

2025 M L D 1299

[Balochsitan]

Before Muhammad Najam-ud-Din Mengal, J

MEHRBAN KHAN and others---Petitioners

Versus

BABAR ALI and others---Respondents

Civil Revision No. 671 of 2022, decided on 18th April, 2025.

(a) Civil Procedure Code (V of 1908)---

---O. VII, R. 3---High Court (Lahore) Rules and Orders, Vol.I, Ch.1-C, Part-C--- Specific Relief Act (I of 1877), Ss.42, 54 & 55---Suit for declaration, partition, mesne profit, consequential relief, mandatory and permanent injunction---Non-mentioning of description of property---Effect---Suit was decreed concurrently by courts below--- Validity---Property mentioned at Serial No.II of the plaint neither carried any specific description nor was supported by any documentary evidence such as mutation, Khasra number, or any other relevant revenue record to substantiate the ownership of the predecessor-in-interest---Decree cannot be sustained in respect of property which is uncertain, unidentifiable, or whose title is not established on record---Failure to produce cogent and reliable documentary evidence pertaining to the said property rendered the findings of the courts below, to that extent, erroneous and not sustainable in the eyes of law---Judgments and decrees of courts below were modified to the extent by excluding the same from the purview of the decree and the remaining findings and reliefs were maintained---With these modifications the judgments and decrees of courts below were maintained, in circumstances.

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(b) Civil Procedure Code (V of 1908)---

---S. 115---Revisional jurisdiction of High Court---Scope---Concurrent findings recorded by the Trial and Appellate Courts cannot be disturbed under the revisional jurisdiction of High Court, but only under the principle as settled down by the Supreme Court of Pakistan that where concurrent findings are based on conjectural presumptions, erroneous assumptions and wrong proposition of law, such findings can be reversed justifiably by the High Court, while exercising revisional jurisdiction as conferred under S. 115 C.P.C.---An interference shall be made in the findings, when the same are passed on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of facts, patent errors of law or arbitrary exercise of powers and where unreasonable view on evidence was taken due to non-reading and misreading of evidence.

Jameel Ahmed for Petitioners.

Ms. Sarwat Hina for Respondents.

Date of hearing: 11th April, 2025.

JUDGMENT

MUHAMMAD NAJAM-UD-DIN MENGAL, J.---This judgment disposes of the instant Civil Revision Petition No.671 of 2022, filed by Mehrban Khan and others, against the judgments and decrees dated 30th April 2022 and 8th September 2022 ("the impugned judgments and decrees") passed by the learned Civil Judge-V, Quetta ("the trial Court") and the learned Additional District Judge-X, Quetta ("the appellate Court") whereby suit filed by the respondents/plaintiffs was decreed in their favour, while the learned appellate Court by

upheld the judgment and decree of the trial Court dismissed the appeal filed by the petitioners.

2. Brief facts arising out from the instant petition are that private respondents/plaintiffs filed a Suit for Declaration, Partition, Mesne profit, consequential relief, mandatory and Permanent Injunction against the petitioners/defendants in trial Court with the averments that the mother of plaintiffs/respondents namely Bibi Hajira and the petitioners/defendants being legal heirs of late Muhammad Ali, who passed away in the year 2011 and left behind the legal heirs i.e. petitioners and the mother of private respondents. The predecessor of the parties left behind the below mentioned properties as his legacy, but remained un-partitioned, as such, the plaintiffs/respondents are also entitled to receive their shares from the following properties and other legacy which left behind the late Muhammad Ali are as under:

I. Property bearing mutation No.47, Khewat/Khatoon No.50/87-89, Qita 4, measuring 1897 sq.ft. situated Ward No.16, Tappa Urban, Tehsil and District Quetta.

II. Property measuring about 10,000 sq.ft. situated at Nawa Killi, near Makkah Shopping Mall, main Nawa Killi road, Quetta.

3. It is further averred in the plaint that besides above said properties, the late Muhammad Ali constructed a hotel in the name and style of Mehr Hotel, situated at Ali Bahi road, Quetta in his lifetime, which consists upon 40 rooms and 23 shops, while the shops were rented out on monthly basis and two houses were also built by late Muhammad Ali in his lifetime, where the defendants/petitioners are residing till date. The rental income of suit property shops and hotel were also being distributed amongst the legal heirs of late Muhammad Ali including the mother of plaintiffs/respondents, who was being provided Rs.10,000/- per month. After the death of the mother of plaintiffs/respondents on 23rd March 2017, the defendants/petitioners stopped her share from the monthly rent income. It has further been averred in the plaint that the defendants/petitioners had partitioned the property of late Muhammad Ali amongst his legal heirs except the mother of plaintiffs/respondents without their consent, thus, the plaintiffs/respondents have been deprived from their legitimate/inherited rights.

4. The suit of the plaintiffs/respondents was contested by the other side by means of filing written statement. After framing issues and recording evidence, the suit of plaintiffs/respondents was decreed in their favour by the learned trial Court; vide impugned judgment and decree dated 30th April 2022.

