

**JUDGMENT SHEET.**

**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**Civil Revision No. 270/2016**

**Aziz Ahmad etc.**

**Vs. Mohammad Irshad etc.**

**Petitioners by:**

**Rana M. Irshad Khan, Advocate**

**Respondents No. 1 to 9 by:**

**Jam Khursheed Ahmad, Advocate**

**Date of Hearing:**

**07.12.2016.**

**MOHSIN AKHTAR KAYANI, J:-** Through this Civil Revision, petitioners have assailed judgment and decree dated 20.06.2016 passed by Additional District Judge-V, Islamabad (East), whereby the Suit filed by Muhammad Sadiq has been decreed and the judgment dated 05.05.2014 passed by learned Civil Judge 1<sup>st</sup> Class (East), Islamabad has been set aside.

2. Brief facts leading to the filling of instant Civil Revision are that respondents filed Civil Suit titled “Muhammad Sadiq, etc. V/s, Aziz Ahmad, etc” for declaration to the effect that order of Collector dated 25.09.1995 regarding correction of wrong entries pertaining to Khasra No. 2103 and 2104 situated at Muza Harno Thanda Pani, Islamabad on the application of Raja Bashir Ahmad dated 15.03.1989 for correction of entries in Record of Right is against the law, without jurisdiction based on fraud and in connivance with revenue department be declared null and void.

3. Learned Civil Court vide judgment decree dated 29.02.2016 dismissed the Suit of the respondents / plaintiffs.

4. Respondents filed Regular First Appeal U/S 96 CPC, which was allowed vide judgment decree dated 20.06.2016 whereby the Suit was decreed.

5. As per plaint respondents claim that Raja Bashir Ahmad filed application dated 15.03.1989 for correction of Revenue Record of Muza Harno Tanda Pani District Islamabad before Assistant Commissioner / Collector Islamabad regarding periodical record of 1950-51. Revenue department after obtaining reports from the concerned officials declared that shares belonging to “Farman Ali s/o Bhadar Ali” were not incorporated in year 1950-51 which was further confirmed through

Subsequent Bandobast 1956-57. In the meanwhile some of the landlords sold land in excess to their shares, therefore, correction of record through Sehat mutation was done under Land Revenue Act 1967 vide order dated 25.09.1995 passed by Assistant Commissioner Sadda/Collector Islamabad.

6. In compliance of order passed by Assistant Commissioner Saddar/Collector Islamabad, mutation No. 2123 Ex P-1 dated 10.10.1995 was recorded, whereby the same was assailed in Civil Suit on the ground of jurisdiction as long standing entities could not be managed through Sehat mutation.

7. Learned counsel for the petitioners contends that:-

- i. The impugned judgment and decree is against the law as the lower Appellate Court failed to determine material issues of law on the subjects i.e., the jurisdiction of Civil Court and powers of the revenue officer to correct the wrong entries in the Record of Rights.
- ii. That Section 172 Land Revenue Act excludes the jurisdiction of Civil Court in matters within the jurisdiction of revenue officers.
- iii. That the learned lower Appellate Court acted in the exercise of its jurisdiction illegally and with material irregularity and accepted the appeal on mere technicalities and has not considered substantive justice as the revenue officer delivered substantive justice after having exercised his powers under Section 27 of Land Revenue Act 1967 and the same could be interfered by the lower Appellate Court on mere technical grounds of jurisdiction/power of revenue officer.
- iv. That the learned lower Appellate Court failed to consider that Sehat Mutation No. 2123 (Exh P1) was attested by Assistant Collector Grade-1 vide his order dated 31.10.1995 who was empowered to do so under Section 44 read with Section 45 of Land Revenue Act 1967 which has not specifically been assailed/challenged by respondents/plaintiffs hence lower Appellate Court arrived at a wrong conclusion through the impugned judgment and decree which is not tenable in the eyes of law as such is liable to be set aside.

v. That the learned lower Appellate Court also failed to consider the provisions of Section 161 of Land Revenue Act of 1967 where an adequate remedy is provided for filing of appeal against an original order of revenue officer, which remedy has not been availed by the respondents/plaintiffs hence they were debarred to file the suit under appeal through which they assailed the order of correction of mutation dated 25.09.1995.

8. Conversely learned counsel for the respondents states that long standing entry in the revenue record can only be rectified or changed through decree of the Civil Court and any Revenue Court cannot take cognizance of the matter which relates to periodical record of right as number of individuals and subsequent vendees' rights were effected.

9. Learned counsel further states that Sec. 53 of Land Revenue Act 1967 provides remedy of declaration in Terms of Sec. 42 of Specific Relief Act, 1877. Therefore judgment passed by the learned Trial Court is beyond its scope and Appellate Court has rightly decreed the suit.

