

**2012 M L D 832**

**[Lahore]**

**Before Muhammad Ameer Bhatti, J**

**HAMIDA BEGUM and others---Petitioners**

**versus**

**PROVINCE OF PUNJAB through Collector and 4 others---Respondents**

Civil Revision No.2059 of 2003, heard on 19th September, 2011.

**(a) Registration Act (XVI of 1908)---**

---S. 77---Civil Procedure Code (V of 1908), S. 11---Specific Relief Act (I of 1877), S. 42---Displaced Persons (Land Settlement) Act (XLVII of 1958), Ss. 10 & 11---Suit for declaration---Transfer of evacuee land obtained by defendant alleged by plaintiff to be illegal and in fraudulent manner---Subsequent sale of suit land by defendant through sale-deed and refusal of Sub-Registrar to register the same---Defendant's suit under S. 77 of Registration Act, 1908 against such refusal decreed by Trial Court was upheld upto the Supreme Court---Defendant's plea that question of his ownership being in issue in his suit under S. 77 of the Registration Act, 1908 and decided in his favour could not be re-agitated in plaintiff's suit by virtue of S. 11, C.P.C.---Validity---Trial Court had decreed suit under S. 77 of Registration Act, 1908 on ground that as defendant was shown in revenue record to be owner of suit land, thus, Sub-Registrar could not refuse registration of its sale-deed---Trial Court in suit under S. 77 of the Act had rightly not decided ownership of either party, but had kept pending such question to be decided in an independent suit--For applying principle of res judicata there must be same claim, prayer and determination between parties on same point---Matter qua determination of ownership about suit land was not directly and substantially in issue in suit under S.77 of the Registration Act, 1908---Defendant's such plea was repelled in circumstances.

Defence Housing Authority, Lahore Cantt. through Secretary v. Punjab Cooperative Housing Society Ltd. through Secretary 2011 CLC 520; Flt. Lt. (Dr) Shariq Saeed v. Mansoob Ali Khan and 5 others 2010 YLR 1647; Mst. Sabiran Bibi and others v. Ahmed Khan and others 2008 SCMR 226; Waheed Azmat Sheikh v. Chairman, Habib Bank Limited and 2 others 2002 CLC 929; Muhammad Sadiq (decd.) through L.Rs and others v. Mushtaq and others 2011 SCMR

239; Muhammad Iqbal Khan v. The Chief Settlement Commissioner and Nasir ud Din Khan PLD 1965 SC 404; Masooda Begum through Legal Heirs v. Government of Punjab through Secretary Forest, Lahore and 9 others PLD 2003 SC 90 and Ghafoor Bukhsh v. Haji Muhammad Sultan and others 2001 SCMR 398 ref.

**(b) Civil Procedure Code (V of 1908)---**

---S. 11---Res judicata principle of---Object.

The underlying purpose behind the principle of res judicata is that once an issue has been settled between the parties, the same should not be re-agitated or re-opened so as to ensure perpetual resolution of dispute and put an end to duplicity of litigation on the same issue.

**(c) Displaced Persons (Land Settlement) Act (XLVII of 1958)---**

---Ss. 10 & 11---Civil Procedure Code (V of 1908), S. 9---Specific Relief Act (I of 1877), S. 42--Suit for declaration---Transfer of evacuee land alleged to have obtained by defendant in fraudulent manner---Jurisdiction of civil court---Scope---Fraud could be challenged before civil court for being court of plenary jurisdiction---Civil court could decide such question after recording evidence of party.

Province of Punjab v. Muhammad Mehmood 1991 SCMR 1426 rel.

Khawar Ikram Bhatti and Miss Yasrab Gulzar for Petitioners.

Ms. Firdous Butt, A.A.-G. with Muhammad Asim SDEO, Forest Department, Silakot and Imtiaz ul Hassan, Incharge, Litigation Branch, Forest Division, Sialkot for Respondents.

Date of hearing: 19th September, 2011.

