

Stereo.HCJDA-38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

C.R. No.237987 of 2018

Muhammad Arshad Mehmood etc.
Vs.
Muhammad Bashir (deceased) through L.Rs. etc.

JUDGMENT

Date of Hearing	10.12.2025
The Petitioners by	Ch. Riaz Hussain, Advocate
Respondents No.2 to 11 by	Ch. Manzoor Ahmad Shakir, Advocate
Respondents No.28 to 31 by	Mr. Hussain Ibrahim Muhammad, Asst. Advocate General
Respondents No.1(1 to 8), 12 to 27	Proceeded against <i>ex parte</i> vide order dated 16.06.2023

Malik Waqar Haider Awan, J. Through this civil revision, the petitioners have challenged the validity of the judgment and decree dated 11.02.2017 passed by the learned Civil Judge 1st Class, Sialkot and the judgment and decree dated 21.06.2018 passed by the learned Addl. District Judge, Sialkot. Through the former, the suit filed by Anayat Ullah, predecessor of the petitioners was dismissed and through the latter, the appeal filed against that judgment was also dismissed.

2. The brief facts of the case are that the late father of the petitioners, Anayat Ullah, purchased agricultural land measuring 06-kanals 16-marlas from respondent No.1 Muhammad Bashir (predecessor of respondents No.1(1 to 8) and Mst. Sughran Bibi (predecessor of respondents No.2 to 11) through registered sale deed No.244 dated 14.09.1966. The sale was implemented through Mutation No.721 dated 25.09.1969 (Exh. P-4). The name of late Anayat Ullah was entered in the record-of-rights for the year 1968-69 (Exh. P-5) as owner to the extent of 04-kanals 12-marlas, whereas according to the petitioners, the remaining land measuring 02-kanals 04-marlas, though sold, was not incorporated in the revenue record due to fraud committed by respondent No. 1 in connivance with the revenue staff to deprive the petitioners. It is further asserted that their predecessor remained unaware

of this alleged fraud for a long time and that he remained in possession of the land purchased by him. Upon discovery of the alleged manipulation in the revenue record, the predecessor of the petitioners filed a suit for declaration, possession and permanent injunction.

3. Respondents No.1(1 to 8) to 11 filed a written statement. They admitted execution of the registered sale deed but pleaded that after the consolidation proceedings of 1968-69, respondent No.1 continued to be the recorded owner. They further stated that the application filed by the predecessor of the petitioners for correction of the revenue record was dismissed by the District Officer Revenue, Sialkot on 15.11.2010 and that the revision before the EDOR also failed on 01.03.2011. They objected that the suit was not maintainable.

4. Divergent pleadings of the parties were summed up through issues and the learned trial court after recording of evidence of both the parties dismissed the suit, mainly on the ground that the civil court had no jurisdiction in view of Section 26 of the Punjab Consolidation of Holdings Ordinance, 1960 (West Pakistan Ordinance VI of 1960) (hereinafter shall be referred to as the "*Ordinance, 1960*"). The learned appellate court affirmed this finding and dismissed the appeal.

5. Learned counsel for the petitioners contends that the sale of the disputed land has never been denied by respondents No.1 (1 to 8), as the land was validly sold through a registered sale deed executed by respondent No.1 and the predecessor of respondents No.2 to 11, namely Mst. Sughran Bibi. He refers to the registered sale deed (Exh.P-3), pursuant to which the name of the predecessor of the petitioners was incorporated and duly reflected in the Register Haq-Daran-e-Zameen for the year 1968-69 (Exh.P-5) pertaining to Mauza Loharke, Tehsil Pasrur, wherein the fact of the sale was recorded. He further points out that mutation No.721 was also sanctioned on the basis of the said transaction. He further pleads that despite these admitted facts, the name of deceased Anayat Ullah was subsequently omitted from the later Registers Haq-Daran-e-Zameen for the years 1973-74 and 1979-80 (Exh.P-6 and Exh.P-7), wherein instead the name of late Muhammad Bashir (respondent No.1) came to be reflected. He argues that the subsequent Jamabandies do not record the name of deceased Anayat Ullah and that this deletion was procured through fraud and manipulation by

