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Judgment Sheet

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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CIVIL REVISION NO.341-D of 2017

MUBARAK AHMAD

Versus

MUHAMMAD HAYAT (Deceased) Through His Legal Heirs and Others

JUDGMENT

Date(s) of hearing:	15.11.2023 & 16.11.2023
Petitioner by:	Sh. Ahsan-ud-Din, Advocate.
Respondents No.1A to 1D by:	Mr. Mujeeb ur Rehman Kiani, Advocate.
Respondents No.2 to 12 by:	M/s Asim Sohail and Sana Javed, Advocates.
Respondents No.13 & 14-A, 14-B by:	Sh. Kamran Shahzad Siddiqui, Advocate.

MIRZA VIQAS RAUF, J. This petition as well as connected petition (Civil Revision No.216-D of 2017) are arising from the judgment and decree dated 23rd January, 2017 passed by the learned District Judge, Attock, whereby he proceeded to dismiss the appeal of the petitioners of both these petitions as well as respondent No.14 and affirm the judgment and decree dated 18th October, 2007 passed by the learned Civil Judge Class-I, Attock. This judgment shall thus govern both these petitions.

2. Facts forming background of these petitions are that predecessor-in-interest of respondents No.1A to 1D namely Muhammad Hayat (respondent No.1) and respondents No.2 & 3

(hereinafter referred to as “respondents”) instituted a suit for separate possession seeking partition of properties duly mentioned in the headnote of the plaint (hereinafter referred to as “suit properties”) with the averments that “suit properties” are joint interse parties. It is asserted that the original owner of “suit properties” numbered as "(د)،(ج)،(ا)" was Muhammad Aslam son of Khudadad and he was also owner of 1/4th share in the property (ب) forming part of “suit properties” and rest 3/4 share in the said property was owned by respondent No.9. As per averments of the plaint Muhammad Aslam died in the year 1976, who survived respondents No.4 to 6 as daughters alongwith respondents No.7, 8 & 14 being widows and respondents No.2, 3 & 13 as his sons. It is mentioned that share of each son is 7/48 whereas share of each daughter is 7/96 and widow is entitled to 1/16 share each. It is also asserted that since the “respondents” purchased the land from respondents No.4 to 7 from the suit *“Hevali”* mentioned at serial No.(ا) and thus they became owners of 70/96 share whereas respondents No.4 to 7 were left with no right of ownership with the “suit properties”.

3. Suit was resisted by the petitioner, who purchased a piece of property forming part of “suit properties” from respondent No.13 during proceedings and thus while submitting his written statement he pleaded that he is bonafide purchaser and his rights are protected under Section 41 of the Transfer of Property Act, 1882. Suit was also resisted by respondents No.13 & 14, who submitted their written statement raising multiple objections. It would not be out of place to mention here that respondent No.13 is the petitioner in the connected petition. Out of divergent pleadings of the parties multiple issues were framed by the trial court, who after recording of evidence from both the sides proceeded to pass the preliminary decree vide judgment dated 18th October, 2007. Feeling dissatisfied the petitioners in both these petitions as well as respondent No.14 preferred appeal but same was dismissed vide judgment and decree dated 23rd January, 2017, which is now impugned in these petitions

under Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as "C.P.C.").

4. Sh. Ahsan-ud-Din, Advocate representing the petitioner namely Mubarak Ahmad submitted that his client purchased 03 Marla property in the constructed shape from respondents No.13 & 14 through registered sale deed and his rights are protected under Section 41 of the Transfer of Property Act, 1882. It is contended that validity of the sale deed in favour of the petitioner has never been questioned by the "respondents" in their suit. Learned counsel while making reference to the statement of respondent No.2, who appeared as PW1 submitted that the "respondents" though did not include all the joint properties in their suit but suit was decreed preliminary in negation of principle of partial partition. Learned counsel emphasized that concurrent findings are the outcome of gross misreading and non-reading of evidence. In support of his contentions, learned counsel placed reliance on *GHULAM RASOOL and another versus MUHAMMAD KHALID and 2 others* **(2006 YLR 2289)**.

5. Sh. Kamran Shahzad Siddiqui, Advocate representing respondents No.13 & 14 and also petitioner in connected petition submitted that sufficient evidence was though produced by the petitioner that "suit properties" are in respective possession of the parties under a family settlement but no heed was paid to this material aspect at all. Learned counsel contended that concurrent findings are tainted with material irregularities and as such not tenable.

