

Judgment Sheet

**PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT**

Civil Revision No.136-A/2015

JUDGMENT

Date of hearing.....**20.10.2025**.....

Petitioners (Mst. Tahira Bibi) By Muhammad Saqib Hussain Lughmani,
Advocate.

Respondents. (Muhammad Siddique and others) By Mr. Aqeel Sarwar
Tanoli, Advocate.

SADIO ALI, J.- The petitioner through the present revision petition has impugned the judgment and decree dated 19.03.2015, passed by the learned Additional District Judge-V, Mansehra, whereby appeal filed by the petitioner / plaintiffs against the judgment and decree dated 30.07.2011, passed by the learned Civil Judge-X, Mansehra, was dismissed, by affirming the findings of the learned trial court.

2. The brief but material facts giving rise to the present revision petition are that the petitioners/plaintiffs instituted a suit seeking partition of their share in a jointly owned constructed house measuring 09 marlas, claiming ownership and possession over 04 marlas thereof. The property was described as

part of Khasra No.288, situated in Village Phagla, Tehsil & District Mansehra. It was their case that the suit property formed part of their ancestral estate inherited from their predecessor-in-interest, and that being co-sharers, they were entitled to have their shares partitioned in accordance with law. It was alleged that the respondent No.1 (Muhammad Siddique), without their consent, unlawfully attempted to demolish the existing structure and raise fresh construction upon the joint property. It was further pleaded that the suit house had remained vacant for a considerable period and that the respondent No.1, by gathering construction material on the site, intended to alter the nature of the property, thereby infringing their proprietary rights. On such assertions, they sought a decree for possession through partition and a perpetual injunction restraining the respondent No.1 from raising construction on the disputed land.

3. Initially, the suit was filed by petitioner/plaintiff No.1, but during pendency

of the proceedings, defendants No.19 to 29 were transposed as co-plaintiffs, as they supported the stance of the original plaintiff. The learned trial court, after framing necessary issues and recording evidence of both sides, came to the conclusion that the petitioners had failed to establish exclusive ownership or possession of the disputed portion. The learned trial Court observed that the petitioner / plaintiffs themselves had admitted the existence of a private partition among their predecessors, signifying that all co-sharers had already been in separate possession according to their respective shares. On this premise, the suit was dismissed vide judgment and decree dated 30.07.2011. Feeling dissatisfied, the petitioners preferred an appeal before the learned Additional District Judge-V, Mansehra, which too was dismissed vide judgment and decree dated 19.03.2015, thereby maintaining the findings of the learned trial court. Hence, this revision petition.

4. Arguments heard and record gone through.

5. After hearing both sides and carefully examining the record, this Court finds no reason to interfere with the concurrent findings of fact. The evidence produced by the petitioners themselves confirms that private partition had been carried out between their predecessors decades ago, and that all co-sharers had been in separate possession since long. The law on this point is well settled that a private partition between co-owners, if not shown to be fraudulent or illegal, carries the same sanctity as a lawful contract. In the instant case, no material has been brought on record to suggest that the said private partition was illegal, void, or obtained by fraud.

6. It is also a settled proposition of law that partial partition cannot be allowed unless the entire joint property is brought before the Court for equitable division. No co-sharer can claim division of only a selected portion of the joint holding, as that would disturb the

equilibrium of shares among the remaining co-owners. The superior courts have consistently held that all joint holdings must be included in proceedings for partition to ensure fairness and completeness. In this context, reliance can be placed on the judgment reported as ***Ghulam Rasool and another Vs Muhammad Khalid and 02 others (2006 YLR 2289)***.

