

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No.140 of 2014

Muhammad Ashraf Chheena (deceased) through legal heirs and others.

Versus

Mst. Rehana Bibi and others.

Petitioners by : Mr. Zulfiqar Ali Abbasi,
Advocate.

Respondents by : Raja Asim Iftikhar, Advocate.

Date of Decision : 12.10.2021.

TARIQ MEHMOOD JAHANGIRI. - Through instant civil revision filed under Section 115 Civil Procedure Code, 1908, the petitioners have assailed judgment and decree dated 31.01.2014 passed by learned Additional District Judge (IV), East-Islamabad as well as judgment and decree dated 15.09.2011, passed by learned Civil Judge 1st Class, Islamabad through which suit of the petitioners / plaintiffs was dismissed.

2. The facts, in brief, are that the petitioners / plaintiffs are owners and co-sharers in possession of land measuring 195-Kanals 11-Marlas in different khasras purchased by them through different agreements / sale deeds. It is stated that vide agreement dated 17.02.1994 and general power of attorney dated 14.02.1994, the petitioners / plaintiffs got possession of 3-

Kanals 2-Marlas land i.e. entire share of respondents No.12 and 14 / defendants No.2 and 4 in Khasra No.2078 out of which some part has also been transferred to the nominees of the petitioners / plaintiffs, accordingly said respondents / defendants also surrendered their possession of shamlat land measuring 02-Kanals 14-Marlas being their entire share in Khasra No.2107 and after transfer of their land in this khasra no possession in this khasra was left with them. It is contended that respondents No.12 and 14 / defendants No.2 and 4 also handed over land measuring 03-Kanals and 02-Marlas out of khasra No.2074 and transferred their entire share in favour of petitioner No.4 / plaintiff No.4 after receiving full consideration. The respondent / defendant No.1 (Zamir Khan) was also shown to be the sharer in the revenue record but as per his family settlement he had waived off his right of giving his consent.

3. That the share of respondents / defendants No.2 to 4 was transferred in favour of petitioner No.4 vide sale deed dated 12.10.1995. It is asserted that the petitioners / plaintiffs and their nominees have been enjoying peaceful possession of the entire aforesaid land for the last five / six years and have also constructed road, boundary walls and rooms etc. over it. It is contended that although petitioners / plaintiffs are owners of land as mentioned in para No.01 of the plaint, but presently the dispute is with respect to khasra numbers 2070, 2074, 2078, 2080 and land about 4-Kanals and 14-Marlas of khasra

Nos.3073/2107. It is stated that the respondents / defendants intend to transfer the land to some other persons after getting incorporating their names in the revenue record through fraud. They have been threatened to dispossess the petitioners by illegal means.

4. During the pendency of suit, after obtaining the permission to amend the plaint, the petitioners / plaintiffs contended in amended plaint that they have been dispossessed by the respondents / defendants in violation of their legal rights. That they requested them not to trespass there and / or to forcibly occupy it, but they refused hence this suit with the prayer of declaration, recovery of possession, mandatory injunction with the direction to respondents to hand over the peaceful possession of land and as a consequential relief a decree for permanent injunction was also prayed for.

5. Respondents / defendants contested the suit by filing written statement in which they denied the ownership as well as possession of petitioners as per their description given in the plaint, whereafter, keeping in view legal as well as factual controversies between the parties following issues were framed:-

"Issues:-

1. Whether the plaintiffs have no cause of action, hence suit is liable to be dismissed? OPD
2. Whether the suit is not maintainable in its present form? OPD
3. Whether the suit is bad or mis joinder of necessary parties, hence liable to be dismissed? OPD

4. Whether the suit is filed with concocted facts, falls frivolous, hence defendants are entitled to special costs? OPD
5. Whether the plaintiffs are co-owners / co-sharers in possession of the suit property measuring 106-Kanals and 05-Marlas? OPP
6. Whether the defendants No.2 to 4 in connivance with defendant No.1 handed over the land measuring 03-Kanals and 02-Marlas form Khasra No.2074 in favour of plaintiff No.4? OPP
7. Whether the defendants have waived off their rights as per family settlement? OPP
8. If issues No.5, 6 and 7 are proved in affirmative, whether the plaintiffs are entitled to the decree as prayed for? OPP
9. Relief.

6. The petitioners / plaintiffs filed a petition under Order XIV Rule 5(3) read with Section 151 C.P.C. for amending issue No.5 framed on 30.06.2003 on the ground that in the issues already framed, the suit property has not been properly mentioned, according to prayer clause of the suit, the suit property is mentioned in para No.5 of the plaint, hence it was prayed in the petition that by amending issue No.5, suit property mentioned in para No.05 of the plaint be mentioned in the said issue. That petition was accepted and learned Trial Court amended issue No.5 on 29.04.2005, as under:-

“5. Whether the plaintiff is owner in possession as co-sharer in the land bearing Khasra Nos.2070, 2074, 2078, 2080 and about 04-Kanals, 14-Marlas of Khasra No.3073/2107? OPP”

7. That the petitioners were directed to produce evidence on amended issue framed but no fresh evidence was produced. The petitioners filed an amended plaint, wherein they claimed the recovery of possession of suit property besides other claims and issue No.5 was re-casted and amended issue No.5-A was framed on 05.01.2011, which is as under:-

“5-A. Whether the plaintiffs have been dispossessed by the defendants during the pendency of suit, therefore, they are entitled to recovery of possession of the same? OPP”.