6. Conversely, Mr. Mujeeb-ur-Rehman Kiani, Advocate representing respondents No.1A to 1D submitted that parties are admittedly co-owners. He added that no tangible material was produced by the petitioner that "suit properties" were partitioned under a family settlement and as such suit was rightly decreed. It is contended by learned counsel that mere private partition is even otherwise not an hurdle in a suit for partition claiming separate possession. Learned counsel submitted that the petitioner namely

Mubarak Ali purchased the property during the pendency of the suit and as such he would only step into the shoes of his vendor and will became co-owner. Learned counsel argued that "respondents" included all the joint properties interse parties in the suit and it is not hit by the principle of partial partition. Placed reliance on *MUHAMMAD YOUSAF versus ADDITIONAL DISTRICT JUDGE, FEROZEWALA and others* **(PLD 2023 Lahore 503)** and *SAKHI MUHAMMAD and others versus HAJI AHMED and others* **(2023 CLC 380)**.

7. On the other hand, M/s Asim Sohail and Sana Javed, Advocates representing respondents No.2 to 12 adopted the arguments of learned counsel representing respondents No.1-A to 1-D.

8. Heard. Record perused.

9. This case has a checkered history at its back. There are four properties in toto forming subject matter of the suit. It appears from the record that initially suit was dismissed by the learned Civil Judge, which judgment was assailed in appeal before the learned Additional District Judge, Attock but appeal was dismissed whereafter the "respondents" challenged the concurrent findings before this Court through Regular Second Appeal No.16 of 1984. The appeal was ultimately accepted by way of judgment dated 08th March, 2001 and matter was remanded to the trial court for deciding it afresh after recording of further evidence of the parties. In post-remand proceedings both the sides produced their further evidence and finally suit was decreed preliminary vide judgment dated 29th April, 2002. Feeling dissatisfied, the petitioner preferred an appeal before the learned Additional District Judge, who proceeded to dismiss the same and thus findings of the courts below were then called in question in Civil Revision No.534-D of 2002, which was allowed by way of judgment dated 27th February, 2004 and case was remanded to the trial court to decide the same afresh in the light of issues as originally framed. In the third round, suit was again decreed preliminary vide judgment dated 18th October, 2007. The petitioners

challenged the said judgment and decree through an appeal before the learned Additional District Judge, Attock, who dismissed the same. This followed Civil Revision No.383-D of 2008 which was allowed by way of judgment dated 20th October, 2016 and case was again remitted to the appellate court with the direction to decide the appeal afresh as in the earlier judgment the learned Additional District Judge had posted the issues of some other case whereas findings were given with regard to the case in hand. After remand the appeal was heard by the learned District Judge, Attock, who proceeded to dismiss the same through impugned judgment and decree dated 23rd January, 2017.

10. It is apparent from the record that suit is mainly resisted by the petitioner firstly on the ground that the "suit properties" were partitioned under a family settlement by the original owners in his lifetime and as such these have lost the status of joint properties and secondly the "respondents" did not include all the properties of Muhammad Aslam, predecessor-in-interest of respondents No.2 to 8, 13 & 14 in the suit which renders the same not proceedable. Though from the pleadings of the parties multiple issues were framed but in order to circumscribe the matter in controversy in more precise and specific shape, to my mind following points for determination emerge before this Court :-

(i). Whether the "suit properties" are joint interse parties or same have been partitioned under a family settlement?

(ii). Had there been any family settlement what would be its effect?

(iii). Whether suit is hit by principle of partial partition? and

(iv). What would be the status of sale transaction effected in favour of petitioner namely Mubarak Ahmad during the pendency of the suit?

11. Adverting to the moot points, it is observed that point at serial Nos.(i) & (ii) are not only interlinked but dependent upon each other. It is evident from the record that the "respondents" at the very outset

while instituting suit asserted that the "suit properties" are joint in nature and not yet partitioned by meets and bounds. Contrary to this suit was resisted by the petitioners/defendants on the ground that there is a family partition interse parties by virtue of which all the co-owners are in possession as per their legal shares. To this effect claim of the petitioners rests upon the stance taken by respondents No.13 & 14 in their written statement. The relevant extract is reproduced below :-