respondent No.1, late Muhammad Bashir, who re-entered the record as owner without any lawful instrument of title. Further maintains that the burden lies squarely upon respondent No.1, as the alleged beneficiary of such alteration in the record, to establish a valid basis for his ownership, which he has completely failed to do. He places reliance on judgments reported as "Misri through Legal Heirs and others Vs. Muhammad Sharif and others" (1997 SCMR 338), "Muhammad Yousaf and 3 others Vs. Khan Bahadur through Legal Heirs" (1992 SCMR 2334), "Muhammad Nawaz Vs. Malik Ghulam Sarwar and others" (2005 MLD 1023), "Ellahi Bakhsh and others Vs. Ahmad Bakhsh and 12 others" (2006 MLD 279), "Muhammad Hayat and 38 others Vs. Abdul Rahim and 24 others" (2001 MLD 1524) and "Himat alias Allah Deya Vs. Rehmat" (2004 YLR 2992).

6. Conversely, learned counsel representing the private respondents No.2 to 11 argues that the jurisdiction of the civil court is expressly barred under Section 26 of the Ordinance, 1960. He submits that if the petitioners or their predecessor were aggrieved by any step taken by the consolidation authorities, they were required to avail the remedy of appeal provided under the Ordinance, 1960 itself. He further pleads that any deprivation alleged by the petitioners took place, if at all, during the consolidation proceedings and therefore the civil court could not assume jurisdiction over such matters in view of the statutory bar.

7. Arguments heard. Record perused.

8. The main reason for dismissal of the suit and appeal was the finding that the jurisdiction of the civil court is barred under Section 26 of the Ordinance, 1960. The said provision reads as follows:-

"26. Jurisdiction of Civil Courts barred as regards matter arising under this Ordinance. No Civil Court shall entertain any suit or application to obtain a decision or order in respect of any matter which Government or the Board of Revenue or any officer is by this Ordinance, empowered to determine, decide or dispose of."

From a bare perusal of the above-referred section, it is clear that the jurisdiction of the civil court is barred only with respect to matters arising under the Consolidation Ordinance. It is evident from the plaint and the evidence on record that the consolidation proceedings *per se* were never challenged by the petitioners. Rather, the grievance of the petitioners is that despite an admitted registered sale deed and

sanctioned mutation, the entitlement of their predecessor was subsequently diminished in the revenue record without any lawful basis. Prayer of the petitioners in their suit is reproduced as under:-

"بجالات بلا استدعا ہے کہ ذگری استقرار حق بحق مدعا علیہم بدین مضمون صادر فرمائی جائے اور قرار دیا جائے کہ اراضی متدعویہ 6-16 کنال (چھ کنال سولہ مرلے) مندرجہ صحن نمبر 1، 2 دعویٰ جو بروئے رجسٹری بیجہ نامہ نمبر 244 مصدقہ مورخ 66-09-14 برے انتقال نمبر 721 مصدقہ مورخ 1969-09-25 کا کامل مالک قابض ہے۔ جملہ اندر راجات بطور مالک نام مدعا علیہم نمبر 1 تا 17 سراسر غلط، خلاف قانون، خلاف واقعات مبنی بر دھوکہ دہی و ساز باز کر کے ہمراہ مدعا علیہم 18 تا 22 ہیں جو قطعی طور پر ناقابل عمل اور قبل منسوخی ہیں علاوہ ازیں جملہ منتقلی ہائے جو منجانب صغراں بی بی حق ریشم بی بی زوجہ تاج دین بھی خلاف قانون اور خلاف واقعات مبنی بر دھوکہ و فراؤ اور حقوق مدعا پر قطعاً غیر موثر اور کا لعدم ہیں۔ کیونکہ صغراں بی بی ازاں قبل ہی اپنا ملکیتی جملہ استحقاق بحق مدعا علیہم بروئے رجسٹری بیعناہ متذکرہ بلا منتقل کر چکی ہوئی تھی۔ جواز ازاں بعد کس قسم کی کوئی منتقلی کسی کے نام کرنے کی قانوناً مجاز نہ تھی۔ اور دوران ایکیل و حکم اتنا عارضی تافیصلہ اپیل، دوران دعویٰ عدالتی حکم کی خلاف ورزی میں قبضہ شدہ اراضی کا باضابطہ دخل و قبضہ حوالہ مدعا کر دیں۔ و نیز ذگری حکم اتنا عارضی دوامی بحق مدعا علیہم بدین امر صادر فرمائی جائے مدعا علیہم باہی ساز باز سے مدعا کے دخل و قبضہ و ملکیت میں زبر دستی سینہ زوری اور خلاف طریقہ سے مداخلت بے جا کرتے ہوئے مدعا کی کاشتہ فصل مونجی کو روک کر ضائع کرنے سے ہمیشہ ہمیشہ کیلئے بازو ممنوع رہیں و نیز بطور دادرسی مستلزمہ دیگر جو بھی دادرسی قرین انصاف عدالت ہو وہ بھی معہ خرچ صادر فرمائی جاوے۔"

