

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MANZOOR AHMAD MALIK  
MR. JUSTICE AMIN-UD-DIN KHAN

**CIVIL PETITION NO.2477-L OF 2015**

(On appeal from judgment dated 17.9.2015, passed by the Lahore High Court, Multan Bench, Multan, in C.R. No.811-D of 2002)

***Muhammad Siddique (decd) thr. L.Rs.  
etc.***

*...Petitioners*

***Versus***

***Mst. Noor Bibi (decd) through L.Rs. etc.***    *...Respondents*

For the Petitioners                    : Mr. Zulfiqar Ali Khan, ASC

Respondents                            : N.R.

Date of Hearing                         : 16.01.2020

**JUDGMENT**

**AMIN-UD-DIN KHAN, J.-** The learned counsel for the Petitioners has filed Civil Misc. Application bearing No.2553-L of 2015 for impleadment of the legal heirs of the deceased Petitioner, which was allowed, subject to all just and legal exceptions.

2.            This Civil Petition for Leave to Appeal has been filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 against the judgment dated 17.09.2015, passed by the learned Lahore High Court,

Multan Bench, whereby Civil Revision bearing No.811-D of 2002, filed by the Petitioners, was dismissed.

3. We have heard the learned counsel for the Petitioners and have examined the available record.

4. The Petitioners filed a Suit for Declaration and Permanent Injunction on 18.04.1985. The Petitioners also challenged the order dated 15.03.1982 of the Collector, Vehari pertaining to review of Mutation No.2198 dated 29.02.1964; the order dated 02.06.1983 passed by the Assistant Commissioner with the powers of Collector, Sub-Division Malsi; and the order dated 15.04.1985 passed by the Additional Commissioner (Revenue), Multan Division, Multan which set aside the mutation No.683 dated 03.10.1982, whereby the Defendants had been recorded as owners of the suit property.

5. The Defendants/Respondents filed the written statement and contested the Suit, whereafter issues were framed and both the parties were given opportunities to produce their oral as well as documentary evidences. The learned Trial Court decreed the Suit vide judgment and decree dated 30.9.1998. Being dissatisfied by the judgment and decree passed by the learned Trial Court, the Defendants preferred an appeal before the learned Additional District Judge, Vehari, which was allowed vide judgment and decree dated 03.07.2002 and the Suit was dismissed. The

Plaintiffs/Petitioners then filed a Civil Revision before the learned Lahore High Court, Multan Bench, which was dismissed vide judgment dated 17.09.2015, hence, the instant Civil Petition.

6. There are concurrent findings of fact of the two learned Courts below. We have observed that there are further defects in the Suit whereby the orders of the revenue hierarchy i.e. the Assistant Commissioner and the Additional Commissioner were challenged in the Suit. In our view, orders of the Assistant Commissioner as well as the Additional Commissioner were liable to be challenged before the Board of Revenue, Punjab; therefore, a Suit before the Civil Court was not competent before exhausting the available remedy under the law. It is a settled principle of law that where a special remedy is provided for under the law, it may not be bypassed and the Civil Courts should not be approached directly without exhausting the highest forum in the authority. Reference may be made to the judgment reported as Hakam and others v. Tassadaq Hussain Shah (PLD 2007 Lahore 261), Zahid Hussain and 10 others v. Shamasuddin and 9 others (2014 CLC 1334) and Muhammad Jalat Khan v. Faisal Hayat Khan and 4 others (2003 CLC 837). Furthermore, the jurisdiction of Civil Courts is also impliedly barred where an alternate remedy has been provided under the law, provided that the authority was not

exercised in excess of the jurisdiction conferred upon the authority. Reference in this regard may be made upon the judgment of this Court reported as Bashir Ahmed v. Messrs Muhammad Saleem, Muhammad Siddique & CO. (REGD) and others (2008 SCMR 1272).

7. Hence, we are fortified in our view that when an order first to review the mutation or the order sanctioning of mutation was challenged by the Plaintiffs/Petitioners, they were required to avail the remedy available to them under Chapter XIII of the West Pakistan Land Revenue Act, 1967. After having availed said remedy, if the Plaintiffs/Petitioners were dissatisfied with the result and could show that the said hierarchy had failed to exercise jurisdiction vested in them by law or had exercised the jurisdiction illegally, only then a Suit before the Civil Court would have been competent. The Petitioners have admittedly not availed the remedy available to them to challenge the orders passed by the Revenue Officer before the revenue hierarchy. Instead, the Plaintiffs/Petitioners opted to file the Suit before the Civil Court, which was not competent in the light of judgments discussed herein above.