5. Being aggrieved the petitioners/defendants assailed the judgment and decree of the learned trial Court before the learned appellate Court by filing appeal, whereby the judgment and decree of the trial Court was upheld and the appeal filed by the petitioners was dismissed, vide impugned judgment and decree as mentioned hereinabove in para No.1. Whereafter the petitioners filed the instant Civil Revision Petition.

6. Learned counsel for the petitioners contended that the suit of respondents/plaintiffs was not maintainable as they have failed to mention the description of property at Serial No.II of the plaint, but the learned Courts below have failed to consider this important aspect of the case; that PWs have not only failed to place on record the mutation with regard to ownership of the predecessor in interest of the parties nor mentioned any Khewat, Khatoon and Khasra number of the property i.e. measuring 10000 sqft. Situated at Nawa Killi, near Makkah Shopping Mall, main Nawa Killi Road, Quetta; that the impugned judgments and decrees passed by the learned Courts below suffer from mis-reading, non-reading and misappreciation of law; passed the impugned judgments and decrees in violation of the law, as such, same are not sustainable and liable to be set aside.

7. Conversely, learned counsel for the respondents/plaintiffs vehemently opposed the arguments so advanced by the learned counsel for the petitioners and contended that the respondents/plaintiffs have proved their suit through confidence inspiring evidence and despite lengthy cross-examination, their testimonies were not shaken rather same are in line and corroborating each other; that the petitioners/defendants have not denied the relationship between them with the mother of the respondents/plaintiffs; that according to the Shariah Law all the legal heirs of the late Muhammad Ali are entitled to receive their legitimate share from the legacy left behind by their predecessor in interest; that the learned Courts below

have passed the impugned judgments and decrees, which are not only well reasoning, well speaking, but also are according to the settled principle of law and are not open for interference by this Court

8. Heard learned counsel for the parties and perused the record minutely, which reveals that the petitioners/defendants and the mother of the respondents/plaintiffs namely Bibi Hajira is the legal heir of late Muhammad Ali, who died in the year 2011. The predecessor in interest of the parties left behind certain properties as his legacy, but the same remained un-partitioned, as such, the plaintiffs/respondents are also entitled to receive their shares from the properties and other legacy mentioned in the plaint, which left behind the late Muhammad Ali. According to the plaintiffs/respondents that the petitioners/defendants have partitioned the inherited properties, but deprived them from their legitimate and inherited share as the relationship of their mother (Bibi Hajira) has not been denied by the petitioners/defendants. The suit of respondents/plaintiffs was contested by the petitioners/defendants on legal as well as on factual grounds whereby vehemently denied the claim of the respondents/plaintiffs mainly to the extent of property mentioned at the Serial No.II of the plaint.

9. Out of the pleadings of the parties, the learned trial Court framed the following issues:

"ISSUES:-

1. Whether the suit of the plaintiff is hit by non-joinder and mis-joinder of necessary parties? OPD

2. Whether the mother of plaintiffs had received her due share in suit property in her life time and also did not claim her share in her life time?

OPD

3. Whether the mother of plaintiff was entitled for her due share in the legacy of late Muhammad Ali but her due share has not been given to her?

OPP

4. Whether defendants' Nos. 1 and 2 are utilizing the rent amount of suit property without giving the due share of mother of plaintiff? OPF

5. Whether plaintiffs are entitled for any relief claimed?

6. Relief?

10. In support of these issues the plaintiffs/respondents produced three PWs and also recorded their own statement through attorney (plaintiff No.1 Babar Ali) including the PW-2 the representative of Tehsildar, who produced and exhibited the revenue record. The record so produced by the official witness supported the version of the respondents/plaintiffs except the property mentioned at the Serial No.II in the plaint. Even otherwise, the statement of the plaintiff No.1/respondent No.1 (attorney of the respondents) fully corroborated/supported the contents of plaint and despite lengthy cross-examination by the other side nothing adverse has come in favour of petitioners, but however, the witnesses as well as the attorney of the respondents have failed to bring on record the ownership of the property i.e. 10000 sq.ft. situated at Nawa Killi, near Makkah Shopping Maal nor they have mentioned the description whereof either in the plaint or during the course of recording their statements.

11. While, in rebuttal the petitioners/defendants produced evidence of four witnesses and the attorney of petitioners/defendants (Sultan Muhammad) got recorded his statement. However, all DWs had not denied the relationship of the mother of respondents/plaintiffs with the late Muhammad Ali as well as with petitioners/defendants, but however, denied the ownership of the property mentioned at Serial No.II of the plaint rather deposed that the same is rented one.

12. The moot question involved in the instant matter pertains to interpretation of Order VII of Code of Civil Procedure ("C.P.C.") and the relevant provision is Rule 3, which deals with the subject matter of suit is immovable property, hence for facilitation the same is reproduce herein below:

"3. Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such

property can be identified by boundaries or numbers in a record of settlement of survey, the plaintiff shall specify such boundaries or numbers."