However, the respondents on the other hand while filing written statement have taken the adverse pleas. Relevant extracts from the written statement are hereunder:-

"عذرات ابتدائی:

یہ کہ مدعا کو دعویٰ ہذا رکرنسے کیلئے کوئی Locus Standi اور بنائے دعویٰ حاصل نہ ہے لہذا دعویٰ مدعا اخراج ہے۔ مدعا نے دعویٰ ہذا مورخ 2010-11-26 کو داڑ کیا اور متوقف اختیار کیا کہ مدعا علیہ محمد بشیر نے دوران ساعت اپیل و دعویٰ اراضی تعدادی M-12K-4P پر زبر دستی قبضہ کر لیا ہوا ہے۔ حالانکہ دستاویزی شہادت پیش کردہ فریقین اور حکم مصدرہ مورخ 2015-11-21 ازاں عدالت جانب سید ناصر علی بخاری ایڈیشنل ڈسٹرکٹ نج سیالکوٹ سے مدعا کے موقف کی نفی ہوتی ہے۔ مدعا علیہ محمد بشیر کاروانی اشتغال سال 1968-69 کے بعد اراضی متدعویہ کا مسلسل مالک و قابض بلا شرکت غیرے چلا آ رہا ہے۔ مدعا کا اراضی متدعویہ سے کسی قسم کا کوئی تعلق واسطہ نہ ہے۔ لہذا دعویٰ مدعا Maintainable نہ ہے خارج فرمایا جاوے۔

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(ب)

(ج) یہ کہ مدعا موضع لوہار کے تحصیل پرور میں دیگر اراضی کا مالک ہے جو اراضی مدعا نے مشترکہ کھاتہ مدعا علیہ محمد بشیر وغیرہ سے خرید کی وہ آراضی دوران کاروانی اشتغال علیحدہ ہو کر دیگر کھاتہ ملکیتی میں ختم ہو چکی ہوئی ہے۔ اشتغال کے بعد اراضی تعدادی نمبر خسرہ 12-4/62 سے مدعا کا کوئی تعلق واسطہ نہ ہے۔ اگر اشتغال کاروانی کے بعد مدعا علیہ سے

اراضی خرید کرتا تو اس کا دعویٰ بتاتھا۔ Infact مدعی نے بذریعہ دعویٰ ہذا کاروانی اشتمال کو چینچ کر دیا ہے۔ جو دعویٰ مدعیٰ ہر لحاظ سے Barred by law ہے۔

9. In this regard, Qamar Abbas, Circle Patwari, appeared as PW-1, who categorically failed to explain or commensurate with the changes made in the subsequent record-of-rights whereby the entitlement of the predecessor of the petitioners stood eclipsed. The pertinent portion of his evidence is reproduced hereinbelow:-

"بر حلف بیان کیا میں سال 69/1968 کا رجسٹر ہفڈار ان زمین ہمراہ لایا ہوں۔ مطابق ریکارڈ عنایت اللہ مدعی کا اندر ارج کھانہ نمبر 80 کھتوں نمبر 106 بخانہ کاشت میں بطور مشتری نمبر خسرہ 61 رقمہ تعدادی 4 کنال 12 مرلے کا اندر ارج موجود ہے۔ بائیان میں محمد بشیر 3/2 حصہ، صغریں بی بی 3/1 حصہ کا اندر ارج ہے۔ خانہ کاشت کا یہ اندر ارج بروئے انتقال نمبر 721 بیجہ بقلم سیاہی درج ہے۔ سال 74/1973 میں نمبر خسرہ 61 کی بجائے نمبر خسرہ 62 قائم ہو گیا۔ 74/1973 کے ریکارڈ کے مطابق جب نمبر خسرہ 61 نمبر خسرہ 62 میں تبدیل ہوا تو عنایت اللہ مدعی کا اندر ارج کسی خانہ میں نہ ہے۔ میرے پاس ایسی کوئی چیز نہ ہے کہ بتا سکوں کہ یہ ریکارڈ کیسے تبدیل ہوا۔ میرے پاس انتقال نمبر 721 موجود نہ ہے۔"