10. Arguments heard, record perused.

11. From the perusal of record it has been observed that suit titled "*Muhammad Sadiq, etc. V/s Aziz Ahmad, etc.*" was filed by the respondents with the following prayer:-

دعویٰ استغفار حق بدیں مضمون کہ حکم کلکٹر مورخہ 25.09.1995 بابت درستی ریکارڈ خسرہ نمبرات 2103 اور 2104 موضع ہرنو ٹھنڈاپانی تحصیل و ضلع اسلام آباد بر درخواست راجہ بشیر احمد محررہ مورخہ 15.03.1989 برائے صحت اندراج بوجہ یکطرفہ کاروائی خلاف مدعیان خلاف قانون بلا اختیار زاید از حصہ مدعا علیم 1 تا 3 و سازش عملہ محکمہ مال مبنی پر فراڈ ہونے کے کالعدم ہے۔ و نیز البعد انتقالات مدعا علیم 1 تا 3 اس حکم درستی کی آڑ میں قبضہ و ملکیت مدعیان میں مداخلت کرنے سے ہمیشہ ہمیشہ کے لیے بازو عزع ہیں۔

12. Above mentioned prayer of the Suit clearly reflects that respondents challenged correction of long standing entry by the collector vide order dated 25.09.1995.

13. It has further been observed from the record that Raja Bashir Ahmad predecessor in interest of Petitioner No. 2(A), 2(E) filed application for correction of Revenue Record which is as under:-

۱۔ یہ سالیان بمطابق ریکارڈ مال جمعندی سال 43-1942، 51-1950 میں خسرہ نمبرات 1822، 1823 میں رقبہ تعدادی 155 کنال واقع موضع ہر نوٹھنڈاپانی تحصیل و ضلع اسلام آباد میں مالک چلے آ رہے تھے۔

۲۔ یہ کہ بعد جمعندی سال 51-1950 سالیان کے نام نامعلوم وجوہات کی بنا پر جمعندی میں درج نہ کیے گئے۔ جبکہ سالیان نے نہ تو اراضی مذکورہ فروخت کی ہے اور نہ ہی کسی دیگر کے نام منتقل کروائی ہے۔

۳۔ یہ کہ سالیان کو اب معلوم ہوا ہے کہ جمعندی میں سالیان کا نام درج ہونے سے رہ گیا ہے۔ لہذا استدعا ہے کہ ریکارڈ مال میں درستی کے بارے جناب تحصیلدار صاحب اسلام آباد کو مناسب احکامات صادر فرمائیں۔

14. Collector / Assistant Commissioner after receiving the report from revenue officials passed the following order dated 25.09.1995:-

مختصر حالات یہ ہیں۔ راجہ بشیر احمد وغیرہ نے درخواست گزاری کہ سال 51-1950 تک انکے والد راجہ عزیز خان کھیوٹ نمبر 230 میں 1/4 حصہ کا مالک تھا۔ جبکہ فرمان علی ولد بہادر 1/8 حصہ کا مالک تھا لیکن دوران بندوبست 57-1956 ان کے والد کو حقدار شملات اور فرمان علی کا نام ہی چھوڑ دیا گیا۔ لہذا درستی فرمائی جائے۔

