

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE JAMAL KHAN MANDOKHAIL

Civil Petition No. 1890-L of 2017 and C.M.A.2295-L of 2017

(Against the order dated 10.5.2017 passed by the Lahore High Court, Multan Bench in Civil Revision No. 770-D of 2009.)

Muhammad Jameel, etc.

...Petitioners

Versus

Abdul Ghafoor

...Respondent

For the Petitioners:

Rana Zia Abdul Rehman, ASC

For the Respondent:

Dr. G. M. Chaudhry, ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing:

29.09.2021

ORDER

AMIN-UD-DIN KHAN, J.- Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, leave has been sought to appeal against the judgment dated 10.05.2017 passed by the learned Single Judge of the Lahore High Court, Multan Bench whereby Civil Revision No. 770-D of 2009 filed by the petitioners was dismissed.

2. On 28.09.2017, after hearing the learned counsel for the petitioners, notice was issued to the other side and status-quo was ordered to be maintained.

3. We have heard the learned counsel for the parties. Learned counsel for the petitioners submits that the suit for declaration and possession was not maintainable as per the terms of the pleadings, and even if the pleadings of the respondent-plaintiff be admitted to be true only a suit under section 9 of the Specific Relief Section, 1877 was competent which was never filed. Therefore, he contends, the decrees granted by the three courts below in favour of the respondent-plaintiff are not sustainable under the law. He further argues that admittedly the suit property is owned by the Federal Government and, therefore, the suit was not maintainable in view of section 80 of the Code of Civil Procedure, 1908 (CPC) without impleading the Federal Government as defendant in the suit. On the other hand, learned counsel for the respondent-plaintiff supports the findings recorded by the three fora below and states that there are concurrent findings of fact recorded by the three courts below and the same should not be interfered with by this Court.

4. We see that there are concurrent findings of fact recorded by the three courts below. A suit for declaration and possession filed by the respondent-plaintiff with regard to "*Ihata*" fully described in the plaint was decreed vide judgment and decree dated 24.11.2008 by the learned Civil Judge, Class-II, Chichawatni. Appeal filed thereagainst by the petitioners-defendants- judgment debtors was dismissed by the learned Additional District Judge, Chichawatni vide judgment and decree dated 18.06.2009 where against the petitioners preferred a Civil Revision No. 770-D of 2009 which too was dismissed. Hence, this petition.

5. The suit property is owned by the Federal Government as admitted by the respondent-plaintiff himself when he appeared as PW-1 and shown by the documentary evidence produced by him in the shape of copy of Jamabandi Exh.P.1 and the document (Jamabandi) produced by the petitioners-defendants as Exh.D.1. Patwari Abdul Majeed who was produced by the petitioners-defendants as DW-1 also stated so. The case of the respondent-plaintiff as pleaded seems to be that he was dispossessed by the petitioners-defendants from suit property and his stance is that some portion of suit property was purchased by petitioners-defendants from his brother Manzoor Ahmad who shifted to Lahore as pleaded in paragraph 2 of the plaint. It is also pleaded by the respondent-plaintiff that share of Ali Ahmad, one of the persons in possession of the "Thata", was received in exchange by Jameel, petitioner-defendant No. 1. We are clear in our mind that for seeking a declaration under section 42 of the Specific Relief Act, 1877 through a declaratory decree, a pre-existing right can be declared by the Court and a new right cannot be created. Reference may be made to the case of "Muhammad Siddique (Deceased) through LRs and others v. Mst. Noor Bibi (Deceased) through LRs and others" (2020 SCMR 483) and "Abdul Razaq v. Abdul Ghaffar and others" (2020 SCMR 202). Further, the possession of the suit "Thata" was prayed for by the respondent-plaintiff. Admittedly, the suit "Thata" is owned by the Federal Government and rights in the "Thata" after allotment, if any, to the allottee were not conferred by the Federal Government. As per the pleadings of the respondent-plaintiff, some portion was purchased by the petitioners-defendants. He seeks a declaration of rights

claimed by him in the “*Thata*”. We are concerned with the question whether a declaration could be granted in such a situation. It is by now a well settled principle of law that no declaration of title can be passed without impleading the real owners and that none could confer a better title in property than he himself possessed. See “The Province of Punjab through Collector, Sialkot versus Feroz Din and others” (2015 SCMR 909), “Muhammad Shamim through legal heirs v. Mst. Nisar Fatima through legal heirs and others” reported as **(2010 SCMR 18)** and “Abdul Hameed v. Shamasuddin” reported as **(PLD 2008 SC 140)**. In our view, when the plaintiff claimed a declaration of title, without a pre-existing right, suit for declaration was not competent and the courts below should not have granted a declaratory decree when no pre-existing rights were available with the respondent-plaintiff in the suit “*Thata*”. If he was in possession of a portion of suit “*Thata*” and was wrongly dispossessed by the petitioners-defendants who are admittedly in possession of a portion of suit “*Thata*”, the only remedy available with him was to file a suit under section 9 of the Specific Relief Act, 1877 and not a suit for declaration under section 42 of the Act, *ibid*, or he could file a suit for possession under section 8 of the Specific Relief Act, 1877. Since the respondent-plaintiff has failed to prove any pre-existing right to be “declared” by the court, the contention regarding non-service of notice under Section 80 of CPC becomes irrelevant and does not call for adjudication. Learned counsel for the respondent is unable to defend the concurrent judgments and decrees granted in favour of the respondent-plaintiff.

6. In the above circumstances, the concurrent judgments and decrees passed by the three courts below are not sustainable

under the law, therefore, this petition is accepted and converted into an appeal and the same is allowed. Judgments and decrees passed by the three courts below are set aside. Resultantly, the suit filed by the plaintiff-respondent stands dismissed.

Judge

Islamabad, the
29th of September, 2021
(Mazhar Javed Bhatti)

Judge

APPROVED FOR REPORTING