

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4144/2019
Muhammad Shabir
Versus
Ghulam Sapparas etc.

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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18.12.2019	Mr. Khurram M. Qureshi, Advocate for the petitioner
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C.M.No.5663/2019 (application under Section 151 C.P.C. for appropriate order) is fixed for hearing today. However, learned counsel for the petitioner submitted that main writ petition is at motion stage as such same may be taken-up for hearing today. Allowed.

MAIN CASE

Through the instant writ petition the petitioner, Muhammad Shabir, impugns the judgment dated 30.05.2019 passed by the learned Additional District Judge, Islamabad-(East), whereby he dismissed the petitioner's revision petition against the order dated 11.03.2019, passed by the learned Civil Judge, Islamabad. Through the said consolidated order dated 11.03.2019, the learned Civil Court over ruled the petitioner's objections against the report of the local commission and also dismissed his application under Section 151 C.P.C. seeking to adjourn the case *sine die*.

2. The facts essential for disposal of this petition are that on 19.04.2013, the respondents instituted a suit for partition, possession, declaration and permanent injunction against the petitioner. In the said suit, it was averred that the respondents are owners of a land measuring one *kanal* six *marlas* in *khasra* No.1534 situated in

village *Phulgran*, Islamabad whereas the petitioner is owner only to the extent of five *marlas* but he is in occupation of fifteen *marlas* of land out of which he built a house on five *marlas*. The petitioner contested the said suit by filing a written statement in which he refuted the claim of the respondents relying on sale deed executed between him and Nazir Ahmed, a co-sharer of the respondents.

3. Learned Civil Court recorded the evidence produced by the parties and passed the preliminary decree dated 30.06.2015, whereby the suit of the respondents was decreed as per their share. It is not disputed that the petitioner's appeal and civil revision against the said preliminary decree dated 30.06.2015 were dismissed. Through the said preliminary decree dated 30.06.2015, the learned Civil Court appointed a local commission to ascertain as to whether the suit land can be partitioned and if so what should be the mode of its partition. On 29.03.2017, the local commission submitted its report. The petitioner raised objections on the local commission's report *inter alia* on the ground that it did not show sketch with measurement of all boundaries of *khasra* No.1534; that according to the report, the respondents were found in possession of 1 *kanal* and 13 *marlas*, i.e. 02 *marlas* in excess of total area of *khasra* No.1534, as such the petitioner's house is out of suit *khasra*; and that value of shares was not mentioned in the local commission's report. The respondents submitted a reply to the objections wherein they supported the report of the local commission.

4. As mentioned above, the learned Civil Court and learned Additional District Judge, Islamabad spurned the objections vide concurrent orders dated 11.03.2019 and 30.05.2019, respectively.

5. Learned counsel for the petitioner submitted that the petitioner's house does not fall within metes and bounds of *khasra* No.1534; that the local commission's report does not reflect the procedure as to how location of *khasra* No.1534 was ascertained; that method of carrying out measurements with reference to the revenue record has not been mentioned in the local commission's report; that the impugned report suffers from concealment; that through a family settlement between his predecessor-in-interest, i.e. Nazir Ahmed and the respondents, fifteen *marlas* of land were given to the said Nazir Ahmed in *khasra* No.1534; and that learned Courts below passed the impugned orders arbitrarily in a slipshod manner without the application of judicial mind. Learned counsel prayed for the writ petition to be allowed and for the impugned orders to be set-aside and the revenue officer may be appointed as a local commission to submit report afresh after demarcation of *khasra* No.1534.

6. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance. The facts leading to the filling of instant writ petition have been set-out in sufficient detail in paragraphs 02 to 04 above and need not be recapitulated.

7. The main thrust to the petitioner's case is that his house constructed on 5 *marlas* of land is situated outside the land under partition, i.e. *khasra* No.1534. However, this contention does not cohere with the petitioner's pleadings and evidence. In the petitioner's written statement as well as evidence, his stance was that through the registered sale deed dated 24.06.2005 executed between the petitioner and the Nazir Ahmed (brother of

respondent No.1), the former purchased a house built on land measuring 15 *marlas*. The petitioner appeared as DW-1 and stated on oath that the said Nazir Ahmed originally owned 05 *marlas* of land in *khasra* No. 1534 but as a result of a family settlement, he was given additional 10 *marlas* land in *khasra* No. 1534 in exchange of the Nazir Ahmed's ownership in *khasra* No.1537. The petitioner could not prove the said family settlement and issue No.2 in this regard was decided against him vide preliminary judgment and decree dated 30.06.2015 passed by learned Civil Court. The said judgment and decree dated 30.06.2015 has attained finality. It was also admitted by the petitioner that through the registered sale deed dated 24.06.2005, land measuring 5 *marlas* was transferred to him in *khasra* No.1534 and the remaining 10 *marlas* land was transferred to him in *khasra* No.1537. Now the field map (*shajra kishtvar*) produced as Exh.P/3 and relied on the impugned judgment dated 30.05.2019 has not been disputed by the petitioner. The said field map (Exh.P/3) shows that *khasra* Nos.1534 and 1537 are not adjacent as such the petitioner's contention that his house is situated outside *khasra* No.1534 is not tenable.

8. In addition to above, it is trite law that the concurrent findings of the two Courts below cannot be upset by the High Court in absence of any perversity, illegality or material irregularity. In this regard reliance can be placed upon the case of "Syed Hussain Naqvi and others v. Mst. Begum Zakara Chatha through L.Rs." (2015 SCMR 1081), wherein it has been held that High Court cannot go behind the concurrent finding of the Courts below unless such finding on the face of it is against the evidence or so patently improbable, or perverse

that to accept it could amount to perpetuating a grave miscarriage of justice, or if there has been any misapplication of principle relating to appreciation of evidence or finally, if the finding could be demonstrated to be physically impossible.

9. In view of above, the petitioner has been unable to point out any illegality, arbitrariness, infirmity or perversity in the impugned orders so as to warrant interference in Constitutional jurisdiction of this Court. Consequently, the instant writ petition is dismissed *in limine* along with C.M.No.5663/2019 accompanied with this writ petition.

(MIANGUL HASSAN AURANGZEB)
JUDGE

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