

IN THE SUPREME COURT OF PAKISTAN

( Appellate Jurisdiction )

Present:

Justice Qazi Faez Isa, CJ  
Justice Naeem Akhtar Afghan  
Justice Aqeel Ahmed Abbasi

CIVIL APPEAL NO.477-L OF 2011

(On appeal against the judgment dated 13.10.2011 passed by the Lahore High Court, Lahore in Civil Revision No.773 of 2005)

Zafar Iqbal and others ... ... Petitioners

## Versus

Muhammad Rafiq and others ... ... Respondents

For the petitioners : Sh. Usman Karim-ud-Din, ASC

For respondents (1-4) : Mr. Imran Muhammad Sarwar, ASC  
(through video link from Lahore)

Date of hearing : 02.07.2024

## JUDGMENT

**Naeem Akhtar Afghan, J.** This judgment disposes of Civil Appeal No.477-L of 2011.

2. Relevant facts of the case are that previously, in the year 1984, the predecessors of the respondents filed civil suit No.123/84 for Declaration and Injunction claiming ownership of 332 *Kanal* of *Shamlat Deh* (joint holding of the villagers) of *Mouza Khushab (the suit land)* on the basis of adverse possession.

3. The above suit was contested by the shareholders of the *Shamlat Deh of Mouza Khusahab* with the contention that the *Shamlat Deh of Mouza Khushab*, including the suit land, is a joint holding and they are in possession of the same as co-sharers.

4. The plaint of civil suit No.123/84 was rejected by Civil Judge Khushab *vide* order dated 15 April 1992 under Order VII Rule 11 of the Code of Civil Procedure (**the Code**) on the basis of judgment passed by the Federal Shariat Court whereby claim of ownership on the basis of adverse possession was declared repugnant to the Injunctions of Islam.

5. Subsequently, on 7 April 1992, the respondents (**plaintiffs**) filed civil suit No.56/1992 against the petitioners and others (**the defendants**) in respect of the suit land. The plaint was amended on 15 July 2002. This suit was filed in representative capacity on behalf of the plaintiffs. The defendants (shareholders of *Shamlat Deh of Mouza Khushab*), being numerous in number, were also sued in representative capacity.

As per list 'B' attached with the amended plaint, 1091 shareholders of *Shamlat Deh of Mouza Khushab* were arrayed as defendants in the civil suit No.56/1992.

6. As per contents of the amended plaint dated 15 July 2002, it is the claim of the plaintiffs that they are owners and are in possession of the suit land since the time of their predecessors. The entries in the *Register Haqdaran* pertaining to the years 1945-1946 in the name of the defendants are incorrect and same are liable to be corrected.

The plaintiffs also prayed for permanent injunction to restrain the defendants from interfering in their possession and from denying their ownership of the suit land.

Mandatory injunction was also sought by the plaintiffs for issuing directions to the Collector, District Khushab (defendant No.11) to instruct the Revenue Staff to enter the suit land in the name of the plaintiffs as owners.

7. It was further contended by the plaintiffs in the amended plaint that partition proceedings of the suit land were initiated/continued during the years 1938-1940. During those proceedings, as per contents of *Roznamcha* dated 14 April 1938, four shareholders namely Sardar Muhammad Amir Khan, Malik Muhammad Khan Numberdar Pattinaij, Syed Muazzam Shah and Ghulam Muhammad Numberdar (claimed by the plaintiffs to be the predecessors of some defendants) had made the following statement:

"تیمہ بیان تحریری مورخہ 14.4.1938  
متعلقہ تقسیم شاملات دیہہ خوشاب  
غیر مالکان بلا لگان سے صرف شیخ بڑا نور دین وغیرہ حکیمان کا رقبہ جس طرح منشی  
قمر الدین کا رقبہ مقبوضہ علیحدہ ضلع از تقسیم ہو کر ملکیت ہو چکا ہے۔ مابقتار قبہ بھی تاخیر  
لگان کا خارج از تقسیم ہو کر ان کی ملکیت قرار دیا جائے۔ تو کوئی عذر نہ ہے۔ کیونکہ  
بلحاظ خاص حالات و کیفیت اندراج کاغذات ان کا قبضہ دیرینہ مخالفانہ ہے جن کے  
ہمراہ مقدمہ بازی نہیں کرنا چاہتے۔"

8. As per contents of the amended plaint, on the basis of the above statements of four shareholders, in his report dated 8 May 1938, the revenue officer made recommendations accordingly. In pursuance of order dated 1 February 1940 passed by the Assistant Collector Khushab, Mutation Nos.1494 and 1495 were also entered in the name of the predecessors of plaintiffs (for the suit land) but subsequently same were not approved and were cancelled as the above named four shareholders alongwith other shareholders, being army persons, were not available in the area due to World War-II.

9. The plaintiffs further contended that their predecessors namely Sheikh Budha, Noor Din and others and after their death, they continued in possession of the suit land as owners but due to negligence of the revenue staff, entry of the suit land still exists in the revenue record as *Shamlat Deh (joint holding of the villagers)*.