"۱۔ یہ کہ دعویٰ مدعیان جزوی غلط ہے جزوی حویلی متدعویہ سے مدعیان کا کسی قسم کا کوئی تعلق واسطہ نہ ہے۔ جزوی حویلی متدعویہ میں محمد اسلم متوفی رہائش پذیر تھا۔ متوفی نے حویلی جزوی اپنی زندگی میں اپنی بیوی مسماۃ کرم جان اور پسر محمد یوسف کو بطور تقسیم کر کے دے دی تھی۔ باقی حویلی ۲ کے میں محمد اسلم کے دیگر اولاد و وارثان قابض تھے۔ متوفی نے اپنی زندگی میں حویلی ۲ کے اپنے وارثان کو تقسیم کر کے دی تھیں۔"

12. It is an admitted fact that the "suit properties" were originally owned by Muhammad Aslam son of Khudadad, who contracted three marriages and respondents No.2 to 6 & 13 are his off springs whereas respondent No.14 Mst. Karam Jan is one of his widows. In order to prove that the "suit properties" are joint interse parties, the "respondents" produced Khizar Hayat as PW1, who reiterated the contents of the plaint. Muhammad Iqbal was produced as PW2. He too deposed on the same lines. From the perusal of the revenue record produced by the "respondents" it clearly evinces that the status of the "suit properties" is recorded as joint. Moreover Mst. Karam Jan i.e. respondent No.14 when appeared in the witness box she stated as under :-

"یہ درست ہے کہ میرے خاوند نے مرتے دم تک اراضی متدعویہ کا انتقال یا رجسٹری میرے حق میں نہ کی تھی۔ تینوں حویلیوں کی کوئی تحریر بہ نسبت تقسیم نہ ہوئی تھی۔"

It is thus crystal clear that no partition has ever taken place through any written deed.

13. Chapter XI of the Land Revenue Act, 1967 (hereinafter referred to as "Act, 1967") deals with the partition of the joint land.

Section 147 of the Act ibid provides a mechanism for affirmation of partitions privately effected which is reproduced below for ready reference and convenience :-

> **"147. Affirmation of partition privately effected.–** (1) In any case in which a partition has been made without the intervention of a Revenue Officer, any party thereto may apply to a Revenue Officer for an order affirming the partition.
>
> (2) On receiving the application, the Revenue Officer shall enquire into the case, and if he finds that the partition has in fact been made, he may make an order affirming it and proceed under sections 143, 144, 145 and 146, or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this Chapter.**"**

The above provision clearly manifests that if a party pleads some private partition effected under some family settlement with regard to partition of joint land, he has to apply to the revenue officer obtaining an order for affirmation of such partition. In other words in absence of any order of affirmation in terms of Section 147 of the "Act, 1967" party relying upon private partition would be precluded to claim any right thereunder.

14. It would not be out of context to mention here that Chapter 18 of the Land Record Manual provides a procedure in partition cases and clause 18.1 especially deals with private partitions. Guidance in this respect can be sought from *MUHAMMAD MUKHTAR and others versus MUHAMMAD SHARIF and others* **(2007 SCMR 1867)**. Reference in this regard can also be made to *Mst. WALAYAT BEGUM and 3 others versus MUHAMMAD AFSAR and 3 others* **(2014 CLC 1103)**. The relevant extract from the same is reproduced below :-

> **"**6…….. It is an admitted fact that Bostan (the predecessor of the present appellants) and the respondent/defendant Muhammad Afsar along with others are co-sharers in the khewat of the disputed land. The respondent/defendant filed an application for partition before the Revenue Assistant and ex parte proceedings were ordered against the respondent in the partition proceedings. Partition deed Exh.D.N. was issued and ultimately a warrant of possession was issued in the name of respondent/ defendant Muhammad Afsar to the extent of the land measuring 2 Kanals and 1 Marla. The said Muhammad Afsar was declared owner in possession of the said land. It is a settled principle of law that private partition or family settlement cannot be declared as final partition. Any of the co-sharers can approach the proper forum for partition of the jointly owned land in accordance with the provisions of law. The record reveals that the predecessor of the present

appellants Bostan refused service of the notice in the partition proceedings and thereafter ex parte proceedings were ordered against him. It was not proved that the service was conducted fictitiously. It was not stated by the said Bostan that what loss was occurred due to partition proceedings? If at all, any fluctuation/ decrease or increase in the quantity of the land is found, the only proper forum for redressal regarding the same is the revenue court designated for the purpose. Moreover, it has not been brought on record and even has not been proved that how much deficiency in the quantity of the land has found in the shares of the said Bostan? It is an admitted principle of law as well that the official partition is always preferred to the private partition. No co-sharer can be deprived of his right only due to this fact that the other co-sharer is in possession of any land.

