

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

RFA No. 176 of 2021

Sabir Hussain

Versus

Muhammad Ashfaq

Appellant by: Mr. Muhammad Sajjad Abbasi,
Advocate.

Respondent by: Qazi Rafi-ud-Din Babar, Advocate.

Date of Decision: 06.02.2024.

MOHSIN AKHTAR KAYANI, J:- Through this RFA, the appellant has assailed the judgment & decree dated 24.02.2021, passed by learned Civil Judge, 1st Class (East), Islamabad, whereby suit filed by respondent for declaration, possession mandatory and permanent injunction has been decreed.

2. Brief facts referred in the instant appeal are that respondent Muhammad Ashfaq filed suit for declaration, possession, mandatory and permanent injunction that he purchased a plot measuring 10 marlas falling Khasra No.44, 45 and 69, situated in village Khadrepair, Tehsil and District Islamabad from one Abid Yasin/PW-4 vide registered sale deed No.13897, dated 19.12.2007, registered before Joint Sub Registrar, Islamabad Ex.P-3 with specific description of property. Respondent has alleged in the plaint that he constructed

boundary wall and installed main gate on the subject property. Respondent was living in village Kurri, District Rawalpindi and in his absence defendant/appellant trespassed into his plot and constructed *kacha* room without any lawful authority. The act of defendant/appellant came into the knowledge of plaintiff/respondent in January 2008, who confronted the appellant on his illegal act, whereby appellant has referred his registered sale deed No.778, dated 26.01.2004 (Ex.D-1) and mutation No.1561. As per the claim of respondent, appellant has nothing to do with the suit land as per his own sale deed which falls within Khasra No.555 & 618, measuring 07 marla, situated at the distance of one Km away from suit plot. Respondent filed an application before PS Koral, Islamabad for taking legal action against defendant/appellant and after initial inquiry qalandra U/S 145 Cr.P.C. was sent to Illaqa Magistrate. Matter was also sent to revenue authorities who submitted report dated 08.02.2008, Ex.P-8, which confirms the status of land in favour of respondent. Illaqa Magistrate passed the order for attachment on 13.03.2008 till further orders as dispute was likely to lead to breach of peace. Appellant in order to avoid legal action filed suit titled Sabir Hussain vs. Muhammad Ashfaq & others seeking declaration and permanent injunction. During the pendency of civil suit, appellant filed application before the Assistant Commissioner Rural on 14.11.2009 in pending proceedings U/S 145 Cr.P.C. to discharge the

qalandra as matter is pending in the civil court. Proceedings U/S 145 Cr.P.C. and its report have been placed on record as Ex.D-2. All these actions persuaded the respondent to file civil suit which has been contested by the appellant by filing written statement by mentioning description of his purchased plot of 07 Marla, situated in Khasra No.555 & 618 through mutation No.1561, Mouza Khadereper, Islamabad and claimed that he purchased the said plot and installed electricity meter as well as gas connection on the suit property, also referred proceedings U/S 145 Cr.P.C. Trial Court framed the initial issues on 14.02.2019 and additionally framed more issues on 06.02.2021, recorded evidence of four plaintiff's witnesses whereas defendant/appellant appeared himself as DW-1. The documentary evidence Ex.P-1 to Ex.P-11 and Ex.D-1 to Ex.D-3 was appreciated and there-after trial court passed the decree in favour of plaintiff/respondent through impugned judgment. Hence, this appeal.

3. Learned counsel for the appellant contends that appellant filed suit earlier to the suit of respondent in which respondent/plaintiff recorded his statement that he has nothing to do with the land claimed by the appellant situated in Khasra No.555 & 618, Mouza Khaderepar, Islamabad. However, the suit of appellant was dismissed on 22.02.2010 and also claims that during the proceedings of civil suit a revenue official/Naib Tehsildar was appointed as local

commission to ascertain the facts relating to controversy between the parties, who submitted report on 09.03.2011 but said report has not been appreciated by the trial court rather trial court relied upon the other report brought on record as Ex.P-8, which was procured during criminal proceedings U/S 145 Cr.P.C., which was consigned due to pendency of matter in civil court; that trial court without summoning the revenue officials approved the report against settled principles of law; that trial court has not given any weightage to the appellant's sale deed which was executed earlier in the year 2004 as compared to the subsequent sale deed of respondent dated 19.12.2007.

