

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

RFA No.106/2020

Muhammad Fayyaz & others

versus

Arshad Mehmood & others

Appellants by: Mr. Muhammad Izzat Khan, Advocate.

Respondents by: Mr. Qaiser Hussain, Advocate for
Respondents No.1 & 2.
Respondents No.3 to 5 in-person.

Date of Decision: 22.02.2021.

MOHSIN AKHTAR KAYANI, J: Through this regular first appeal, the appellant has called in question judgment and decree of the learned Senior Civil Judge-II (East), Islamabad, dated 20.02.2020, whereby suit filed by the appellant has been dismissed.

2. Succinctly, Arshad Mahmood (***Respondent No.1***) purchased a piece of land measuring 01-Kanal and 08-Marla in Khewat No.392, Khatooni No.1316 to 1322, in Mouza Mughal Thub, Islamabad (***suit property***) from Karamat Hussain (deceased), represented through legal heirs (***Respondent No.2***) being co-sharer of Khasra No.25. Afterward, Respondent No.1 sold out the suit property to Muhammad Fayyaz, Muhammad Ayaz and Muhammad Bilal (deceased), represented through his legal heirs, (***appellants***) vide mutation No.3504, dated 26.01.2004. However, Iftikhar, Fida Hussain and Mansoor (Respondents No.3 to 5) started interference in the possession of suit property, compelling the appellants to file a suit for declaration and permanent injunction against the respondents. After summoning of the defendants, respondents No.1 & 2 filed cognovits, while

respondents No.3 to 5 contested the suit through written statement and contended that Khasra No.35 has been changed to Khasra No.25 with the connivance of revenue authorities, as a result whereof Fard-e-Badar No.159 was issued. The learned trial Court after recording pro and contra evidence, dismissed the suit filed by the appellants vide impugned judgment and decree dated 20.02.2020. Hence, instant regular first appeal.

3. Learned counsel for appellants contended that the appellants purchased the suit property from respondent No.1 for valuable consideration, as such, respondents No.1 and 2 have admitted the possession thereof in favour of appellants, which has also been confirmed through report of Local Commission, but all such facts and circumstances of the case have not been appreciated by the learned trial Court while passing the impugned judgment and decree, which are not sustainable in the eyes of law, therefore, same are liable to be set-aside and suit filed by the appellants may be decreed.

4. Conversely, respondents No.3 to 5 appeared in-person and raised objection regarding maintainability of instant appeal and contended that this is the second round of proceedings as earlier suit filed by the appellants was dismissed as withdrawn; that the correction with respect to Khasra in question through Fard-e-Badar has been accorded by the revenue department, which has nothing to do with appellants' claim.

5. Arguments heard, record perused.

6. Perusal of record reveals that the appellants are mainly aggrieved with the preparation of Fard-e-Badar No.159, dated 20.12.2006, whereby Khasra No.35 has been changed to Khasra No.25, whereas the appellants stressed that they are owner in possession of Khasra No.25, while the

respondents in their written statement have taken the categorical stance that the Halqa Patwari had erroneously mentioned Khasra No.35, instead of Khasra No.25, in the periodical record of right while preparing *Jama Bandi*, as such, when the respondents No.3 to 5 learnt about this slip-up, they approached the revenue authorities, who after inquiring into the matter obtained a detailed report and as a result whereof, Fard-e-Badar No.159 has been prepared and sanctioned.

7. The appellants in order to prove their case has produced Haji Muhammad Banaras as PW-1, who has submitted the documentary evidence containing mutations No.3504 (Exh.P3) and No.3428 (Exh.P4), but he has not produced the copy of Fard-e-Badar No.159 in his evidence, rather same has been placed as Mark-PA, which is an inadmissible document.

8. On the other hand, respondents No.3 to 5 had produced witness DW-3 Fida Hussain, who has submitted registered sale deed No.650, dated 11.02.1976 as Exh.D/3, Fard-e-Badar No.159 as Exh.D/4, Revenue Record for the years 1973/74 as Exh.D/5, Revenue Record for the years 1989/90 as Exh.D6, mutation No.1053 as Exh.D/7 and Revenue Record for the years 1977/78 as Exh.D/8, whereas, DW-1 and DW-2 supported the case of appellants/plaintiff.

9. In view of above position, the primary question before the learned Trial Court as well as before this Court is as to whether Fard-e-Badar Exh.D4 has rightly been incorporated in the revenue record to correct the mistake of number of Khasra, which allegedly had wrongly been incorporated by the revenue officer. In order to prove this issue, PW-1 Haji Muhammad Banaras has not produced any evidence except a photocopy

of Fard-e-Badar (Exh.D4) with oral assertion that the same was prepared by respondents No.3 to 5 in connivance with revenue officials, as such, the primary onus in terms of Article 117 of the Qanun-e-Shahadat Order, 1984 is upon the appellants to prove their stance through cogent evidence that Fard-e-Badar Exh.D4 was malafidely prepared in order to deprive the appellants of their valuable rights in suit property, but surprisingly the appellants have not called in any revenue officer as witness of record to substantiate that Fard-e-Badar was dishonestly prepared.