7. It was not proved by the present appellants that when they got knowledge regarding the partition proceedings. The record also reveals that the said Bostan filed a suit for permanent injunction on 22-8-2000 after issuance of warrant of possession in favour of the respondent/ defendant Muhammad Afsar. The said suit was dismissed for non-prosecution on 9-3-2002. This fact indicates that the said Bostan had knowledge of the partition process and he remained absent from the partition proceedings intentionally and he filed the suit for permanent injunction when the warrant of possession was issued in the name of the respondent Muhammad Afsar. So, the suit under appeal was filed beyond the period of limitation. The present appellants have relied on private partition only. The private partition does not change the nature of the joint property and the same will remain joint until and unless it is partitioned by the revenue authorities according to the provisions of law. It is a settled principle of law as well that no suit for possession can be filed by a co-sharer having the version that he is already in possession of a part of the disputed land and such suit cannot be treated under section 9 of the Specific Relief Act.**"**

15. In the case of *SAKHI MUHAMMAD and others versus HAJI AHMED and others* **(2023 CLC 380),** while dealing with similar question this Court held as under :-

"7. Section 147 of the "Act, 1967", provides a mechanism for affirmation of partitions privately effected, which reads as under:-

147. Affirmation of partitions privately effected. (1) In any case in which a partition has been made without the intervention of a Revenue Officer, any party thereto may apply to a Revenue Officer for an order affirming the partition.

(2) On receiving the application, the Revenue Officer shall enquire into the case, and if he finds that the partition has in fact been made, he may make an order affirming it and proceed under sections 143, 144, 145 and 146, or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this Chapter."

From the bare perusal of above referred provision of law, it clearly evinces that if a party is relying upon some family settlement with regard to partition of joint land, any party interested therein has to apply to the Revenue Officer for obtaining an order for affirmation of such partition. In

> absence of any such order, party relying upon the private partition would be precluded to claim any right therefrom. Furthermore, Chapter 18 of the Land Record Manual provides a procedure in partition cases and clause 18.1 especially deals with private partitions. To understand the true import of private partition, guidance can be sought from *Muhammad Mukhtar and others v. Muhammad Sharif and others (2007 SCMR 1867)*. Reference in this regard can also be made to *Mst. Walayat Begum and 3 others v. Muhammad Afsar and 3 others (2014 CLC 1103)*."

From the above analysis it can safely be held that no family settlement has ever taken place and the "suit properties" are still joint interse parties.

16. Next comes the question relating to partial partition, it appears from the record that to this effect respondents No.13 & 14, out of them former is also petitioner in the connected petition, while submitting their written statement objected the maintainability of the suit on the ground that "respondents" did not include the whole properties owned by Muhammad Aslam in the suit. To this effect learned counsel for the petitioner has heavily relied upon the statement of Khizar Hayat Khan (PW1). Attending this question it is noted that from the bare perusal of plaint, it appears that the "respondents sought partition of three *"Hevalies"* one of which is situated in the revenue limits of Baryar whereas other two falls within the limits of revenue estate of Nawa, fourth and last property is in the shape of drawing room "بیٹھک" which too falls within the territorial limits of revenue estate of Nawa. The objection of partial partition was taken by respondents No.13 & 14 without mentioning as to which property or properties have not been included in the suit. For the purpose of reference, relevant extract from the written statement is reproduced below :-

"۳۔۔۔۔سالم جائیداد متوفی محمد اسلم دعوی ہذا میں شامل نہ کی گئی ہے۔۔۔۔"

The above was clearly a vague assertion and even during evidence no specific property was pointed out either by the petitioner or respondents No.13 & 14. So far statement of Khizar Hayat (PW1) is concerned, on the basis of which learned counsel has made emphasis that the suit is hit by partial partition, it would be relevant to have a glimpse of the said part of statement, which reads as under :-

"۔۔۔حویلی موضع ناوہ وڈھوک فتح والی بدستور مشترکہ ہے۔۔۔"

From the above portion of statement, it is crystal clear that the *"Hevali"* Dhok Fateh Wali is located in the revenue estate of Nawa. The petitioner has failed to bring on record any material to substantiate that *"Heavli"* Dhok Fateh Wali is an independent and separate property thus one cannot say that the suit is not proceedable being hit by principle of partial partition. So far judgment in the case of ***Ghulam Rasool's*** *supra* is concerned, it is observed that same is not applicable to the case in hand, as it was founded on entirely different facts and circumstances.