## **JUDGMENT**

**MUHAMMAD AMEER BHATTI, J.**---Through this civil revision the order dated 18-5-2002 passed by the learned District Judge, Sialkot has been challenged whereby he remanded the case to the learned trial Court after setting aside the judgment and decree passed by the learned trial Court while accepting the application under Order VII, Rule 11, C.P.C. of the petitioners/defendants/ with a direction to decide the suit in accordance with law, after recording the evidence of both the parties.

2. The facts necessary for the just decision of this case are that the respondents by way of civil suit challenged the validity of the order dated 7-6-1976 passed by the EACO/ASC (L) Sialkot and on the basis of this order, the Mutation No.5 dated 20-5-1977 in favour of Muamla son of Wazira, and subsequent Mutation No.3 dated 29-12-1988 by virtue of policy Letter No.CEP/1824 dated 10-2-1948 issued by the Custodian Evacuee Properties and subsequent Notification No.1503-D(F) dated 7th May 1951 issued by the Government of Punjab.

3. It is also claim of the plaintiff/respondent that Chief Settlement Commissioner West Pakistan vide memorandum No.65/795-R(L) dated 27-2-1965 issued direction that the evacuee land in possession of the Forest Department, whether notified or un-notified, should not be allotted against claims under the provisions of the West Pakistan Rehabilitation Settlement Scheme. Hence, the impugned transfer of land which is under the possession of the Forest Department is illegal unlawful and based on fraud and misrepresentation.

4. The present petitioners filed the application under Order VII Rule 11, C.P.C. for the rejection of the plaint on the ground the land in dispute was transferred from the name of the Central Government in the name of "Muamla" in whose favour Mutation No.4 dated 19-10-1976 was sanctioned as his "Mukhbari" application under sections 10 and 11 Displaced Persons (Land Settlement) Act, 1958 was accepted vide order dated 27-3-1976 by the Chief Settlement Commissioner. Out of this total land measuring 2428 kanals 16 marlas, said "Muamla" sold the land measuring 1000 kanalas in favour of Kh. Tasneem Sadiq through a registered sale-deed dated 29-11-1976 and Mutation No.5 dated 20-5-1977 was also sanctioned regarding this sale transaction and the name of Mst. Kh. Tasneem Sadiq was duly incorporated in the revenue record in the jamabandi 1977-1978.

5. Through a second transaction dated 19-5-1980, the remaining land measuring 1428 kanals 16 marlas was sold out in favour of Aurangzaib Khan, etc. for a consideration of Rs.3,50,000 and a sale-deed was executed and same was presented for registration before the sub-Registrar which was refused by the Registrar Office. As such a suit under section 77 of Registration Act, 1908 was filed in the Civil Court. It is added that the Forest Department, being not a party to the suit, filed an application for its impleadment in the suit which was allowed and after the amended plaint, the Forest Department/respondent filed the written statement. The suit was hotly contested on the ground that the sale-deed sought to be registered was without any legal justification as the "muamla" was not owner of the land as it was owned by the Forest Department. Accordingly, the suit was decreed vide judgment and decree dated 31-3-1988. However, the Province of Punjab and others challenged the impugned judgment and decree dated 31-3-1988 by filing an R.F.A. No.9 of 1989, which was dismissed being hopelessly time-barred. The C.P.S.L.A No.1608-L/1997 was also filed, same was heard and dismissed by the Hon'ble Supreme Court vide judgment dated 15-4-1999. It is added that during the pendency of this C.P.S.L.A, the respondent filed a Writ Petition No.430 of 1998 in this Court which was also dismissed hence the suit is hit by principle of res judicata as envisaged in section 11 of the C.P.C., hopelessly time barred, barred by law besides no cause of action.

6. This application was contested by the respondents/plaintiffs by filing the written reply on 19-5-1998 and following issues were framed:

"(1) Whether the suit is hit by res judicata? OPD

(2) Whether the plaint is barred by law, if so its effect? OPD

(3) Whether the suit is hopelessly time barred? OPD

(4) Whether the plaintiffs have got no cause of action to file the suit? OPD"

The plaint of the respondents was rejected vide judgment and decree dated 18-4-2002 after permitting the parties to produce their documentary evidence. This judgment and decree dated 18-4-2002 was appealed by the respondents/plaintiffs before the learned District Judge, who vide impugned judgment dated 24-6-2003, while accepting the appeal of the respondents remanded the case to the learned trial Court to decide the same on merits after providing the opportunities of filing of written statement to the petitioners/ defendants and recording of evidence in accordance with law.

