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**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT LAHORE  
JUDICIAL DEPARTMENT**

**Civil Revision No. 624 of 2016**

**Nazir Ahmad (deceased) through legal heirs**

**Versus**

**Muhammad Rafique, etc.**

Date of hearing: 01.04.2016

Petitioners by: Mr. Muhammad Hanif Niazi, Advocate.

Respondents by: Mr. Abdul Wahid Chaudhary, Advocate.

**MUHAMMAD SAJID MEHMOOD SETHI, J.-** Through instant revision petition filed under Section 115 of Code of Civil Procedure, 1908, the legal heirs of Nazir Ahmad (deceased) have assailed judgments and decrees dated 21.09.2013, passed by learned Civil Judge, Gujranwala, and 18.01.2016 passed by learned Addl. District Judge, Noshehra Virkan, whereby suit and appeal filed by Nazir Ahmad were respectively dismissed.

2. Brief facts of the case are that Nazir Ahmad filed suit for declaration and permanent injunction against respondents, claiming exclusive ownership of joint land measuring 33-Kanals & 18-Marlas out of 87-Kanals & 19-Marlas on the basis of oral partition and subsequently family partition deed dated 15.11.2003 (Ex.P-1), was executed between Nazir Ahmad and Bashir Ahmad, predecessors in interest of the parties. Since then they were in cultivating possession of the partitioned shares. It was alleged that Bashir Ahmad in connivance with revenue authorities had got entered his name in Khasra Girdawari for the year 1993 to 2003 regarding the whole property which was got corrected on the application made by

Nazir Ahmad before District Collector, Gujranwala, vide order dated 04.09.2004. Since then both the parties have been shown in cultivating possession of their respective shares. After death of Bashir Ahmad, present respondents, again claiming joint ownership, moved an application for permanent partition under section 135 of the Land Revenue Act, 1967 before Assistant Collector, who allowed the partition vide order dated 27.07.2011.

3. Nazir Ahmad filed suit for declaration and permanent injunction on 11.12.2010, which was contested by respondents/defendants by filing written statement. Out of divergent pleadings of the parties, learned trial Court framed following issues:-

- i) Whether wrong description of the suit property has been mentioned by the plaintiff, if so, what is the correct detail thereof? OPP
- ii) Whether the predecessor of defendants namely Bashir Ahmad had provided the property to plaintiff and the plaintiff had improved the agricultural status thereof by expending huge sum of money? OPP
- iii) Whether the plaintiff and predecessor of defendants had through the Panchiat mutually portioned the property vide deed No.145 dated 15.11.2003 as alleged by the plaintiff? OPD
- iv) Whether the plaintiff has concealed the real state of facts, has not come to court with clean hands and intends to harass the defendants, thus, the instant suit is liable to dismissal with special costs? OPD
- v) Whether plaintiff is entitled to the decree for declaration and permanent injunction as prayed for? OPP
- vi) Relief.

4. After recording of evidence produced by the parties and hearing the arguments, learned trial Court dismissed the suit vide judgment and decree dated 21.09.2013.

5. Feeling aggrieved, Nazir Ahmad filed appeal before learned District Judge which was also dismissed vide judgment

and decree dated 18.01.2016. Through instant petition both the afore-said judgments and decrees have been assailed.

6. Learned counsel for petitioners submits that observation of learned Courts below regarding Ex.P-1/family settlement deed dated 15.11.2003 are in conflict with the law laid down in “Din Muhammad and 6 others v. Mehr Ali Khan and 2 others” (PLD 1978 Karachi 267) and “Anwar Khan v. Abdul Manaf” (2004 SCMR 126). He adds that Ex.P-1 was proved by the statements of PW-1 to PW-4 and PW-6. He further submits that all the PWs verified that Ex.P-1 was thumb marked by Bashir Ahmad, his nephew Muhammad Rafique, Nazir Ahmad and the marginal witnesses. He adds that impugned judgments and decrees have been passed not only in violation of the law laid down by superior courts but also are based on mis-reading and non-reading of evidence brought on record.

7. On the other hand, learned counsel for respondents defends impugned judgments and decrees and submits that the petitioners have failed to pinpoint any illegality and legal infirmity in the same. He adds that there are concurrent findings of fact arrived at by both learned Courts below which cannot be disturbed in routine. In support of his contentions, he has placed reliance upon judgments reported as “Irshad Hussain v. Ijaz Hussain, etc.” (NLR 1994 SCJ 134), “Anwar Zaman and 5 others v. Bahadur Sher and others” (2000 SCMR 431), “Abdul Hakeem v. Habibullah and 11 others” (1997 SCMR 1139), “Syed Musarrat Shah and another v. Syed Ahmed Shah alias Lal Bacha and 8 others” (PLD 2012 Peshawar 151), “Mir Muhammad alias Miral v. Ghulam Muhammad” (PLJ 1996 Karachi 172), “Anwar Ali, etc. v. Sharfuddin, etc.” (PLJ 1996 Karachi 177), “Khan Shah and others v. Mst. Sat Bhari and another” (PLD 1965 W.R. (Rev.) 69), “Shamshuddin and others v. Fazaluddin and others” (PLD 1965 W.P. (Rev.) 71), and “Atta Muhammad v. Maula Bakhsh, etc.” (2008 SCJ 147).