8. That after framing of issue No.5-A, the petitioners produced additional evidence, after hearing both the parties, the learned Trial Court dismissed the suit filed by the petitioners vide judgment and decree dated 15.09.2011. Being aggrieved the petitioners filed regular first appeal under Section 96 of C.P.C., the same was also dismissed by the Court of learned Additional District Judge (IV), East-Islamabad, vide judgment and decree dated 31.01.2014, hence the instant revision petition.

9. Learned counsel for the petitioners, *inter-alia*, contends that both the learned lower Courts have not given any finding on amended issue No.5, dated 29.04.2005.

10. That the right of cross-examination of the respondents was closed, the respondents have also not adduced the affirmative evidence, hence claim of the petitioners / plaintiffs had gone un-rebutted.

11. That the impugned judgments and decrees of the Courts below are against the law and facts and same are not tenable in the eye of law, both the learned lower Courts have ignored the important aspect that previously issue No.5 was originally framed by learned Trial Court on 30.06.2003 but amended on 29.04.2005 as the petitioners / plaintiffs have adduced their affirmative oral as well as documentary evidence on the said issue but the said primary issue has never been discussed by both the Courts below, by passing the impugned judgments and decrees the learned lower Courts have acted illegally and have committed irregularity. That the valuable rights of the petitioners are involved in the instant case and has prayed for setting aside of concurrent findings of both the Courts below, whereby suit filed by the petitioners was dismissed.

12. Conversely, learned counsel for the respondents has controverted the arguments made by learned counsel for the petitioners by stating that both the impugned judgments and decrees have been passed according to law laid down by superior Courts of the country and facts of the case, the concurrent findings are not liable to be set-aside by this Court, in the impugned judgments and decrees both the learned lower Courts have discussed all the evidence and controversy between the parties and have rightly passed the impugned judgments and decrees by dismissing the suit of the petitioners and has prayed for dismissal of the instant revision petition.

13. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record have been examined with their able assistance.

14. The main emphasis of the learned counsel for the petitioners is on the point that both the learned lower Courts have not given any findings on issue No.5, which was amended on 29.04.2005 on the petition filed by the petitioners, which is reproduced as under:-

“5. Whether the plaintiff is owner in possession as co-sharer in the land bearing Khasra Nos.2070, 2074, 2078, 2080 and about 04-Kanals, 14 Marlas of Khasra No.3073/2107? OPP”.

15. Though in the impugned judgments and decrees the said amended issue is not mentioned but the controversy / points involved in the issue have been decided by the learned Trial Court in the impugned judgment and decree, the relevant portion is reproduced as under:-

“In para No.01 of the plaint they have claimed their ownership over total land measuring 195-K, 11-M and have particularized their dispute to the extent of land mentioned in para No.5 of the plaint i.e. khasra No.2070, 2074, 2078, 2080 of land measuring 4-K, 14-M and khasra No.3073/2017. That admittedly the whole land i.e. Malkiyat as well as Shamlati was purchased by them through different documents / agreements from joint Khatta without any legal demarcation. While perusing the documentary evidence produced by plaintiffs it is transpired that khasra No.2074 is a shamlati khasra, khasra No.3073/2107 is also shamlati comprising over total land 683-K, 18-M and plaintiffs have produced their titled document only to the extent of 70-K as Ex-P.2 and 36-K 5-M as Ex.P.1. Regarding Khasra No.2078 there is a general power of attorney regarding land measuring 3-K, 2-M Malkiyat land and iqarnama regarding 3-K 2-M Malkiyeti as well as 2-K 14-M in shamlati land, but neither the document of Iqarnama nor general power of attorney act as title

documents. Regarding Khasra No.2071 and 2080, there is no title document produced on record. In view whereof there is no sufficient proof of title of property in dispute. It was never partitioned legally, therefore, it cannot be said with certainty that they were ever given the possession of this land wherefrom they were dispossessed. Despite that there is no supporting evidence of PW-2 who is a sole witness, therefore, I am not convinced to grant them their claim. Resultantly, this issue is decided in negative.”

16. As the issues have been decided by discussing all the oral and documentary evidence, so if the issue was not reproduced according to its wordings in the impugned judgment, no prejudice is caused to the petitioners / plaintiffs, no irregularity or illegality has been committed by the learned Courts below while passing the impugned judgments and decrees.