17. Coming to the last point of controversy relating to sale transaction effected in favour of the petitioner, it is observed that undoubtedly said transaction took place during the pendency of the suit. The transaction thus would be governed in terms of Section 52 of the Transfer of Property Act, 1882 on the touchstone of principle of *lis pendens*. There is no cavil to the proposition that a co-sharer has every right to transfer or sell the joint property to a third person but such transfer or alienation is always dependent upon the actual share of such co-owner and if he transfers or alienates the property within his share, the vendee will step into his shoes accordingly. Law to this effect is well settled that no co-sharer can sell joint property with specific boundaries if any such transaction is made that would always be the subject to the partition. Guidance in this respect can be sought from *Mst. TABASSUM SHAHEEN versus Mst. UZMA RAHAT and others* **(2012 SCMR 983)** wherein the Supreme Court of Pakistan held as under :-

> **"**5. The afore-referred provision enshrines the age old and well established principle of equity that *ut lite pendente nihil innovetur* (pending litigation nothing new should be introduced) and stipulates that *pendente lite* parties to litigation wherein right to immovable property is in question, no party can alienate or otherwise deal with such property to the detriment of his opponent. Any transfer so made would be hit by this Section. The doctrine by now is recognized both in law and equity and underpins the rationale that no action or suit would succeed if alienations made during pendency of proceedings in the said suit or

action were allowed to prevail. The effect of such alienation would be that the plaintiff would be defeated by defendants alienating the suit property before the judgment or decree and the former would be obliged to initiate de *novo proceedings* and that too with lurking fear that he could again be defeated by the same trick. The doctrine of *lis pendens* in pith and substance is not only based on equity but also at good conscience and justice. In Lalji Singh v. Rameshuwar Misra ((1983) 9 All LR 269 (271) (All)), the essential ingredients of section 52 ibid or the conditions precedent to attract this principle were construed as follow:--

(i) the pendency of any suit or proceeding in a court law:
(ii) the court must have jurisdiction over the person or property;
(iii) the property must have specifically described and should be affected by the termination of the suit or proceedings;
(iv) the right to the said property be directly and specifically be in question in any suit or proceeding;
(v) an alienation of such immovable property without the permission or order of the court; and
(vi) the alienation should be during the pendency of any such suit or proceeding and a suit or proceeding in question is not collusive.

6. From our jurisdiction in recent past, the ambit and import of lis pendense came up for consideration before a Full Bench of this Court in Muhammad Ashraf Butt v. Muhammad Asif Bhatti (PLD 2011 SC 905) and at page 912, one of us (Mian Saqib Nisar, J) speaking for the Court observed as follows:--

> *"The rule unambiguously prescribes that the rights of the party to the suit, who ultimately succeed in the matter are not affected in any manner whatsoever on account of the alienation, and the transferee of the property shall acquire the title to the property subject to the final outcome of the lis. Thus, the transferee of the suit property, even the purchaser for value; without notice of the pendency of suit, who in the ordinary judicial parlance is known as a bona fide purchasers in view of the rule/doctrine of lis pendens shall be bound by the result of the suit stricto sensu in all respects, as his transferor would be bound. The transferee therefore does not acquire any legal title free from the clog of his unsuccessful transferor, in whose shoes he steps in for all intents and purposes and has to swim and sink with his predecessor in interest .... The foundation of the doctrine is not rested upon notice, actual or constructive, it only rest on necessity and expediency, that is, the necessity of final adjudication (Emphasis supplied) that neither party to the litigation should alienate the property so as to effect the rights of his opponent. If that was not so, there would be no end to litigation and the justice would be defeated. In support of the above, reliance is placed upon Messrs Aman Enterprises v. Messrs Rahim Industries Ltd. and another (PLD 1993 SC 292), Muhammad Nawaz Khan v. Muhammad Khan and 2 others (2002 SCMR 2003). Besides, in West Virginia Pulp and Paper Co. v. Cooper, 106 S.E. 55, 60, 87 W.Va. 781, it has been held the doctrine of "lis pendens" is that*