7. During the course of the trial, both the parties adduced oral and documentary evidence. The petitioner / plaintiffs relied upon *Fard Jamabandi* for various settlement years (1980-81, 1984-85, 1988-89, 2000-01, and 2004-05) and Goshwara-e-Malkiat, showing their respective shares in ownership. They also examined PW-3, Zahid Asghar, the special attorney of the remaining plaintiffs, who deposed that the disputed house was their joint property and was lying vacant when respondent No.1 started collecting material for its reconstruction. He stated that the plaintiffs filed the suit to prevent such unilateral action. However, during cross-examination, PW-3

candidly admitted that Khasra Nos.287, 288, and 289 had been privately partitioned among their predecessors long ago and that each co-sharer was in exclusive possession of his respective portion. He further admitted that respondent No.1 had raised construction on the disputed property from his own means, although he alleged that it was rebuilt after selling the debris of the old house. He also conceded that the private partition among the co-sharers was never challenged by his grandfather or father and that all co-sharers were in peaceful possession of their respective holdings. In this behalf, reliance can be placed on the judgments reported as *Irshad alias Abdul Rahim and 02 others Vs Ashiq Hussain* (PLD 2007 Karachi 421) and *Mushtaq Ahmad and 06 others Vs Imam Bakhsh and 28 others* (2007 MLD 315).

8. Moreover, the respondent No.1 appeared as DW-3 and supported his stance of exclusive possession over the disputed property since the time of his forefathers. He produced

Patwari Halqa as DW-1, who proved *Fard Jamabandi* for the years 1953-54 to 2004-05, confirming that Khasra Nos.287, 288, and 289 were privately partitioned though still reflected jointly in the revenue record. Respondent No.1 further deposed that he had raised construction over Khasra No.288 much prior to the institution of the suit and that his family had been residing there for decades. During cross-examination, he admitted that his original share in the property was less than one (01) marla but explained that he had subsequently purchased the remaining area from Ali Asghar and Mst.Khan Sahib, the other co-sharers, and that Khasra Nos.288 and 289 were contiguous and used jointly for practical purposes.

9. After thorough and careful examination of the record, the learned Civil Judge rightly held that the plaintiffs had failed to prove exclusive possession, title, or independent ownership over the suit property. The very witness of the plaintiffs (PW-3) admitted the existence of a private partition,

which nullified their claim for a fresh partition through the Court. It was further found that respondent No.1 had been in possession of the suit property since long, had constructed the house at his own expense, and that no illegality or encroachment was established against him.

10. In the present case, it is also an admitted position that the petitioner / plaintiffs sought partition only of Khasra No.288, while excluding the remaining khasras (Nos.287 and 289) admittedly held jointly with the same co-sharers. Such selective litigation offends the principle of indivisibility of joint property, and the law does not permit a co-sharer to seek partition of only a valuable portion while excluding the rest.

11. I have examined both the judgments and find that both the courts below have exhaustively embarked upon the issues involved in this case, rightly appreciated the documentary as well as oral evidence produced by the parties and reached to the right conclusion which to my mind, are not opened

to any exception. Although this court, in exercise of its revisional jurisdiction is not required to reappraise the evidence, yet in the interest of justice, I have examined the evidence available on record and find that the conclusions arrived at by both the courts below are not only in accordance with the record of the case, but the same are also in consonance to law on the subject.

12. It is by now settled that concurrent findings of facts recorded by the courts below, which are based on proper appreciation of evidence, oral and documentary produced by the respective parties before the learned trial court, are not liable to be interfered with in revisional jurisdiction under section 115 CPC. In this context reliance can be placed on the judgments reported as *Abdur Rahim and another Vs Mst. Pervaizi Bibi and others* (2000 SCMR 346), *Muhammad Rashid Ahmad –Vs- Muhammad Sadiq* (PLD 2002 SC 293) and *Secretary to Government of the Punjab, Education Department, Lahore and*

another Vs Saeed Ahmad Khan (PLD 1994 SC 219).

13. For what has been discussed hereinabove, I find no illegality or material irregularity of jurisdictional defect in the impugned judgments of the learned courts below calling for interference. Resultantly, this revision petition is hereby dismissed.

Announced:
20.10.2025.

J U D G E

Arshad Iqbal