XXXXXXXXXXXXXXXXXXXX

درست ہے مثل حقیقت اشتمال 69/1968 کے بعد مدعی کا نمبر خسرہ 62 سابق 61 کے بارے میں کاغذات مال میں کسی شکل میں اندر ارج موجود نہ ہے۔ درست ہے کہ مثل حقیقت اشتمال کے بعد محمد بشیر ولد چراغ دین وغیرہ مدعا علیہم کا اندر ارج بطور مالک قابض بابت نمبر خسرہ 62 زیر کار تعدادی 4 کنال 12 مرلے مسلسل چلا آ رہا ہے۔"

From the above, after consolidation proceedings, it appears that during preparation of *Misl-e-Haqeeqat* due to *malafide* or otherwise name of Anayat Ullah predecessor of the petitioners was omitted and Muhammad Bashir etc. predecessor of respondents shown as owner as per his previous ownership but there is no document available that how this change took place. Learned counsel for respondents failed to refer any document which may justify this change but only stressed that under Section 26 of the Ordinance, 1960 jurisdiction of civil court is barred. No authority is empowered with unbridled powers rather jurisdiction is to be exercised in accordance with law. Support is drawn from the judgment reported as "Utility Stores Corporation of Pakistan Limited Vs. Punjab Labour Appellate Tribunal and others" (**PLD 1987 Supreme Court 447**).

10. No iota of evidence is available on record to show as to how, when and under what authority such diminution of entitlement occurred.

Even the Province of the Punjab and the revenue hierarchy, though party to the proceedings, failed to explain the manner in which the predecessor of the petitioners was deprived of his title.

11. Without any proof showing that the change in the subsequent record-of-rights was the result of consolidation proceedings or any lawful order passed thereunder, it cannot be presumed that such change occurred due to consolidation. Courts decide cases on the basis of proof and not on presumption, whereas the findings of both the learned courts below while referring Section 26 of the Ordinance, 1960 are based on presumptions and conjectures, which are not tenable in the eyes of law.

12. It is settled law that a special or statutory tribunal cannot clothe itself with jurisdiction by deciding jurisdictional facts in its own favour. The august Supreme Court of Pakistan in judgments reported as "Mr. Muhammad Jamil Asghar Vs. The Improvement Trust, Rawalpindi" (**PLD 1965 Supreme Court 698**) and "Hamid Husain Vs. Government of West Pakistan and others" (**1974 SCMR 356**) has authoritatively held that such tribunals are not judges of the facts which form the foundation of their jurisdiction, unless the statute expressly so provides. A civil court, being a court of plenary jurisdiction, is competent to examine whether such jurisdictional facts exist. In the absence of any lawful order showing that the alleged diminution of entitlement resulted from consolidation proceedings, the bar under Section 26 of the Ordinance, 1960 cannot be presumed.

13. Blanket cover of statutory bar cannot be extended to each and every act of illegality committed by revenue or consolidation staff merely by invoking Section 26 of the Ordinance, 1960. Any illegality does not attain immunity from the jurisdiction of civil courts solely because it was committed during the era when consolidation proceedings were in progress, particularly when such illegality has no nexus with the consolidation process itself.

14. The mere existence of consolidation proceedings does not oust civil court jurisdiction where the dispute relates to title. Reference can be made to case reported as "Muhammad and 19 others Vs. Muhammad Hayat and 8 others" (**2006 CLC 907**), wherein it was held that questions of ownership and lawful entitlement fall within the exclusive

jurisdiction of the civil court, notwithstanding consolidation proceedings.