7. Learned counsel for the petitioners contends that the learned 1st appellate court has failed to consider the finding given by the learned trial Court while deciding the suit of the petitioners in which Muamla has been held the owner of the land in dispute in the earlier round of litigation. Hence, the issue No.1 was rightly decided by the learned trial Court as the principles of res judicata has been fairly applied by the learned trial Court. Reliance is placed by the learned counsel:--

Defence Housing Authority, Lahore Cantt. through Secretary v. Punjab Cooperative Housing Society Limited through Secretary (2011 CLC 520)

Res judicata---Subsequent suit---Maintainability---Subsequent suit for permanent injunction is neither hit by S.11, C.P.C. nor by O.II, R.2, C.P.C. because suit for permanent injunction is a relief in relation to cause of action stated in that suit---Such is not a claim and further the question of res judicata would not arise in a case when a previous suit was dismissed for non-prosecution. Provision of section 11, C.P.C. would be applicable only if previous suit had been decided on merit regarding same issues which were directly and substantially in issue in the subsequent suit, and

Flt. Lt. (Dr) Shariq Saeed v. Mansoob Ali Khan and 5 others (2010 YLR 1647).

---S.11---Res judicata, doctrine of---Essential principles---Essential principles of res judicata are that a relief which is or which can be claimed and prayed for by a litigant, through one recourse to law, cannot be claimed or prayed for again by the same litigant before same forum---Principle of res judicata aims to save the court from being vexed repeatedly by a litigant for the same relief or for a relief which could have been claimed or prayed for by him in earlier action---In order to support plea of res judicata, former decision must have been on merits of question in issue in subsequent litigation and it should be inter se parties having same cause of action, subject-matter and claim---If anyone of such elements is missing, provisions of S.11 C.P.C. would not be applicable---Principle of doctrine of res judicata is that judgments and decrees bind only the parties.

8. Learned counsel for the petitioners added that the learned 1st appellate Court has not appreciated the real facts of the case, hence the order is not sustainable. Learned counsel for the petitioners further contends that the points in issue have already been dealt with by the learned trial Court in the earlier round of litigation which was up held by this Court as well as the Hon'ble Supreme Court while dismissing the R.F.A. and C.P.S.L.A respectively. Hence the same issue which has been resolved by this Court as well as Hon'ble Supreme Court, cannot be re-agitated through another suit filed by the respondents and this aspect of the matter has not been properly considered and appreciated by the learned Ist appellate Court which has caused prejudice to the petitioners. The learned counsel for the petitioners to elaborate his view point contends that the learned trial Court in the earlier round of litigation while deciding the suit of the petitioners declared "Muamla" as owner of the land in dispute on the basis of the revenue record which fact remains un-rebutted, hence there is no occasion for the learned trial Court in a present suit to reopen the matter which has already settled/decided and attained finality in the earlier suit of the petitioners. Hence, the finding of the learned trial Court was well-reasoned and the finding of the learned 1st appellate Court are erroneous and against the evidence available on the record. Further contends that the present respondents had tried to challenge the ownership of

the petitioners through a Writ Petition No.430 of 1998 which was also dismissed in limine and this Court while deciding this writ petition had not permitted the respondents to file the suit but it was just an observation for filing civil suit for redress of their grievance in accordance with law. Hence, it was up to the learned trial Court to decide the issues of res judicata and limitation strictly in accordance with law and same has been decided with a well-reasoned judgment but the learned 1st appellate Court reversed the same and remanded the case without dilating upon the findings given by the learned trial Court. Learned counsel for the petitioners relied on the judgments Mst. Sabiran Bibi and others v. Ahmed Khan and others (2008 SCMR 226), Waheed Azmat Sheikh v. Chairman, Habib Bank Limited and 2 others (2002 CLC 929), Muhammad Sadiq (decd.) through L.Rs and others v. Mushtaq and others (2011 SCMR 239), Muhammad Iqbal Khan v. The Chief Settlement Commissioner and Nasir ud Din Khan (PLD 1965 SC 404). Contends that the suit of the petitioners was not maintainable as it was hopelessly time barred besides barred by law as prohibited under sections 22 and 25 of the Displaced Persons (Land Settlement) Act, 1958.