13. Besides, perusal of the High Court Rules and Orders under Chapter 1-C of (Volume I), wherein the certain instructions have been defined for the subordinate Courts, while the relevant provision to the case in hand is reproduced as under:

"Part C--- EXAMINATION OF THE PLAINT

- (i)
- (ii)
- (iii)
- (iii)

9. Land Suit.---If the plaintiff relates to agricultural land and the plaintiff is illiterate, it should be scrutinized with special care, according to the following directions:---

- (i).....

(ii) Every such plaintiff shall be accompanied by a statement, in the prescribed form setting forth the particulars relating thereto recorded in the Settlement record and in the last Jamabandi. This statement shall be verified by the signature of the Patwari of the Circle in which the land concerned is situate. Where by reason of partition, river action or other cause, the entries in the Settlement record and in the last Jamabandi do not accord, a brief explanation of the reason should be given in the column of remarks. Where the suit is for a specific plot with definite boundaries, it shall also be accompanied by a map, drawn to scale, showing clearly the specific plot claimed, or in relation to which the decree is to be made, and so such of the fields adjoining it, also drawn to scale, as may be sufficient to facilitate identification. The specific plot and adjoining fields shall be numbered in accordance with the statement and the map shall be certified as correct by the Patwari or other persons who prepared it. Where, however, the suit is for the whole of one or more Khasra numbers as shown in the Settlement map, or a share in such numbers, and not for a specific portion thereof no map will be required unless it is necessary for other reasons to show the boundaries of such Khasra numbers" **UNDERLINE AND BOLD IS ADDED.**

14. Furthermore, the concurrent findings recorded by the learned trial Court as well as by the appellate Court cannot be disturbed under the Revisional Jurisdiction of this Court, but the principle as settled down by the Hon'ble Supreme Court of Pakistan that where concurrent findings are based on conjectural presumptions, erroneous assumptions and wrong proposition of law, such findings can be reversed justifiably by the High Court, while exercising revisional jurisdiction as conferred under section 115, C.P.C., an interference shall be made in the findings, when the same are passed on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of facts, patent errors of law or arbitrary exercise of powers and where unreasonable view on evidence was taken due to non-reading and misreading of evidence.

15. Plain reading of entire record reveals that the suit was carrying certain inherent defects with regard to property mentioned at the Serial No.II of the plaint, neither the respondents/plaintiffs have mentioned the description of the said property in the plaint nor produced any mutation, Khasra numbers nor proved the ownership of late Muhammad Ali with the aforementioned property, meaning thereby the suit is defective only to the extent of property mentioned at the Serial No.II of the plaint i.e. property measuring about 10,000/ sq.ft. situated Nawa Killi, near Makkah Shopping Maal, Main Nawa Killi Road, Quetta under the provisions of Order VII of C.P.C. Reliance in this regard is placed on the case titled as "Muhammad Sabir and 3 others v. Mst. Janat Khatoon, (2015 CLC 1042)" the relevant portion whereof is reproduced as under:

"The suit filed by the defendant/respondent carries certain inherent defects and description of property pertaining to Revenue Record was neither mentioned nor appended with plaint. The civil suit on uncertain boundaries and without revenue record in respect of immoveable property was not maintainable because no decree on basis of uncertain and unidentified boundaries is executable. The object of partition or determination of inherited rights cannot be determined without description of

property, the revenue entries pertaining to the ownership/tenancy of anyone, who claims any right under such entries, in a case when total measurement of area was not mentioned neither decree can be granted and if so, same will not be virtually executable, therefore, decree cannot be awarded on the basis of such an ambiguous pleading and such like frivolous, ambiguous and baseless suit/lis shall be buried on its inception."

16. After examining the record, it has been observed that the Courts below have concurrently decreed the suit for declaration, partition, and permanent injunction filed by the plaintiffs/respondents. However, upon careful scrutiny of the record, it transpires that the property mentioned at Serial No.II of the plaint neither carries any specific description nor is supported by any documentary evidence such as mutation, Khasra number, or any other relevant revenue record to substantiate the ownership of the predecessor-in-interest. It is a settled principle of law that a decree cannot be sustained in respect of property which is uncertain, unidentifiable, or whose title is not established on record. The failure to produce cogent and reliable documentary evidence pertaining to the said property renders the findings of the Courts below, to that extent, erroneous and not sustainable in the eyes of law.

17. Keeping in view the facts and circumstances of the case, accordingly, the judgments and decrees passed the learned Courts below are modified to the extent of property mentioned at Serial No.II of the plaint, as such, same be excluded from the purview of the decree. While, the remaining findings and reliefs granted by the learned Courts below, being based on proper appreciation of evidence and in accordance with law, are maintained.

With the above modifications the impugned judgments and decrees passed by the Courts below are maintained.

The petition stands disposed of with the above terms.

SA/55/Bal.

Order accordingly.