4. Conversely, learned counsel for the respondent contends that entire revenue record confirms the status of respondent's land which is in possession of appellant without any lawful justification and trial court has rightly decided the matter based upon the revenue reports and record; that appellant has not discharged the burden to prove his claim that he is in possession of right property in accordance with the description provided in his sale deed.

5. Arguments heard, record perused.

6. Perusal of record reveals that entire controversy between the parties revolves around two different sets of sale deeds as well as mutations claimed by the appellant and the respondent referred as Ex.D-1 versus Ex.P-3, whereby description of suit plots are as under:-

<u><i>Appellant's claim, Ex.D-1</i></u>	<u><i>Respondent's claim, Ex.P-3</i></u>
<i>Sale deed dated 26.01.2003, registered at</i>	<i>Sale deed dated 19.12.2007, registered at</i>

<p>S.No.778, before Sub Registrar, Islamabad, measuring 07 Marla, situated in Khewet No.24, Khatooni No.58, 59, Khasra No.555 (total land 10 kanal, 14 marla) & 618 (total land 09 kanal, 09 marla) (02 qitaat measuring 20 kanal, 03 marla, share 7/403) through mutation No.1561, revenue estate Mouza Khaderepar, Tehsil and District Islamabad.</p> <p>Last vendor/owner Sarwar Khan.</p> <p><u>Description of Land:-</u></p> <p>On East: plot of Muhammad Rasheed;</p> <p>On West: plot of Haji Muhammad Siddiq;</p> <p>On North: Land of Sufi Lal;</p> <p>On South: Street 12 feet.</p>	<p>S.No.13897, before Sub Registrar, Islamabad, measuring 10 Marla, situated in Khewet No.12, Khatooni No.39, Khasra No.69 (total land 01 kanal, 08 marla, share 7/28, 07 marla), Khewet No.25, Khatooni No.60, Khasra No.44, 45 (total land 01 kanal, 14 marla, share 3/34, 03 marla) total 10 marla through mutation No.2568, revenue estate Mouza Khaderepar, Tehsil and District Islamabad.</p> <p>Last vendor/owner Abid Yasin.</p> <p><u>Description of Land:-</u></p> <p>On East: House of Riaz;</p> <p>On West: House of Arshad;</p> <p>On North: Land of Sufi Lal;</p> <p>On South: Street.</p>
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7. While comparing these two primary sets of documents brought on record without objection from either side respondent/plaintiff/PW-1 claims that he purchased this land from one Abid Yasin/PW-4 and then subsequently mutated the land through mutation No.2568, Ex.P-4 and reiterated his stance referred in the plaint that he constructed boundary wall and also installed gate which was locked and in the year 2008, he came to know that his lock was broken and someone is constructing within the compound of respondent, whereafter appellant has been identified as trespasser though his land falls within the Khasra No.555 & 618 with 07 marla of land. As per PW-1:-

چنانچہ میں نے تحصیل پٹواری کے پاس جا کر سارا ریکارڈ چیک کر لیا تو وہاں سے مجھے معلوم ہوا کہ مدعا علیہ کا پلاٹ عس
تجرہ کے مطابق پلاٹ متد عویہ سے کافی دور واقع ہے اور مدعا علیہ کا پلاٹ متد عویہ سے کوئی تعلق نہ بنتا ہے۔

8. Respondent/PW-1 also highlighted that he filed application to the SHO PS Koral, whereby proceedings U/S 145 Cr.P.C. were initiated and report was requisitioned by the Assistant Commissioner Rural/ Illaqa Magistrate:-

جنہوں نے موقعہ ملاحظہ کرنے کے بعد رپورٹ پیش کی کہ پلاٹ متدعوئیہ خسرہ نمبرات 44، 45 اور 69 میں واقع ہے اور مدعی کا ملکیتی ہے جبکہ مدعا علیہ کا خرید کردہ رقبہ خسرہ نمبرات 618 اور 555 میں واقع ہے اور وہ پلاٹ متدعوئیہ سے کافی فاصلے پر واقع ہے۔ جس پر AC صاحب نے پلاٹ متدعوئیہ کو Attach کرنے کا حکم صادر فرمایا اور انکوائری ملک فرخ ندیم صاحب مجسٹریٹ رورل کومارک کر دی۔