8. Arguments heard. Record perused.

9. Perusal of impugned judgment and decree passed by learned lower appellate Court shows that it has upheld the findings of learned trial Court on the ground that the respondents, being legal heirs of Bashir Ahmad, had been denying the said deed No.145 dated 15.11.2003, and the witnesses have not stated in their examination in chief as to whether they identified thumb impression and signature of Bashir Ahmad, which have also not been exhibited in evidence. It was also held that Ex.P-1 has become doubtful inasmuch as that as per Section 147 of the Land Revenue Act, 1967, it is required to be affirmed and approved by the Revenue Officers but the said document was never produced before the Revenue Court. Reference to Ex.D-1 has also been made, which is the certified copy of proceedings in suit for permanent injunction filed by respondents, wherein Nazir Ahmad appeared and stated that he would not alienate the suit property or interfere into the possession without getting it partitioned. It was also noted that Girdawaris from 1993 to 2003 were rectified with the consent of predecessor in interest of respondents, which is a proof of possession and has no concern with the title of suit property. After appraisal of entire evidence brought on record, the learned lower appellate Court came to the conclusion that suit property is un-partitioned and suit for declaration filed by Nazir Ahmad was consequently dismissed by upholding judgment and decree of learned trial Court.

10. Admittedly, Nazir Ahmad and Bashir Ahmad, both sons of Allah Dad were joint owners in village Panjgrain, Tehsil Noshehra Virkan, District Gujranwala. Nazir Ahmad, deceased started selling land of his choice. Respondents being successors of late Bashir Ahmed, filed suit for injunction in which late Nazir Ahmed appeared on 09.06.2010, and made statement that he would not sell the land without partition. He made the

statement without any reservation or reference to any instrument of partition, therefore, the legal heirs of late Bashir Ahmad were constrained to approach the Revenue Officer under Chapter 9 (Sections 135 to 150) of Land Revenue Act and partition was made by the Revenue Officer, Halqa Kamonki on transfer from the concerned Revenue Officer, Noshehra Virkan on 27.07.2011. The said proceedings for partition are part of record as Ex.D2. Late Nazir Ahmed or his successors remained silent about the alleged agreement dated 15.11.2003 and instituted suit on 11.12.2010 for declaration and injunction in civil court.

11. Undoubtedly, seeking affirmation of a private partition under section 147 *ibid* is optional. The said provision of law only requires that in case where partition had been made without intervention of Revenue Officer, any party may apply for affirming the partition. Such document does not lose its efficacy if no resort is made to Revenue Officer under the said provision of law. The provision of section 172 of the West Pakistan Land Revenue Act, 1967 is inapplicable when partition proceedings were assailed through a suit as private partition creates title and interest of the parties in the disputed land and as per law, questions relating to title are to be decided and adjudicated upon by civil court of competent jurisdiction, under section 9 of the Code of Civil Procedure, 1908. Reference can be made to Mohabat Khan v. Abdul Hameed (2016 YLR 1120) and Din Muhammad and 6 others v. Mehar Ali Khan and 2 others (PLD 1978 Karachi 267). However, in the instant case so-called partition agreement (Ex.P-1) is not enforceable *firstly* it was not admitted by the respondents, *secondly* it was never sought to be affirmed by the Revenue Officer and *thirdly* the said document is negated by admission made in earlier round of litigation by predecessor of the petitioner, namely, Nazeer Ahmad in the suit titled “Abdul Latif

etc. v. Nazeer Ahmed” that he would not sell it without partition, which is reproduced hereunder:-

بیان کیا کہ فریقین اپنی اپنی اراضی کا رقبہ جو عرصہ 7/8 سال کاشت کر رہے ہیں وہ ہی کاشت کرتے رہیں گے کسی میں مداخلت نہ کریں گے۔ اور بلا تقسیم فروخت نہ کریں گے۔

Such document does not carry any value and creates no right or interest in favour of petitioner.

12. Undeniably, predecessor of petitioner himself admitted in his statement, referred above, before Court of law that land in question was not partitioned. Such admission acts as estoppel against the party making it. Even otherwise, such statement constitutes judicial admission which cannot be overlooked. The admissions have to be construed strictly. It is also well established that facts admitted need not to be proved especially when such admission has been made before the Court of law as a result whereof the earlier suit was disposed of. Reference can be made to the case Muhammad Iqbal v. Mehboob Alam (2015 SCMR 21).

13. Petitioners have failed to point out any illegality or legal infirmity in the concurrent findings of learned Courts below, which appear to have been passed in terms of the statutory provisions and evidence brought on record, warranting no interference of this Court in the exercise of its revisional jurisdiction. Even otherwise, this Court seldom interferes in concurrent findings arrived at by learned Courts below while exercising power under section 115 C.P.C. unless and until findings on the face of it are against evidence or so patently improbable or perverse that to accept the same could amount to perpetuate a grave miscarriage of justice or if there has been any mis-application of principles relating to appreciation of evidence or if findings could be demonstrated to be impossible, absolutely illegal and unwarranted under the law.

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14. In view of the above discussion, this petition, being devoid of merits, is hereby **dismissed**, with no order as to costs.

**(Muhammad Sajid Mehmood Sethi)**  
**Judge**

**Announced in open Court on \_\_\_\_\_.**

**Judge**

**Approved for reporting.**

**Judge**

\*SULTAN\*