10. In order to resolve the case in hand, it is necessary to elucidate the concept of Fard-e-Badar, which is meant for correction of mistake in entries of revenue record in terms of Land Record Manual Paras 7.30 and 7.44(f), including Instruction No.3, whereby clerical error of entries in *Haqdaran Zameen* by Fard-e-Badar could be corrected in exercise of revisional jurisdiction by board of revenue. Reliance is placed upon PLD 1991 Lahore 314 (Dilmi v. Member Board of Revenue) and 1992 CLC 382 Peshawar (Tanzeem Bazyabi-e-Haqooq Malkan-e-Orush, Abbottabad v. Deputy Commissioner/Collector). It is also settled law that old entries in revenue record could not be changed by means of Fard-e-Badar. Similarly, no mutation could be entered in the record or sanctioned for purpose of correcting it as Fard-e-Badar is the only option for correction of clerical error, whereas old standing entries could only be settled by way of civil suit as held in 2001 YLR 2387 Lahore (Mst. Shireen Khanum v. Member (Revenue), Board of Revenue, Punjab, Lahore).

11. While considering the above concept, I have gone through the cross examination of PW-1 Haji Muhammad Banaras, who acknowledged that he has not gone through the revenue record and, therefore, he is not aware

qua the mistake carried forward in the revenue record, even he has acknowledged that Mutation No.3504 was executed in the year 2003 when they had purchased the suit property from Respondent No.1 in Khewat No.392, Khata 12, total land measuring 14 Kanal and 18-Marla, who earlier purchased the same from Respondent No.2, however if this would be admitted position then there is no occasion left that appellants were not aware qua Fard-e-Badar Exh.D4.

12. Similarly, PW-1 Haji Muhammad Banaras has also acknowledged that in the year 2007, the appellants had earlier filed a suit against respondents No.3 to 5 qua suit property, but the same was later on withdrawn by the appellants, whereafter the appellants filed the instant suit. Such anomaly on the part of appellants spells out that they were well aware of the entire issue, but they have not pursued their case, as such, after dismissal of their application under Order XXXIX Rule 1&2 CPC, they had withdrawn their suit. Per se, it could unmistakably be held that the present suit is hit by Order II Rule 2 CPC on the ground that the appellants had earlier relinquished and omitted certain claims, as such, at the present they are not permitted to raise the same in the instant suit. In this regard, this Court is guided by the principles laid down PLD 2001 SC 325 (Hashim Khan v. National Bank of Pakistan).

13. Undoubtedly, the appellants through PW-1 Haji Muhammad Banaras had admittedly withdrawn their earlier suit filed on same subject matter qua the suit property, as such, they have not brought on record any legal permission to file a fresh suit, rather the earlier suit is considered to be withdrawn unconditionally, per se, filing of second suit on same subject matter is not maintainable in terms of Order XXIII Rule 1 CPC and the

same has to be rejected in terms of Order VII Rule 11(d) CPC. Reliance is placed upon 2003 MLD 961 Lahore (Shah Walayat vs. Muhammad Akram).

14. Likewise, learned counsel for appellants has been confronted regarding maintainability of suit in terms of Section 172(2)(vi) of the Land Revenue Act, 1967, whereby the jurisdiction of Civil Court has been excluded in matters to be dealt with by the revenue officers, especially when it relates to *the correction of any entry in record of right, periodical record or register of mutation*.

15. I have also gone through the evidence of DW-3 Fida Hussain, who has specifically asserted in his evidence that on application filed by respondents No.3 to 5 qua correction of revenue record, the revenue officials verified the same and issued Fard-e-Badar No.159 Exh.D4, whereby Khasra No.25 was not the part of Khewat as written in the record, and as such, it has nothing to do with appellants' claim, which fact is supported from the revenue record, however the correction of revenue record does not fall within the mandate of the Civil Court, which is exclusively available to the revenue authorities, per se, this fact has also candidly been conceded by the appellants' counsel. In this regard, this Court is also guided by the principles referred by the superior Courts in cases reported as 2015 MLD 763 Lahore (Muhammad Jaffar Khan v. Muhammad Ali Tariq), 2004 SCMR 604 (Nemat Ali v. Malik Habib Ullah), 1996 SCMR 78 (Rasta Mal Khan v. Nabi Sarwar Khan), PLD 1949 West Punjab 3 (Qazi Muzaffar Hussain v. Muhammad Ghuas, etc.), 2011 CLC 638 Peshawar (Mst. Maryam Bibi v. Senior Member Board of Revenue), PLD 1994 SC 336 (Waris Khan, etc. v. Col. Humayun Shah, etc.), 2013 SCMR 906 (Dildar Ahmad, etc. v. Member (Judicial-III) Board of Revenue,

Lahore), 1992 SCMR 2334 (Muhammad Yousaf v. Khan Bahadur) and 2019 YLR 706 AJ&K (Iqbal Hussain, etc. v. Muhammad Ayaz Khan, etc.).

16. In nutshell, this Court after examining the entire evidence is of the view that the appellants have failed to substantiate the entry of Khasra No.25 in Revenue Record for the years 1989/90 and backwards. On the other hand, respondents No.3 to 5 produced mutation No.1053, reflecting Khasra No.25, measuring 01-Kanal and transferred by one Khudadad to his three (03) daughters, including other khasra numbers, as such, the Revenue Records for the years 1956/57 and 1977/78, are silent with reference to Khasra No.25 in Khewat No.392, and if the appellants are aggrieved with issuance of Fard-e-Badar on account of having been condemned unheard, they can approach the revenue authorities afresh for settlement of said issue.

17. In view of above, the instant regular first appeal is not maintainable and same is hereby DISMISSED. However, the appellants may approach the revenue authorities, if so advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.