9. The appellant in order to avoid legal proceedings filed civil suit for declaration, permanent injunction in which he has referred his ownership of land in Khasra No.555 & 618. Counsel for respondent/ plaintiff recorded his statement in the civil court on 22.02.2010 that respondent has nothing to do with the land situated in Khasra No.555 & 618, claimed by the appellant, resultantly, suit was dismissed. PW-1 also highlighted that separate local commission was also appointed.

10. Initial onus is upon the respondent to prove that his plot is entirely different with the plot claimed by the appellant in terms of Article 117 of the *Qanun-e-Shahadat* Order, 1984. He was cross-examined at length but nothing fruitful has been achieved. Even in order to discharge the burden respondent has produced PW-2 Mukhtar-ul-Haq, who confirms the purchase of plot as well as construction of boundary wall and installation of main gate by respondent. Even PW-2 also participated in the previous negotiations and inquiry qua the claim of appellant and proceedings before police. The additional witness Yasir Mehmood/PW-3 is property dealer who confirms that Ashfaq/plaintiff/respondent has purchased the plot in

Mouza Khaderepar through him from one Abid Yasin, measuring 10 marla, situated in Khasra No.44, 45 and 69, which has been transferred in the name of respondent through registered sale deed and possession was handed over to him, who raised boundary wall and installed gate but later on came to know that Sabir Hussain started construction, which resulted into litigation. Nothing fruitful has been achieved through his cross-examination. Respondent further produced PW-4/Abid Yasin, who confirmed the sale of plot to the respondent measuring 10 marla and also confirmed that plot was purchased from SM Rizvi through sale deed and reconfirmed the description of land with the claim that on north side land of Sufi Lal, on west side house of Arshad, on south street, even he confirmed that when he sold out the land boundary wall has been constructed upto two feet and remaining height of boundary wall measuring 5 to 6 feet and installation of gate was completed by the plaintiff/respondent after complete wall construction. He confirmed that suit land falls within Khasra No.44, 45 and 69. He also confirmed that demarcation was also carried out.

11. While comparing the evidence of respondent in juxtaposition with the claim of appellant Sabir Hussain/DW-1, who confirmed that he is owner of 07 Marla land, purchased from one Sarwar Khan S/o Muhammad Tufail in Khasra No.555, 618, Mouza Khaderepar and produced sale deed Ex.D-1. During the course of cross-examination,

he also confirmed that land was purchased through property dealer and his total land claim is 07 marla.

12. Now adverting towards the documentary evidence brought on record in shape of sale deed Ex.P-3 and Ex.D-1, I have also attended the record of rights as well as application addressed to SHO PS Koral. Report of Tehsildar has been placed on record as Ex.P-8 in which revenue official issued report dated 08.02.2008 to the SHO in terms of proceedings U/S 145 Cr.P.C in the following manner:-

الزام علیہ فریق صابر حسین ولد غلام عباس نے بروئے رجسٹری نمبر 778 مورخہ 26.01.2004 منجانب سرور خان ولد محمد طفیل بالغ نمبرات خسرہ 555-618 سے رقبہ بقدر 10-0 خرید کیا ہے۔ اور مذکور نے پلاٹ واقع نمبرات خسرہ 44-45-69 پر قبضہ کیا ہوا ہے۔ جبکہ اس کا خرید کردہ رقبہ بابت نمبرات خسرہ 555-618 متد عویہ پلاٹ سے تقریباً ایک کلو میٹر کی مسافت پر ہے۔ اس طرح مذکور نے متد عویہ پلاٹ پر خلاف ریکارڈ و موقعہ غلط قبضہ کر رکھا ہے۔ اور مذکور نے پلاٹ ہذا میں چھوٹا کچرا تعمیر کر لیا ہے۔ سائل محمد اشفاق ولد علی اکبر بیانی ہے کہ الزام علیہ نے اس کے پلاٹ خرید کرنے کے بعد ناجائز قبضہ کیا ہے۔