آمدہ درخواست کو انکوائری کے لیے عملہ مال کو بھیجا گیا۔ تحصیلدار اسلام آباد نے بعد ملاحظہ ریکارڈ مفصل رپورٹ پیش کی۔ تحصیلدار کی رپورٹ کے بعد فریقین کو سماعت کیا گیا۔ مطابق رپورٹ عملہ مال و بیانات فریقین سے یہ بات سامنے آئی کہ رجسٹر حقداران زمین سال 47-1946 کھیوٹ نمبر 211 میں کل حصص (48) اور اندرونی حصص غظنفر خان وغیرہ مندرجہ کھیوٹ نمبر 150 بارہ (12) حصہ محمد آزاد وغیرہ مندرجہ کھیوٹ نمبر 167 چھ (6) حصہ، کرمداد وغیرہ کھیوٹ نمبر 121، بارہ (12) حصہ، غریب خان مندرجہ کھیوٹ نمبر 177 بارہ حصہ درست درج ہیں۔ چار سالہ 51-1950 کھیوٹ نمبر 211 کی کھیوٹ 230 تیار ہوئی۔ فرمان علی ولد بہادر علی چھ حصہ کا مالک تھا۔ بلا وجہ اس کا نام چھوڑ دیا گیا۔ اس طرح (48) حصہ کی بجائے (42) حصہ درج کر دیے گئے۔ اسکے بعد بندوبست سال 57-1956 کھیوٹ نمبر 293 سابقہ کھیوٹ نمبر 230 تیار ہوئی۔ اس میں فرمان علی کا حصہ پہلے ہی غائب تھا اور غریب خان جو بارہ (12) حصہ کا مالک تھا اس کو بلا وجہ حقدار شملات درج کر دیا گیا۔ اس طرح کل (48) حصہ کی بجائے (30) حصہ کھیوٹ مذکور کر دیے گئے جبکہ غریب خان مالک نے کوئی رقبہ بیعہ نہ کیا جس کا عمل چار سالہ میں کیا جاوے کیونکہ خانہ کیفیت میں کوئی حوالہ انتقال بھی نہ ہے۔ حصص غلط ہونے کی وجہ سے چند ایک مالکان نے اپنا حصہ بیع کیا۔ چاہے تو یہ تھا کہ (48) حصہ میں جوان کا حصہ آتا تھا فروخت کرتے مگر (30) حصہ میں ان کا حصہ نکال کر فروخت کیا گیا ہے۔ اس طرح پہلے انتقال نمبر 290، 522، 626، 627، 628، 722 زاید الحصہ بیع ہوئے اور ان ہی انتقال کی نروسے دربارہ رقبہ بذریعہ انتقال نمبر 869، 983، 912، 963، 1053 بیعہ ہوتے رہے۔ ان انتقال کا عمل رجسٹر حقداران زمین میں ہو چکا ہے۔ ان کی صحت بیعہ صحت انتقال ہی ہو سکتی ہے لہذا مذکور بالا کی صحت بذریعہ صحت انتقال درستی کی اجازت دی جاتی ہے۔ حکم سنایا گیا۔

15. Above mentioned order finally transformed into mutation No. 2123 dated 10.10.1995 and revenue record has been rectified. Being aggrieved by the said order respondents filed Suit for declaration challenging the entire process of correction / rectification on the ground that Revenue Officials have no jurisdiction to change the

long standing entries and simultaneously taking the ground that principle of *Audi Alteram Partem* has not been applied as no notice has been given to effectees who have become subsequent vandeers/owners, nor any hearing has been afforded to them.

16. In view of above preposition, the petitioners have raised two objections, firstly, Sec. 172(2)(vi) Land Revenue Act 1967.

**“172. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers.**

*(2) Without prejudice to the generality of the provisions of subsection (1) a Civil Court shall not exercise jurisdiction over any of the following matters namely:*

*(vi) The correction of any entry in a Record of Rights, periodical record of register of mutations.”*

and secondly non availing of remedy U/S 161 Land Revenue Act 1967 against the order dated 25.09.1995 and 10.10.1995 by the respondents.

17. Above mentioned provision of Land Revenue Act, 1967 excludes the jurisdiction of Civil Court and provides remedy of appeal in terms of Sec. 161 of the Act, however from meticulous perusal of record it transpire that:-

- i. Application for correction was filed by Raja Bashir which relates to correction of revenue record for the year, 1950-51.
- ii. Correction has been made after sanction of report without giving any opportunity of hearing to any of the effectees.
- iii. Subsequent vandeers/owners rights have not been considered.

In view of above it is settled law that Sec. 172 of Land Revenue Act, 1967 does not exclude the jurisdiction of Civil Court from exercising the jurisdiction for the settlement of rights of parties which have been effected or when rights have not been settled completely or in those cases where right in *rem* and *personam* have to be finally determined as the Revenue Authorities can only give any order for correction of revenue record whereas the term “correction” which means “alteration made to something that was incorrect”. Correct means “*True, accurate, proper, to set right, to point out faults in*”. Whereby word “correction” has been defined in:-

**M.R. Tahir Adv. V/s Chief Election Commissioner PLD 1977 LAH 926**, *“corrections is of very wide, impost and is not confined to merely one type of correction may be by way of adding names of person, by deleting names, or by making certain other similar changes, alterations, and modification.”*

Hence the word used in Sec. 172(2)(vi) Land Revenue Act, 1967 only provides, remedy to rectify the mistake in periodical record whereas it is settled law that when any long standing entry effects the rights of individual it can only be rectified on the basis of decree of the Civil Court and for such kind of situation Land Revenue Act, 1967, provides Sec. 53 which is as follows.