> *one who purchases from a party pending suit a part or the whole of the subject-matter involved in the litigation takes it subject to the final disposition of the cause and is bound by the decision that may be entered against the party from whom he derived title.*
> *In Tilton v. Cofield, 93 U. S. 168, 23 L.Ed, 858, the view set out is "the doctrine of lis pendens is that real property, when it has been put in litigation by a suit in equity, in which it is specifically described, will, if the suit is prosecuted with vigilance, be bound by the final decree, notwithstanding any intermediate alienation; and one who intermeddles with property in litigation does so at his peril and is as conclusively bound by the results of the litigation, whatever they may be, as if he had been a party from the outset".*

Reliance in this respect can also be placed on *MUHAMMAD ASHRAF BUTT and others versus MUHAMMAD ASIF BHATTI and others* **(PLD 2011 Supreme Court 905)** and *KHADIM HUSSAIN versus ABID HUSSAIN and others* **(PLD 2009 Supreme Court 419).**

18. Since the petitioner has purchased 10 Marla from respondent No.14 which is within his legal share, so sale deed to the extent of such transfer would remain intact but the petitioner cannot claim exclusive possession on the basis of schedule of boundaries mentioned therein. He would be treated as co-owner/co-sharer and would be entitled to get the property according to his entitlement in the process of partition in terms of preliminary decree passed by the trial court. Reference to this effect can be made to *Mst. KALSOOM MALIK and others versus ASSISTANT COMMISSIONER and others* **(1996 SCMR 710)** and *MUHAMMAD SHARIF and 3 others versus GHULAM HUSSAIN and another* **(1995 SCMR 514)**.

19. In the case of *MUHAMMAD MUNAWAR BAJWA versus Mst. ZUBERA SHAHEEN and another* **(2004 CLC 441)** this Court while reiterating the above principles held as under :-

> **"**17…….While dealing with a similar question, in Syed Jamal Shah v. Abdul Qadir Shah and others PLD 1955 Pesh. 26, it was observed at page 30 of the Report as follows:--
> "I consequently hold that a person, who is in exclusive possession of a certain portion of a joint property, can alienate that property, but then the alienation will be subject to any adjustment which takes place at the time of the partition of the joint property, and the person, to whom that joint property is allotted, shall take that property free of such alienation."

In Muhammad Muzaffar Khan v. Muhammad Yusuf Khan PLD 1959 SC 9 the Honourable Supreme Court had declared the law thus:--

> "The vendee of a co-sharer who owns an undivided Khata in common with another, is clothed with the same rights as the vendor has in the property no more and no less. If the vendor was in exclusive possession of a certain portion of the joint land and transfers its possession to his vendee, so long as there is no partition between the co-sharers, the vendee must be regarded as stepping into the shoes of his transferor qua his ownership rights in the joint property, to the extent of the area purchased by him, provided that the area in question does not exceed the share which the transferor owns in the whole property. Alienation of specific plots transferred to the vendee would only entitle the latter to retain possession of them till such time as an actual partition by metes and bounds takes place between the co-sharers".

A similar question came up for consideration before the Supreme Court of Azad Jammu & Kashmir in the case reported as Mustafa Khan and 3 others v. Muhammad Khan and another PLD 1978 SC (AJ&K) 75. The case-law was extensively reviewed at pages 77-79 of the Report, and it was observed as follows:--

> "After careful examination of the law on the point and the facts of this case, we are of the view that a co-sharer in possession of specific field numbers can validly transfer such land, even if his share in such specific field numbers exceeds his share, provided it does not exceed his over all entitlement of the share in the whole land. Of course the vendees' rights will be subject to adjustment on partition. But such a sale cannot be legally challenged on the mere ground that the land sold exceeds the share of the vendor in the specific numbers.
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> For this we may refer to AIR 1925 Lah. 518. In that case Mr. Justice Martineau, was confronted with the question whether a co-sharer in a Shamilat land on a transfer made by another co-sharer of land under his sole and exclusive possession, can prevent transferee from construction of building on such land. The learned Judge after discussing all aspect of the case answered the proposition in affirmative and stated that--
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> "Although Allahdiya and Kimun not being the sole owners of the land could not sell the full proprietary rights, the sale by them nevertheless holds good to the extent of conveying the rights which they could sell including the right to retain possession till partition. It has been held in Muhammad Amin v. Karam Das, (1924 Lah. 293) in which various rulings, on the point have been considered, that when a co-sharer has been long in possession of a portion of the Shamilat land no other co-sharer can oust him therefrom or even get joint possession with him as long as a partition of the Shamilat does not take place. The plaintiff has the same rights in the land that his predecessor in title had. He is entitled to undisturbed possession of the land as long as the Shamilat is not partitioned, and the defendants have no right to prevent him from building on the land".