17. In a case reported as "*The Province of East Pakistan v. Major Nawab Khawaja Hasan Askary and others*" (**PLD 1971 SC 82**), it has been held that:

“The parties have led evidence in support of their cases and it was on this evidence that decision has been given by the Courts below. In my opinion, the procedure adopted by the Courts below cannot be said to be illegal. If issues are not framed but allegations are made in the plaint and they are challenged in the written statement, it is open to the Court to allow the parties to lead evidence on such point and to give decision on it without framing any issue.”

18. In a case reported as "*Fazal Muhammad Bhatti and another v. Mst. Saeeda Akhtar and 2 others*" (**1993 SCMR 2018**), it has also been held that:

“It was held by this Court in the Province of East Pakistan v. Major Nawab Khawaja Hasan Askary and others (PLD 1971 SC 82) that if issues are not framed but allegations made in the plaint are challenged in the

written statement and the Court has allowed evidence to be led, then a decision rendered without framing of the "issues is not illegal."

19. In a case reported as "*Mst. Saeeda Akhtar Sadiq through Special Attorney v. Tauqir Akhtar*" **(2006 CLC 1430)**, it has also been held that:

"Where the parties have been aware of the points requiring determination, and had led evidence and the matter had been decided by the Court, in that case the decision rendered by the Court would not be illegal. Reliance in this context can be placed to the case of Fazal Muhammad Bhatti v. Mst. Saeeda Akhtar and 2 others 1993 SCMR 2018 and also a judgment of this Court in the case of Kaura and others v. Allah Ditta and others. 2000 CLC 1018; Mst. Sughra Bibi alias Mehran Bibi v. Asghar Khan and another 1988 SCMR 4. Both the Courts below by passing the impugned judgments and decrees have taken into consideration the evidence produced by the parties."

20. Reliance is also placed on a case reported as "*Mst. Sughra Bibi alias Mehran Bibi v. Asghar Khan and another*" **(1988 SCMR 4)**.

21. As concurrent findings of both the learned lower Courts have been challenged but the learned counsel for the petitioners has failed to point out that the Courts have exercised the jurisdiction not vested in them by law or have failed to exercise the jurisdiction so vested or to have acted in exercise of jurisdiction illegally or with material irregularity.

22. In a case reported as "*Haji Wajdad v. Provincial Government through Secretary Board of Revenue Government of Balochistan, Quetta and others*" **(2020 SCMR 2046)**, it has been held that:

“There is no cavil to the principle that the revisional court, while exercising its jurisdiction under section 115 of the Civil Procedure Code, 1908 ("C.P.C."), as a rule is not to upset the concurrent findings of fact recorded by the two courts below. This principle is essentially premised on the touchstone that the appellate court is the last court of deciding disputed questions of facts. However, the above principle is not absolute, and there may be circumstances warranting exception to the above rule, as provided under section 115, C.P.C.: gross misreading or non-reading of evidence on the record; or when the courts below had acted in exercise of its jurisdiction illegally or with material irregularity.”

23. In a case reported as "*Shahbaz Gul and others v. Muhammad Younas Khan and others.*" **(2020 SCMR 867)**, it has also been held that:

“appraisal of facts of lower courts should not have been overturned by the learned High Court in its revisional jurisdiction under Section 115, C.P.C. Between two possible interpretations, the one adopted by the learned Trial and Appellate Courts should have been maintained, keeping in mind the limited scope of revisional jurisdiction.”

24. In a case reported as "*Mst. Zaitoon Begum Vs. Nazar Hussain and another*" **(2014 SCMR 1469)**, it has also been held that:

“Even otherwise, this Court in the case of Kanwal Nain v. Fateh Khan (PLD 1983 SC 53) has held that concurrent findings of two Courts below are not open to interference in limited revisional jurisdiction of the High Court, albeit, it may be, to some extent, erroneous on point of fact and on point of law, both.”

25. In a case reported as "*Shafi Muhammad and others v. Khanzada Gul and others*" **(2007 SCMR 368)**, it has also been held that:

“It is a settled law that High Court had very limited jurisdiction to disturb the concurrent findings of fact recorded by the courts below while exercising power

under Section 115, C.P.C., unless and until the courts below had given concurrent findings of fact by misreading or non-reading of the record or in violation of any principle laid down by the superior Courts.”

26. In a case reported as "*Nazir Ahmed through legal heirs v. Umra and others*" (**2002 SCMR 1114**), it has also been held that:

“It is trite law that if the judgments impugned / challenged by a litigant before a High Court under Section 115, C.P.C. concurrently resolve a controversy of facts one way or the other, the same cannot be interfered with by the High Court.”

27. Reliance is also placed on cases reported as "*Administrator, That Development through EACO Bhakkar and others v. Ali Muhammad*" (**2012 SCMR 730**), "*Ahmad Nawaz Khan v. Muhammad Jaffar Khan and others.*" (**2010 SCMR 984**) and "*Rafaqat Ali and others v. Mst. Jamshed Bibi and others.*" (**2007 SCMR 1076**).

28. In view of above discussion, instant revision petition is meritless, hence the same is **dismissed**.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Approved For Reporting