13. The above mentioned report has further been clarified with report Ex.P-9 dated 13.03.2008, prepared by Illaqa Magistrate on the direction of Assistant Commissioner Rural in the proceedings U/S 145 Cr.P.C., whereby following has been recorded:-

بروئے ریکارڈ متد عویہ پلاٹ نمبر 44، 45، 69 میں واقع ہے۔ نمبرات خسرہ متد کرہ بالا سے بروئے رجسٹری نمبری 13897 مورخہ 19.12.2007 فریق اول محمد اشفاق ولد علی اکبر نے رقبہ بقدر 10-0 خرید کر رکھا ہے۔ جس کا انتقال نمبر 2568 درج ہے۔ اس طرح مطابق ریکارڈ و موقعہ کے مطابق محمد اشفاق فریق اول کا خرید کردہ رقبہ درست ہے۔ فریق دوم صابر حسین ولد غلام عباس نے بروئے رجسٹری نمبر 778 مورخہ 26.01.2004 رقبہ بقدر 07 مرلے خرید کر رکھا ہے۔ جس کا انتقال نمبر 1576 منظور شدہ ہے۔ فریق دوم کا خرید کردہ رقبہ موقع سے

مطابقت نہ رکھتا ہے۔ متدعو یہ پلاٹ سے کافی دور ہے۔ فریق دوئم نے نمبرات خسرہ 44، 45، 69 پر ناجائز قبضہ کر رکھا ہے اور وہ مذکورہ خسرہ نمبرات میں مالک اراضی نہ ہے۔

14. These two reports, if seen in context of entire claim of the parties, it appears that the said revenue reports have been issued on the direction of lawful authorities in the proceedings U/S 145 Cr.P.C., which are judicial proceedings, even otherwise, these reports have not been objected to by the appellant during the course of its submission, therefore, trial court has rightly observed the authenticity of these reports on the principles highlighted in judgment reported as 2005 YLR 2129 (Mst. Zainab vs. Muhammad Iqbal), wherein it was held that documents forming part of judicial record are public documents.

15. In addition to above facts judicially noticeable need not to be proved in terms of Article 111 of the *Qanun-e-Shahadat* Order, 1984 if read in conjunction with Article 113 of the *Qanun-e-Shahadat* Order, 1984 the court shall take judicial notice of the judicial proceedings of Section 145 Cr.P.C. which facts have not been denied by the appellant. The term “judicial notice” means expression which has been recognized without proving of something as existing or being true. Respondent/PW-1 in his plaint especially in paragraphs No.4, 5, 6, 7, 8 & 11 reiterated the proceedings U/S 145 Cr.P.C. as well as revenue reports whereby these judicial proceedings have not been denied in para-7 of the written statement on facts, even appellant

being DW-1 relied upon the proceedings including the qlandra, police report and report of Illaqa Magistrate. In such eventuality, admissions made in pleadings, not require any further proof as held in 2017 CLCN 184 (Saeed Ahmed vs. Haji Abdul Hameed), 2015 YLR 2683 (Muhammad Imran vs. Ghulam Mustafa and 6 others). All these aspects have rightly been appreciated by the trial court in collective findings of issue No.1, 2, 2-A & 2-B respectively, even presumption of truth is attached with the judicial proceedings of Section 145 Cr.P.C. in terms of Article 91 of the *Qanun-e-Shahadat* Order, 1984 and has rightly been declared in the impugned judgment, therefore, in this scenario, one cannot wriggle out from the two separate reports prepared in proceedings U/S 145 Cr.P.C. which is admitted phenomena in pleadings as well as in evidence.

16. The reports which were not objected to by the appellant referred in Ex.P-8 and Ex.P-9 confirm the common features that the claim of appellant is regarding land measuring 07 marla situated in Khasra No.555 & 618, Mouza Khaderepar in comparison of 10 Marla land of the plaintiff/respondent in Khasra No.44, 45 & 69, Mouza Khaderepar. Similarly, land of appellant is far away from the land of respondent. In this backdrop, the principle of preponderance has truly been applied by the trial court; no illegality has been committed in appreciation of record, especially when the previous owner of land Abid Yasin/PW-4 confirmed the entire transaction.