9. Conversely, the learned counsel for the respondents in support of the judgment of the learned 1st appellate Court relying on Masooda Begum through Legal Heirs v. Government of Punjab through Secretary Forest, Lahore and 9 others (PLD 2003 SC 90) contends that the land which has already been allotted to the respondents before 1965, cannot be deemed to have been cancelled in terms of para 4 of the Rehabilitation and Settlement Scheme under the directive of the Chief Settlement Commissioner dated 27-2-1965. Further contends that the suit of the petitioners was not barred by any law as the fraud and mis-representation has been committed while getting the allotment of the land in dispute as it had already been allotted to the respondents and without cancellation of that by a specific order by the competent authority, the same land could not be available for allotment. Even otherwise, question of fraud and mis-representation has been raised and the suit of the respondents was competent as the Civil Court has exclusive domain and being competent Court of jurisdiction, can resolve the factual controversy by providing the opportunity of adducing the evidence to the parties. Reliance is placed on Ghafoor Bukhsh v. Haji Muhammad Sultan and others (2001 SCMR 398). Hence, the learned trial Court had misapplied the Order VII Rule 11, C.P.C. while rejecting the plaint of the respondents which was rightly cured by the learned 1st appellate court and there is no exception to challenge it, so far as the principles of res judicata is concerned.

10. Learned counsel for the respondents while supporting the judgment of the learned 1st appellate Court argued that the point of ownership has never been arbitrated by the learned trial Court in the earlier round of litigation but it had been specifically kept out of consideration by a specific words that this fact could not be adjudicated in this suit as it is not a suit for that purpose. Hence, the principles of res judicata had been misconstrued and misapplied by the learned trial Court which was efficiently appreciated by the learned 1st appellate court by rendered a convincing judgment and there is no valid reason to reverse the same.

11. I have heard the learned counsel for the parties and perused the record.

12. The main emphasis of the learned counsel for the petitioners while calling in question the legality of the judgment of the learned Ist appellate court is that findings qua ownership of the parties have been ascertained in the earlier round of litigation in a suit filed by the present petitioners which was upheld up to Hon'ble Supreme Court. Hence, the judgment of the learned Ist appellate Court is contrary to the earlier view taken by the learned trial Court as well as this court and the Hon'ble Supreme Court.

13. I have given anxious consideration to the contentions and perused the record minutely, especially the judgment of the learned trial Court rendered in the earlier suit filed by the petitioners before dilating upon this point. It is appropriate to reproduce the relevant issues and the findings of the Court:--

"(8) Whether the plaintiff No.5 is owner of the property in dispute? OPP

(10) Whether the property in dispute is owned by the defendant No.3? OPD-3."

Findings:

"I have gone through the provisions of section 77 of Registration Act and the relevant sections of the Registration Act and I am afraid that this aspect of the case of the defendants cannot be looked into while deciding the suit under section 77 of Registration Act. This is out of the scope of this suit to declare or judge the ownership of the defendants. It is also out of the scope of this suit to look into validity of the allotment of the plaintiff No.5 under section 77 of Registration Act, the Court is to see only the execution of the sale and that whether the Registrar was competent to refuse the registration or not. The Civil Court while deciding this suit under section 77 is competent to look into the matter which the Registrar should do at the time of registration i.e. whether the document fulfils the requirements of section 35 or not and whether the document fulfil the requirement of sections 71 to 76 or not. In the present case what regard to the fraud or ownership of the property in dispute. I am of the opinion that this court cannot do so, while deciding this suit under section 77 of Registration Act. So purposely; I refrain myself from commenting upon the evidence of the respondents which he has produced for establishing his right because if I will do so, it will affects the regular suit of the defendants, if any; on that point.