15. It would not be out of place to mention here that Section 53 of the West Pakistan Land Revenue Act, 1967 (hereinafter shall be referred to as the “*Act, 1967*”) itself provides a statutory remedy where a person is aggrieved by an entry in the record-of-rights affecting his proprietary rights, enabling him to approach the civil court. The present case squarely falls within the ambit of Section 53 of the Act, 1967, as the petitioners have alleged deprivation of title through fraudulent manipulation of revenue record. This view finds support from the judgments reported as “Nemat Ali and another Vs. Malik Habib Ullah and others” (2004 SCMR 604) and “Brig. (R) Masood Salam through Legal Heirs Vs. Sohail Ahmad and others” (PLD 2020 Lahore 478).

For convenience Section 53 of the Act, 1967 is reproduced below:-

“53. Suit for declaratory decree by persons aggrieved by an entry in a record. If any person considers himself aggrieved by an entry in a 'Record-of-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).”

16. The above-reproduced section expressly preserves the right to challenge incorrect or fraudulent revenue entries through a civil suit. Light can be taken from judgment reported as “Muhammad Yousaf and 3 others Vs. Khan Bahadur through Legal Heirs” (1992 SCMR 2334) wherein the august Supreme Court of Pakistan has held that the jurisdiction of civil courts is not ousted in such matters and that failure to consider Section 53 constitutes a legal error.

17. Section 45 of the Act, 1967 restricts any variation in entries in a record-of-rights or in a periodical record, except entries made in the periodical record regarding undisputed acquisition of interest under Section 43 of the Act, 1967.

18. Learned counsel for the respondents has taken the plea of non-maintainability of the suit but has not referred to any document through which the predecessor of the petitioners was deprived of his land nor any instrument through which deceased Muhammad Bashir respondent No.1 or Mst. Sughran Bibi allegedly acquired title.

19. The scope of Section 9 of the Code of Civil Procedure, 1908 (CPC) is well-settled. The august Supreme Court in cases referred as "Abdul Rauf and others Vs. Abdul Hamid Khan and others" (**PLD 1965 Supreme Court 671**) and "Pakistan Transport Company Ltd. Vs. Walayat Khan through Legal Heirs" (**2002 SCNR 1470**) has consistently held that civil courts are courts of general and plenary jurisdiction and are competent to try all suits of a civil nature unless their cognizance is expressly or impliedly barred by law. It has further been held that the question whether an act of an executive authority, revenue officer, or quasi-judicial tribunal is without jurisdiction or illegal is itself a matter of a civil nature and is justiciable before civil courts. For ease of reference, Section 9 is reproduced hereunder:-

"9. Courts to try all civil suits unless barred. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

20. Complicated questions of law and fact, particularly those involving allegations of fraud, necessarily require recording and appreciation of evidence and fall within the exclusive jurisdiction of the civil court. Fraud can only be adjudicated by a competent civil court and not by revenue authorities exercising summary jurisdiction. Fraud and *mala fides* vitiate all proceedings and cannot be protected by any statutory bar. The august Supreme Court of Pakistan in case of Mr. Muhammad Jamil Asghar supra as well as in judgment reported as "Jan Muhammad through Mubarik Ali and others Vs. Nazir Ahmad and others" (**2004 SCMR 612**) has successively held that the jurisdiction of civil courts can never be taken away in respect of fraudulent or *mala fide* acts, as such acts are void in law and require adjudication through proper recording and appreciation of evidence.

21. Actually, the present case is one of alleged fraudulent activity through which the predecessor of the petitioners was deprived of his title and therefore, the bar of jurisdiction provided under Section 26 of the Ordinance, 1960 or of Section 172 of the Act, 1967 is manifestly not applicable.

22. This Court then faced two options: either to decide the matter itself or to remit it to the learned trial court for a fresh decision. Since

both the learned courts below placed considerable emphasis on their findings regarding lack of jurisdiction and maintainability, while not properly appreciating the evidence on record, it would be appropriate to remand the matter to the learned trial court

23. Accordingly, this revision petition is **allowed**; the judgments and decrees impugned herein are hereby **set aside** and the case is **remanded** to the learned trial court for decision afresh on the question of its jurisdiction in accordance with law, with liberty to the parties to address arguments on the basis of the available evidence and/or to lead additional evidence in support of their respective pleadings and the issues framed therein.

24. Parties shall appear before the learned trial court concerned on 08.01.2026, where the suit of the petitioners shall be deemed pending for onward proceedings in terms of the above-mentioned order.

Signed

22.12.2025

Sadheer Ahmad

(MALIK WAQAR HAIDER AWAN)
JUDGE

Approved for reporting

Judge