17. In presence of above discussion and overwhelming evidence, including the revenue reports, appellant could not justify his case, especially when he has not produced any evidence to rebut the claim of respondent except his own testimony being DW-1, which is insufficient qua the technical reports of Ex.P-8 & Ex.P-9. Resultantly, instant appeal stands *dismissed*. However, in this backdrop, this court is inclined to issue certain parameters and direction to the Registrar, ICT as well as to the Chief Commissioner, ICT, Member Board of Revenue, Collector to observe the following principle in letter & spirit in order to avoid any further litigation within ICT:-

- i. Halqa Patwari before issuance of any periodical record of rights for the purpose of sale (فروختن) he should ask the vendor/owner qua the possession of property and record this aspect in the daily diary while incorporating mutation in the register;
- ii. Halqa Patwari shall verify the possession of property and may prepare a report confirming the actual possession by inspection or through *girdawri* (گردآوری);
- iii. The Revenue officer/ Tehsildar at the time of sanctioning mutation shall ensure the delivery

of possession in *jalsa-e-aam* (جلسہ عام) based upon report prepared by Halqa Patwari;

- iv. At the time of sanctioning mutation, if the land falls within the *abadi deh* (آبادی دیہہ) Collector/Revenue officer is under legal obligation to requisition a report of physical inspection from subordinate revenue officials including Qanungo, Naib Tehsildar, Halqa Patwari, etc. and shall refer the surrounding (محَل، قوع) containing the description of plot/land;
- v. The Member Board of Revenue/ Chief Commissioner, ICT, Collector/ Deputy Commissioner are under legal obligation to notify the *abadi deh* (آبادی دیہہ) through notification U/S 3 of the Land Revenue Act, 1967 in each Mouza, however, in case such notification was not issued then they should give certificate subject to verification through a circular directing sub-ordinate officials, Registrar, Joint Sub-Registrar, etc. to refer the

land in *abadi deh* (آبادی دیہہ) to avoid the future litigation;

- vi. No Registrar, Joint Sub-Registrar are authorized to register any sale deed of land meant for construction of house or built up property unless a physical verification with reference to possession through inquiry has been made and duly recorded in the record and till such time, sale deed shall be kept pending for its authorize execution;
- vii. Registrar, Joint Sub-Registrar or the Revenue Officer or Tehsildar may issue local commission through any official for verification of possession of property in *abadi deh* (آبادی دیہہ) before sanctioning any mutation or sale deed;
- viii. Registrar, Joint Sub-Registrar, Tehsildar or the Revenue officer, who issue direction for verification/ inspection of land under transfer, must maintain a separate register in sequence to maintain reports in their office as a public record, which must be used for any

purpose required under the law in any trial, proceedings, inquiry, etc;

- ix. Chief Commissioner shall issue these instructions through circular to his subordinate officials and non-compliance of such direction may render departmental action against the officials. The circular must contain the timeline of inspection report, local commission report for verification of possession on site of any land which must receive before the Registrar or the Revenue officer within period of seven (07) days by all means so that general public should not be deprived from their transfer of immovable property rights;
- x. Chief Commissioner shall also call the joint survey before issuance of notification U/S 3 of the Land Revenue Act, 1967 from the office of Surveyor General of Pakistan and may use modern devices including but not limited Google mapping, coordinate in land and if possible may also pass a direction to notify the coordinate i.e. longitude and latitude of

any property or any particular point of reference for the purpose of identification of land in the sale deeds;

- xi. Chief Commissioner may also issue necessary directions to the MCI, Administrator or Mayor of the local government to issue identification number to the *abadi deh* (آبادی دیہہ) which could be used in the sale deed, gift deed, etc. in future;
- xii. Halqa Patwari, once notification U/S 3 of the Land Revenue Act, 1967 issued declaring *abadi deh* (آبادی دیہہ) and survey numbers have been marked, shall not record any mutation rather only sale deed, gift deed, etc. used as mode of transfer of immovable property;
- xiii. Sale deed must contain photographic evidence of vendor, vendee, seller, purchaser, as the case may be, along with witnesses to avoid any untoward claim of fraud in future;

(MOHSIN AKHTAR KAYANI)
JUDGE