A similar point came up for decision before Lahore High Court in AIR 1938 Lah. 465. In that case, the point to be determined was whether, in a case of joint "Khata" where one co-sharer had been in exclusive possession for a long time of a portion of

the joint land not exceeding his share in the entire holding, another co-sharer can dispossess him against his will from such land. Mr. Justice Tek Chand, relying on AIR 1924 Lah. 293 and AIR 1925 Lah. 518 observed:-

> "It is well-settled that in a case of joint Khata, where one co-sharer has been in exclusive possession of a portion of the joint land, which does not exceed his share in the entire holding, another co-sharer cannot dispossess him against his will from the portion of which he had been in possession".

Again an identical question came for consideration before the Oudh High Court in AIR 1939 Oudh 243. In that case Plot No.2807 was jointly owned by Baldeo Singh and Ambika Prasad, along with 80 other defendants. They (Baldeo Singh and Ambika Prasad) had given two leases in respect of this plot one on 11th of October, 1932 and the other on the 15th of November, 1932 in favour of defendant No. 1. The leases were made subject of a regular suit. But it was held that Baldeo Singh and Ambika Prasad being in exclusive possession of the land at the time of the lease were competent to lease it out to defendant No.1 alongwith possession. Mr. Justice Radha Krishna, held that:--

> "The question, therefore, is whether a co-sharer, who has been in exclusive possession of a certain plot of land without let or hindrance by other co-sharers, can transfer the plot to a third person subject to the right of other co-sharers to obtain a partition of the village. The law on the point in Oudh seems to me to be well-settled. In 21 OC 214 Lindsay, .J.C. (later Lindsay, J.) held that the general rule regarding the enjoyment of joint property by the co-sharers is that one co-sharer has no right to appropriate specific portions of such property to the exclusion of his co-sharers except by means of a lawful partition. This rule, however, is subject to the qualification that where one co-sharer has been for a long time in peaceful possession of a portion of the joint property without hindrance or opposition by his co-owners the latter are not entitled to eject him except by means of a partition".

In the case AIR 1927 Oudh 467 and AIR 1921 Oudh 106 were relied upon:--

> "The question of entitlement of a co-sharer to transfer the specific land under his possession was once again adjudicated in a Division Bench case in AIR 1940 Lah. 473. The Bench consisted of Mr. Justice Tek Chand and Mr. Justice Bhide Judges. The learned Judge Bhide who wrote the principal judgment in the case, after discussing the case-law on the point, observed:-
>
> "As a result, it has been held that a co-sharer who is in such possession of any portion of a joint Khata, can transfer that portion subject to adjustment of the rights of the other co-sharers therein at the time of partition. This view seems to be consistent with the principle embodied in section 44, T.P. Act, regarding transfers of their `interests' in joint property by co-sharers'.

In PLD 1955 Pesh. 26, a similar question was posed to be determined. It was held by Mr. Justice Muhammad Shafi, that:--

> "A person, who is in exclusive possession of a certain portion of a joint property, can alienate that property, but then the alienation will be subject to any adjustment which takes place at the time of the partition of the joint property,

> and the person, to whom that joint property is allotted, shall take that property free of such alienation".

In PLD 1959 S.C. (Pak.) 9 (Full Court case), it was observed by Mr. Justice S.A. Rahman, who wrote the main judgment that:--

> "Alienation of specific plot transferred to the vendee would only entitle the, latter to retain possession of them till such time as an actual partition by metes and bounds takes place between the co-sharers."