**“53. Suit for declaratory decrees by persons aggrieved by an entry in a record.** If any person considers himself aggrieved by an entry in a “Record-in-Rights” or in a periodical record as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877)”

Hence, it is proved from the record that petitioners are beneficiary of correction made by the collector vide order dated 25.09.1995 and subsequent mutation but on the other side learned Trial Court has not considered the import of Sec. 53 specifically when any entry in the Periodical record of rights has successively been made it entails presumption of correctness U/S 52 of Land Revenue Act, 1967 and these long standing entries can only be rectified on the basis of decree of Civil Court in terms of Sec. 53 of Land Revenue Act, 1967 at the first instance, therefore there was no need to assail the order dated 25.09.1995 for correction before Appellate forum of Revenue Authorities as the basic order is illegal and same has been procured in violation of fundamental principles of Article 10-A of the Constitution of Islamic Republic of Pakistan 1973 as all the necessary parties have not been impleaded in the correction proceedings dated 25.09.1995 by the Collector nor rights of individuals have been settled, who purchased the land in question after 1950-51, even Collector has not issued any notice to the effectees of correction (Shehat) mutation, therefore, the entire proceedings of Collector are contrary to the legal practice.

18. In order to understand the concept of correction of long standing entries, I am fortified from the judgment.

**“Ikram Ullah V/s Zakir Ullah (2010 YLR 2687)** – Civil Court had been vested with powers to adjudicate upon any contentious matter more particularly when the same related to longstanding entries in the Revenue Record --- Matter relating to the issue of appointment of a commission to report the actual possession of the parties over the suit property had already been decided by the District Court --- Defendant had failed to produce any convincing evidence, ocular or documentary to suggest his actual possession over the suit property --- Courts below having exercised their jurisdiction correctly, there was no ground to interfere in the impugned judgments and decrees of the courts below --- High Court, in its revisional jurisdiction, was barred under S. 115(4), CPC to entertain such matter. (pp.2688, 2690)”

Whereas in judgment reported as **Niamat Ali Vs. Malik Habibullah (2004 SCMR 604)** it was held that:-

*“The august Supreme Court further explained that longstanding entries in the Revenue Records are to be interfered with only on the orders of the Civil Courts and not in a summary manner by the revenue authorities under the Act. The august Supreme Court held that:---*

*“It is reflected from the perusal thereof that the petitioner wanted change of longstanding entries in the Revenue Record in a summary manner by the Collector. The rights of the parties as agitated by both the sides are to be determined qua the property under dispute by giving them opportunity to adduce their evidence. Admittedly, in the present case these factual controversies can only be resolved by the Civil Court which has got the plenary jurisdiction.”*

In judgment reported as **Abdul Hamid Vs. Sikandar Ali, etc. (2005 YLR 890)** it was held that:-

*“.... parties in the case in hand, correction under discussion could not have been ordered in summary proceedings on miscellaneous application and that too on the basis of one sided report of the Revenue filed staff regarding which no right of rebuttal was afforded to the adversaries / the persons against whom the report was remitted. Suit under Section 53 of the Land Revenue Act, 1967 in form of declaration, has to be usual suit, the one under section 42 of the Specific Relief Act, 1877, decision where over can only*

*be given after recording of evidence and affording the parties full opportunity for substantiating their respective stance, whereas such opportunity cannot be afforded to the parties on an application for correction of Revenue Record under Section 42 of the Land Revenue Act, 1967, as these proceedings are summary in nature.*

7. *Limitation of filing declaratory suit under section 42 of the Specific Relief Act, 1877 the one under section 53 of the Land Revenue Act, 1967 starts from the date of accrual of cause of action under Article 120 of the Limitation Act, 1908 and thus entertainment of application of Revenue Record after lapse of 24 years creates an anomalous situation where under the Courts of ultimate jurisdiction are deprived of their jurisdiction to adjudicate upon the dispute due to extinction of time but such exercise could be done on a miscellaneous application through summary proceedings.”*

Whereas in **Rasta Mal Khan Vs. Nabi Sawar Khan (1996 SCMR 78)** it was held that:-

*“10. Regarding the bar of jurisdiction of Civil Courts under Section 172 (subsection VI) of the West Pakistan Land Revenue Act, 1967 it may be pointed out that exclusion of jurisdiction of Civil Court relates to correction of the entries made by the Revenue Officer in performance of his duty without touching the right of the person in the land, but whenever such entries interferes with the right of a person in the record of rights, and such person feels aggrieved for correction of such entries he had to approach Civil Court for declaration under Section 53 of the Act or in other words under Section 42 of the Specific Relief Act both the relief available being of the same nature and identical.”*

19. In view of the above, inference can safely be drawn that impugned judgment and decree dated 20.06.2016 passed by Additional District Judge-V, Islamabad (East) does not suffer from misreading or non-reading of evidence, therefore calls for no interference while exercising jurisdiction U/S 115 CPC. Hence, instant Civil Revision is devoid of the merits and is hereby dismissed. However decision of the High Court would not debar the petitioners from agitating the matter before



Competent Court after impleading all the concerned parties, effectees, subsequent vendees and transferees in the proceedings under the law.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

ANNOUNCED IN OPEN COURT ON 16.12.2016.

**JUDGE**

Khalid Z.

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