8. Another defect observed in the instant Suit pertains to non-impleadment of the Provincial Government and the relevant public functionaries as parties in the Suit. When a document is registered or a public functionary

prepared a document, action taken or orders passed in discharge of his duties performed in due course of law, it has the presumption of regularity attached with it, and that presumption needs to be rebutted with strong evidence. Furthermore, it is an indirect right of public functionary who has acted within the mandate of law to be able to defend the sanctity and validity of the documents prepared, actions taken or orders passed by him in the performance of his duty. We have noted that private parties have shown the tendency to bring about Suits for Declaration or cancellation of registered Sale Deeds and mutations with the intention of getting the same set aside; and many a times, the relevant revenue authorities and the representatives of the Provincial Government are not produced before the Court, nor impleaded as parties, creating a serious defect in the Suit. Same is the case at hand. This Court, therefore, is of the view, that non-impleading of public functionaries in the Suits for Declaration and cancellation of public documents pertaining to immovable properties, prejudices the rights of authorities to defend their actions and does not enable the Court to decide the matter effectively and adjudicate completely. Therefore, under Order I Rule 10(2) of the Code of Civil Procedure, 1908, the Provincial Government and the relevant authorities should be made proper parties to a Suit in which an attested mutation or registered Sale Deed, etc. or

otherwise a registered document, has been challenged. Order

I Rule 10(2) of the CPC is reproduced hereunder:

“(2) Court may strike out or add parties. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(emphasis supplied)

We have also referred to the judgment of this Court reported as Muhammad Arif and others v. District and Sessions Judge, Sialkot and others (2011 SCMR 1591) wherein it was held as follows:

“... The object of the law is that even a doubt should not be permitted to hinder an effective adjudication of a trial. Similarly Rule 10 empowers the Court to substitute or add a party in the suit or to strike out an improperly joined plaintiff/defendant. The rule therein is that "the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely, to adjudicate upon and settle all the questions involved in the suit, be added". This is to obtain complete and effective decision of all the questions/issues arising from a suit and importantly to prevent separate actions on the same cause or causes. A party who ought to have been joined is a 'necessary party' and one whose presence is necessary for the adjudication of all issues and matters involved in the suit is a 'proper party'. In the absence of a 'necessary party', a suit cannot be proceeded with and a final and binding decree cannot be passed. To pass an

effective and binding decree, all questions/ issues/matters arising from the suit will need to be adjudicated upon; for which presence of certain other persons before the Court is essential. They have been classed as the proper parties; whose interest in or against the relief or the subject matter of the suit may be marginal, nominal, limited or none. The presence of proper parties before the Court is also to prevent frustration or embarrassment of the suit by containing investigations/inquiries on the same controversies in more than one trial. An objection to their joinder, mis-joinder or non-joinder must be taken at the earliest. Failing which as per Rule 13 thereof such objection will be deemed to have been waived."

We have also referred to the judgment reported as Islamic Republic of Pakistan v. Abdul Wali Khan (PLD 1975 SC 463)

wherein this Court has made the following observations:

"Now a proper party is a party whose presence before the Court is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the proceedings. The terms "questions involved" include all matters, material to a proper decision of the case but the object of making such persons parties is to prevent multiplicity of proceedings. The person must, therefore, be a person whose interest is likely to be affected even though no relief is claimed against him. This does not, therefore, extend to persons who have no interest which is likely to be affected by the proceedings nor does it embrace persons only general interested in common with others nor can persons be added as parties so as to set up a new cause of action which does not concern the original parties."

Therefore, non-impleadment of the Provincial Government and relevant authorities who have sanctioned a document which has been impugned in a Court of Law, creates a

serious defect in the Suit. This is not to say that the whole Suit must always be defeated on this cause alone, as non-impleadment of proper parties in general does not always defeat a *lis*. Previous judgments of this Court are relevant which are reported as Chaudhry Muhammad Munir and others v. Election Tribunal, Mandi Bahauddin and others (2009 SCMR 1368) and Mst. Rani and another v. Mst. Razia Sultana (1994 SCMR 2268). Nonetheless, non-impleadment of proper parties creates a serious irregularity and opens doors for fraud to be practiced by parties in connivance with one another, as well as creates impediments for a Court of Law to effectively and completely adjudicate the matter after considering all aspects of the case.

9. Coming to another aspect of this case, we are of the considered view that by filing a Suit for Declaration under Section 42 of the Specific Relief Act 1877 (hereinafter referred to as the Act of 1877), a party can get his pre-existing rights declared from the court and no fresh rights can be created by grant of a decree in a suit filed under the Act of 1877. This is evident from the language of Section 42 of the Act of 1877 itself, as well as reaffirmed in the judgment of this Court reported as Rehmatullah Khan and others v. Government of Pakistan through Secretary Petroleum and Natural Resources Division, Islamabad and others (2003 SCMR 50). The Plaintiffs/Petitioners failed to show and establish their pre-



existing rights as sought in the prayer of the Suit to be declared as such. Therefore, the judgment passed by the learned High Court is in accordance with the law. In this view of the matter, no case for grant of leave is made out.

10. Consequently, the instant Civil Petition is dismissed and leave declined.

**JUDGE**

Lahore, the  
16<sup>th</sup> of January, 2020  
'APPROVED FOR REPORTING'  
*Mahtab H. Sheikh/\**

**JUDGE**