Looked from another angle we come to the same conclusion. It is conclusively established that the possession of the vendor in the specific field numbers was due to family arrangement. It is true that such an arrangement does not extinguish the title of other co-sharers, but so far as the factum of such a possession and sale of the specific field numbers is concerned, it certainly debars other co-sharers to get back such possession or challenge the sale. This is, of course, subject to adjustment at the time of partition as would have been the case if the vendor had not sold the land. Section 115 of the Evidence Act comes to the aid of vendee in such a case. Mr. Justice Monir, formerly Chief Justice of Pakistan in his Principles and Digest of the Law of Evidence, Vol. II, Pakistan Edition, page 1296 says:--

> "Family arrangements are arrangements between the members of a family for the preservation of its piece of property. The principles upon which such arrangements are enforced in England are stated in the case of Williams v. Williams. Such arrangements are constantly entered into in this country, and, where they have been acted upon and acquiesced, the Court will not look so much to the adequacy of the consideration as to the motives and conduct of the parties. In a settlement of a doubtful right truth may be on either side, but the essential effect of the settlement is that further trouble or investigation is put to an end and a settlement is concluded to restore harmony. The consideration for such a settlement is the mutual promise made, or forbearance shown, by one party to the other. In the absence of fraud or undue influence, it is not, therefore, open to either party to resile from it afterwards and the settlement is binding not only on the parties but on their sons and descendants. A family settlement is binding, even though a limited owner is a party to it. Where parties settle a family dispute amicably, take a share of the property, enter into possession, and subsequently sell or mortgage the items allotted to them, they are estopped from questioning the settlement".
>
> AIR 1924 All. 63 may be referred as an authority on point. In that case a person deliberately by his own conduct got the name of another person who had no right to inheritance to a property entered as owner of such property at the time of mutation. Later on he challenged the mutation. It was held by the Division Bench of the Court that he was estopped from subsequently pleading that he was the owner of the whole property".
>
> In view of this we hold that the appellants' suit is otherwise too hit by the doctrine of estoppel as because of the family arrangement they are precluded from claiming their shares in the specific field numbers in possession of the vendor".

18. The afore-quoted decision of the Supreme Court of Azad Jammu and Kashmir was cited, with approval, by the Hon'ble Supreme Court of Pakistan in Shah Hussain v. Abdul Qayyum

and others 1984 SCMR 427 wherein it was further held as follows:--

> "We have examined the contentions raised by the learned counsel and agree with the finding of the learned High Court Judge in principle i.e. the sale of specific field numbers by a co-sharer in possession can, for consideration, alienate the land in possession, and if his share in such specific field numbers exceeds his share, provided it does not exceed his over all entitlement in the land, the vendee's rights would be subject to adjustment on partition as held in the case cited by the learned Judge entitled Mustafa Khan and 3 others v. Muhammad Khan and another PLD 1978 S.C. (AJK) 75".

In Ch. Ghulam Abbas v. Barkat Ali add another 1999 YLR 2190, a learned Judge of this Court held in the following terms:--

> "Law is well-settled that a co-sharer, in exclusive possession of specific field number can alienate the entire field number provided the area of the said field number does not exceed the entitlement of the vendor in the entire joint holdings. The effect of this sale is that the vendee steps into the shoes of the vendor and can retain possession subject to adjustment at the time of partition".

Respectfully following the law laid down in the aforementioned decisions, I would hold that the sale in favour of defendant-respondent No. 1 is not open to exception either on fact or in law, and she can retain possession of the suit-land till such time as an actual partition by metes and bounds takes place between the co-owners. The concurrent findings of facts recorded by the Courts below under Issues 1 and 2, being neither perverse or whimsical nor arbitrarily, do not call for interference.**"**

20. There are concurrent findings of facts recorded by both the courts below, which are apparently rested upon sound reasoning. The petitioner has failed to point out any misreading and non-reading of evidence. The revisional jurisdiction is not meant to unearth another possible view from the evidence which is contra to the findings rendered by two courts of competent jurisdiction. The revisional jurisdiction is to be exercised, while keeping in view the principles enshrined in Section 115 of "C.P.C.". The superior courts are always reluctant to interfere with the concurrent findings, unless some patent illegality or material irregularity crept up on the record or pointed out by the petitioner(s). The exercise of revisional powers is always guided by the necessary pre-conditions laid down in the above referred provision of law. The scanning of evidence and the perusal of impugned judgments does not reflect any illegality or material irregularity, justifying interference by this Court. Reference in this respect can be made to *GHULAM QADIR and others versus Sh. ABDUL*

WADOOD and others **(PLD 2016 Supreme Court 712)**, *Mst. ZARSHEDA versus NOBAT KHAN* **(PLD 2022 Supreme Court 21)** and *MUHAMMAD SARWAR and others versus HASHMAL KHAN and others* **(PLD 2022 Supreme Court 13)**.

21. For the foregoing reasons, both civil revisions, having no merits are **dismissed** with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE

Shahbaz Ali*