While deciding this issue, I am not competent to touch this point. I am not going to touch the version of the defendants that the allotment in favour of the plaintiff No.5 is bogus."

14. I have no doubt in my mind that the earlier suit filed by the petitioners was suit under section 77 of the Registration Act, 1908 for issuance of direction to the registration office for registration of sale-deed. Although the respondents Forest Department and Province of Punjab have been subsequently impleaded as respondents either on the application of the Forest Department or on the direction by this Court to implead the Province of Punjab while accepting the RFA, yet the learned trial Court while passing the judgment and decree in favour of the respondents, has not determined the ownership of either party, rather categorically observed while deciding the Issue No.10 that this was not a suit in which the ownership could be determined or decided on the basis of any evidence. It was further observed that this particular question of ownership should be got determined by filing an independent suit for this purpose. So far as the ownership of the present petitioners is concerned, the learned trial Court simply used the words that the "Muamla" has been shown as owner in the revenue record. Hence, the registering authority had no occasion to refuse the registration. So, the learned civil Court never decided the ownership either way in that suit, rather kept the matter of ownership pending to be determined in an independent suit for that purpose, which was rightly observed by the learned Civil Court. In my analysis, the matter qua determination of ownership was/is not an issue which could be termed as directly and substantially in issue in the earlier suit, hence the principles of res judicata in the light of the observation made by the learned trial Court in the earlier suit for seeking direction to the registration office, is not applicable because for precise application of the principles of res judicata, there must have been the same claim and prayer and determination between the parties on that point. The underlying purpose behind the principle of res judicata is that once an issue has been settled between the parties, the same should not be re-agitated or re-opened so as to ensure perpetual resolution of disputes and to put an end to duplicity of litigation on the same issue.

15. Since the issue regarding the ownership about the same disputed land has not been decided by the learned trial Court in the suit filed by the present petitioners and specifically kept it pending/open, hence the contention of the petitioners is devoid of legal force. The dictum enunciated by the Hon'ble Supreme Court as well as this Court is clear on this point.

16. So far as the point of limitation is concerned, the learned trial Court has not considered the Article 149 of the Limitation Act and straightaway declared the limitation under Article 120 of the Limitation Act providing limitation of six years, which Article is to be commonly applied where there is no specific provision in the Limitation Act. Since a specific Articles available providing the limitation for filing the suit, hence Article 120 of Limitation Act is not applicable and the finding on this point has been rightly reversed by the learned Ist appellate Court.



17. I turn now to the question of jurisdiction of the Civil Court, this objection would have been valid in the case where the allotment order has been passed with the jurisdiction by the competent authority and element of fraud and misrepresentation has not been alleged. The case of the respondents is based on the ground that the land was not vacant for allotment, the land has been excluded by the Chief Settlement Commissioner from allotment pool and this authority of the Chief Settlement Commissioner has been approved by the Hon'ble Supreme Court in case Province of Punjab v. Muhammad Mehmood (1991 SCMR 1426):--

"Under paragraph 4-A of the Rehabilitation Settlement Scheme, the Chief Settlement Commissioner had the power to direct the exclusion of land from allotment where it was required for a public purpose. While so excluding by his directive dated 27-2-1965, the Chief Settlement Commissioner was acting within this lawful authority."

It was pleaded in the plaint that the land had been obtained in a mala fide manner either by fraudulent exercise or misrepresentation. A Civil Court is only the Court of plenary jurisdiction and it is established principle of law that fraud can always be challenged before the Civil Court which determine such like questions after recording the evidence of the parties, hence jurisdiction of the Civil Court in such like cases is not barred.

18. There is no exception to interfere in the judgment of the learned Ist appellate Court as the same has been rendered by the learned Ist appellate Court in accordance with law. As an ultimate result of above discussion, I do not find any illegality in the impugned judgment. This petition has no merits and dismissed accordingly. No order as to costs.

S.A.K./H-30/L

Revision dismissed.