10. According to the plaintiffs, after the years 1945-1946 till date, *four years Jamabandi* (چار سالہ جمع بندی) of the suit land has not been prepared periodically by the revenue staff and taking un-due advantage of the same, the defendants are denying the ownership of the plaintiffs for the suit land and they are bent upon to interfere in the same.

11. The above suit has been contested by the defendants by filing separate written statements denying possession of the plaintiffs over the suit land and denying the claim of ownership of the plaintiffs for the suit land with the contention that the plaintiffs have no *locus standi* to file declaratory suit claiming exclusive ownership of the suit land which is a joint holding being part and parcel of *Shamlat Deh* of *Mouza Khushab*, that *Jamabandi* of the years 1989-90 for *Shamlat Deh* of *Mouza Khushab* has been prepared by the revenue staff wherein the defendants have been shown/entered as co-owners with possession, that the predecessors of defendants did not make any statement in favour of the predecessors of the plaintiffs for the suit land.

12. After framing issues arising out of the pleadings of the parties and after recording evidence of the parties, the suit filed by the plaintiffs was dismissed by Civil Judge, Khushab (**Trial Court**) *vide* judgment and decree dated 18 October 2003.

13. The plaintiffs filed appeal which came up for hearing before Additional District Judge, Khushab (**Appellate Court**). The appeal was dismissed by the Appellate Court *vide* judgment and decree dated 29 October 2004.

14. The plaintiffs challenged the above judgments and decrees by filing Civil Revision No.773/2005 before the Lahore High Court which has been accepted *vide* judgment dated 13 October 2011 and the suit filed by the plaintiffs has been decreed.

Feeling aggrieved of the above judgment passed by the Lahore High Court in revisional jurisdiction, the defendants have filed the instant appeal.

15. While answering the query of the Court about maintainability of the Declaratory Suit claiming exclusive ownership of a particular piece of land in a joint holding i.e. *Shamlat Deh of Mouza Khushab*, learned counsel for the plaintiffs contended that due to their longstanding possession over the suit land coupled with the statements made by four shareholders of *Shamlat Deh of Mouza Khushab* in favour of their predecessors, the plaintiffs are entitled to claim exclusive ownership of the suit land.

Learned counsel for the defendants contended that the Declaratory Suit filed by the plaintiffs claiming exclusive ownership of the suit land, being a joint holding, is not maintainable, that the plaintiffs have failed to prove that the four shareholders had made statements in favour of the predecessors of the plaintiffs for the suit land, that as per revenue record the plaintiffs are non-occupancy tenants of the suit land, that subject to proof of their status as shareholders in the suit land, the plaintiffs can approach the revenue forum subject to all just legal exceptions.

16. After hearing learned counsel for the parties at length we have perused the entire record with their able assistance. The suit land being part and parcel of *Shamlat Deh of Mouza Khushab* is a joint holding. According to the settled principles<sup>1</sup>, the vendee of a co-sharer who owns an undivided *Khata* in common with others, 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

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<sup>1</sup> Muhammad Muzaffar Khan v. Muhammad Yousaf Khan (PLD 1959 SC (Pak.)9)  
Atta Muhammad v. Manzoor Ahmad (1992 SCMR 138)

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.

17. It is not the case of the plaintiffs that they are purchasers of the suit land. The plaintiffs are claiming exclusive ownership of the suit land primarily on the basis of their alleged possession without specifying/explaining the nature/status of their alleged possession.

The plaintiffs have further based their claim upon the statements made by four shareholders on 14 April 1938 in favour of their predecessors with regard to the suit land. Admittedly statements in writing of those four shareholders are not available on record. Neither the said four shareholders nor their successors have ever affirmed those statements before any forum.

18. In the *Roznamcha* dated 14 April 1938 (reproduced in para 7 *supra*) neither any reason nor any specification or measurement of the area of *Shamlat Deh of Mouza Khushab* for its exclusion from the partition has been mentioned.

19. The above vague *Roznamcha* does not mention as to on what basis the unspecified portion of *Shamlat Deh of Mouza Khushab* has to be declared as ownership of *Sheikh Budha*, Noor Din and others.

20. Learned counsel for the plaintiffs failed to explain as to how merely on the basis of their alleged possession, the plaintiffs can be declared as owners of the suit land.

21. In view of all the above it is concluded that the Trial Court as well as the Appellate Court have rightly dismissed the suit of the plaintiffs by passing speaking and well-reasoned judgments. It is further concluded that while decreeing the suit *vide* impugned judgment in exercise of revisional jurisdiction, the Lahore High Court has erred in facts as well as in law.

For the above reasons the appeal is accepted. The impugned judgment dated 13 October 2011 passed by Lahore High Court in

Civil Revision No.733/2005 is set aside. However, the plaintiffs are held at liberty to approach the revenue forum for redressal of their grievance, if any, in accordance with law.

Chief Justice

Judge

Judge

Islamabad  
02.07.2024  
*M. Saeed/\**

Announced in open Court on \_\_\_\_\_

APPROVED FOR REPORTING