

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO.14 OF 2020

ABDUL HAMEED
Vs.
MALIK TARIQ JAVED, ETC

Petitioner by : Malik Irfan Asif, Advocate.

Respondents by : Mr. Muhammad Ilyas Sh., Advocate.
Mr. Tariq Mahmood Bashir, Advocate.
Mr. Talha Ilyas Sh., Advocate.
Mr. Aqib Aman, Advocate.
Malik Altaf Hussain Kedwal, Advocate.

Date of hearing : 09.09.2020.

LUBNA SALEEM PERVEZ, J. Through instant Civil Revision, the petitioner has assailed the judgment dated 31.10.2019, passed by learned Additional District Judge-III, East- Islamabad, whereby order for preliminary decree passed by the learned Trial Court dated 01.06.2019 has been set aside and matter has been remanded back with the directions to the learned trial Court to decide the matter after framing issues and recording of pro and contra evidence.

2. Facts in brief are that the suit for separate possession through partition and permanent injunction was filed by the petitioner Abdul Hammed against Malik Tariq Javed and others seeking declaration for owner ship of total land of 10 marlas in khewet No. 807, Khatooni No. 1269, Khasra No. 2359, 2 kanal 7 marla, 1/47 share = 1 marla; Khewet No. 808, Khatooni No. 1270, Khasra No. 2363, 2 kanal 6 marla, 1/48 share=01 marla; Khewat No. 1201, khatooni No. 2380 Khasra No. 2357 10 kanal 17 marla 1/217 share=01 marla; khewat No. 1202, khatooni No. 2381, Khasra No. 2358 19 kanal 1/380 share = 01 marla; khewat No. 1203, khatooni No. 2382, Khasra No. 4134/2360/2 9 kanal 4 marla 6/184 the share = 06

marla. It appears that another suit for declaration and possession through partition and permanent injunction was also filed for Khasra No. 4134/2360/2 measuring 2 kanal and 6 marlas falling in Revenue estate Rawat, by Khalid Rafiq and others against Abdul Hameed and others. Tariq Javed Respondent No.1 in the present civil revision has been named as Respondent No.15 in that suit. The learned trial Court passed an order on 01.06.2019 in the suit filed by Khalid Rafiq against Abdul Hameed and appointed Local Commission to prepare detailed report after inspection of the suit property/Khasra Nos for the purposes of partition of suit land. Another order was passed on the same date i.e. on 01.01.2019 in suit filed by Abdul Hameed against Tariq Javed whereby the said suit was kept in pending till the report of the local commission considering that the subject matter and the suit land is common. It is against this order that Tariq Javed filed appeal before the learned District Judge, East, Islamabad on the ground that he has purchased the portion of land measuring 26 kanal 11 ½ marla in Khasra Nos. 2358 and 2359 with specific metes and bounds and clear dimensions through sale deed No. 7354 dated 23.05.2012 from Yasmin Riaz (one of the respondents in both the suits). Learned Appellate Court, vide order dated 31.09.2019, allowed the appeal by remanding the case to the learned Trial Court with the directions to decide a matter afresh by framing issues and recording of evidence. Being aggrieved of this order, Abdul Hameed has filed the present Civil Revision.

3. Learned counsel for the petitioner submits that the learned Appellate Court has misread the contents of the suit as well as impugned order; that the land subject matter of both the suits is common and all the respondents who are the co-sharer in the suit land and have undivided shares filed the suit for partition; that the learned Trial Court has rightly appointed Local Commission for inspection of the land to ascertain that whether the suit land is partitionable and what should be the mode of

partition and if the suit land is not partitionable then what is the market value of the suit property; that the order dated 01.06.2019 being a consent preliminary decree cannot be assailed in appeal; that the shares of the co-owners are admitted in the khasras which are the subject of the suit; that where the share and title are determined there is no need for recording evidence and trial, in this regard, he relied on judgment of *Hon'ble Supreme Court of Pakistan Shabla vs Ms. Jahan Afroz Khilat (2020 SCMR 352)*.

4. Learned counsel for the respondents submitted that though some of the khasra, khatoonis and khewat numbers are common but Tariq Javed has purchased the portion of land 26 kanal and 11 ½ marlas through registered sale deed dated 23.05.2012 and 12 kanal 6 marlas through another registered sale deed dated 02.06.2016 from Yasmin Riaz the owner in possession out of her specific shares sold the land having clear dimensions and layout map which is in the knowledge of Respondent Nos. 1 to 4; that these sale deeds have not been challenged in any court of law and are intact till date; He, therefore, submitted that in view of these facts, the learned Appellate Court has rightly remanded the matter to the learned Trial Court.

5. Arguments heard. Record perused.

6. Perusal of the record revealed that suit has been filed by Abdul Hameed for partition of suit land with the contention that the defendant Muhammad Tariq has forcibly occupied his property and sought separate possession through partition of the suit land and sought restraining order against Tariq Javed from interfering in possession; raising construction; claiming right and interest in the suit land and alienating the possession to anyone else. Tariq Javed contested the suit by filing written statement in his defence on the basis of the registered sale deed for the part

of land purchased by him from one of the co-owners Mst. Yasmeen Riaz. It is in this factual backdrop, the learned Appellate Court has set aside the preliminary decree dated 01.06.2019 for resolving the factual controversies after framing of issues and recording evidence through proper trial. Perusal of the record appended with the case shows that both the suits have been filed by the co-owners/co-sharers in the suit land (having four khasras in common) for partition so that specific portion of land for possession be determined in their names, however, the plea of Tariq Javed is not regarding partition of his share but he is defending the land having definite boundaries and specific metes and bounds and dimensions claimed to have purchased through registered sale deeds from Yasmin Riaz. Thus, I am in agreement with the decision of the learned Appellate Court as though some khasras of the suit land are common but the issues raised vide suit filed by Abdul Hameed against Tariq Javed are quite different and, therefore, the factual controversies raised in the said suit are to be decided through conducting proper trial and considering the documentary as well as oral evidence produced by both the parties after framing of issues.

7. The impugned judgment dated 31.10.2019, passed by the learned Appellate Court does not suffer from any legal error or infirmity, therefore, does not warrant any interference. Hence, present civil revision is accordingly dismissed.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on this 17th day of September, 2020.

JUDGE