

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Amin-Ud-Din Khan
Mr. Justice Jamal Khan Mandokhail

(AFR)

Civil Appeal No. 822 of 2014

Against the judgment dated
28.02.2014 passed by the Lahore High
Court, Lahore, in Civil Revision No.
273 of 2009.)

Mst. Kalsoom Bibi & others

...Appellants

Versus

**Muhammad Amin Agha (Deceased) through
LRs and others.**

...Respondents

For the Appellants:

Mian Muhammad Hanif, ASC.
Raja Abdul Ghafoor, AOR

For the Respondents:

Malik Sana Ullah, ASC.

Date of Hearing:

13.10.2021

ORDER

AMIN-UD-DIN KHAN, J. Through this appeal filed under Article 185(2)(d)(e) of the Constitution of Islamic Republic of Pakistan, 1973 appellants have challenged the judgment dated 14.04.2014 passed by the Lahore High Court, Lahore whereby Civil Revision No. 273 of 2009 filed by the respondents-plaintiffs was accepted.

2. We have heard the learned counsel for the parties at length and gone through the record, considered the arguments advanced by the learned counsel for the parties as well as record and judgments of the three fora below.

3. A suit for possession filed by the plaintiffs-respondents was dismissed by the learned trial court vide judgment & decree dated 28.11.2000. They preferred an appeal before the learned District Judge which too was dismissed vide judgment and decree dated 20.10.2008. Thereafter they filed Civil Revision No. 273 of 2009 before the Lahore High Court, Lahore which was accepted by the learned Single Judge of the Lahore High Court vide impugned judgment dated 14.04.2014. Hence, the instant appeal by the defendants-appellants.

4. Basis of the suit for possession, filed by the plaintiffs-respondents, with regard to a portion comprising two rooms and a courtyard shown in red colour in the site plan annexed with the plaint, was allotment of property No. SE-9-R-70/1, 2, 3, 4 (National Foundary and Workshop) presently known as O.K. National Industries (Pak) by the Settlement & Rehabilitation Department vide P.T.O No. 9315/R.B dated 8.12.1959 and transferred through P.T.D No. 20 dated 29.6.1964 consisting of 5 kanals and 5 marlas situated at Brandreth Road, Lahore.

5. The defendants-appellants have not disputed the P.T.O as well as PTD in favour of plaintiffs-respondents and the measurement of the property of plaintiffs-respondents being 5 kanals and 5 marlas but they dispute that the property in their possession is part of the property allotted and transferred to plaintiffs-respondents. It is their case that an independent house was allotted to their predecessor for which the process of transfer remained pending for a long time and due to start of the instant litigation the department did not finally determine their

entitlement. They dispute even the property number by saying that the portion in their possession is a residential house. It bears property No. SE-9-R-68-A-LHR and their stance is that the P.T.O/PTD/plan produced by the plaintiffs-respondents do not relate to the suit property. In their written statement they claimed the ownership of the suit premises. Preliminary objection No. 6 of the written statement is as follows:-

“That the defendant has become owner of the suit property due to adverse possession.”

As defendants-appellants are before this Court to challenge the judgment and decree granted by the learned Lahore High Court while accepting the Civil Revision filed by the plaintiffs-respondents, therefore, we need to take into consideration the case of the defendants-appellants first. It is admitted by the learned counsel for the appellants that the appellants do not have any proprietary rights of suit property in their possession. Further argues that their stance is that due to pendency of the various rounds of litigation which started by issuance of notice under section 30 of the Displaced Persons and Rehabilitation Act by the plaintiffs-respondents to the defendants-appellants and thereafter a round of ejectment proceedings which came up to this Court and thereafter filing of the suit, subject matter of the instant appeal, the Settlement Department could not finalize the matter of allotment in favour of the appellants. The case pleaded by the appellants-defendants is that they had submitted their form for allotment of the land in their favour to the settlement authorities but the matter of allotment and conferment of rights was kept pending due to the pendency of the litigation before the various forums. We are however unable to understand that if there was

independent property not previously allotted or rights in that property not conferred upon any person, how the settlement authorities could keep the matter pending till the finalization of any other proceedings before any other forum. Learned High Court held that the suit property is part of the property allotted in favour of the plaintiffs-respondents and rights of the ownership conferred upon them in the property measuring 5 kanals and 5 marlas and the suit property is part of the said property, no question arises of allotment of the suit property in possession of the appellants-defendants in their favour. In this view of the matter, appellants-defendants have failed to establish on record that with regard to the suit property their claim was pending before the settlement authorities. Furthermore, when there was no claim pending, the settlement authorities could not initiate proceedings for allotment or conferment of rights after the repeal of the Settlement Laws through the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. Reference can be made to a judgment of this Court reported as "Province of Punjab v. Ali Muhammad" (2001 SCMR 1822). The admitted position is that there is no allotment order on the file in favour of the appellants or conferment of proprietary rights in their favour with regard to suit property whereas they have claimed in the written statement that they are owner of the suit property and simultaneously they have raised preliminary objection No. 6 that on the basis of adverse possession they are the owner of the suit property. We may note that for claiming an adverse possession it becomes admitted position that a party claiming adverse possession admits the ownership of other side and on the basis of long uninterrupted hostile possession

claims the adverse possession. In the instant case it is not the position as there is no adverse hostile possession of the appellants because from a long time the matter is in litigation between the parties. Even otherwise now the ownership on the basis of adverse possession being contrary to the Islamic Injunctions is not available to the appellants in the light of judgment reported as "Maqbool Ahmad v. Hakoomat-e-Pakistan" (1991 SCMR 2063). Claiming the ownership on the basis of allotment in their favour at one stage and raising the plea of adverse possession at the other are self-destructive. A party could not be allowed to blow hot and cold in the same breath. Reference can be made to "Gerry's International (Pvt.) Ltd. v. Aeroflot Russian International Airlines" (2018 SCMR 662); "Raees-Ud-Din v. Nasreen Anwar" (2011 SCMR 998). When admittedly no title document of the suit property in favour of the appellants is available, their stance disputing that the suit property is not the part of the property allotted to the plaintiffs-respondents does not find support from the record. The judgment of the learned High Court is in detail; it discusses the entire evidence as well as the law on the subject which is in favour of the plaintiffs-respondents and their suit has been decreed. It need not be re-discussed here again as we agree with the findings recorded by the learned High Court. The documentary evidence in the shape of orders of the settlement authorities which confirms that the suit property is the part of the property which was allotted and confirmed in the name of the plaintiffs-respondents was not challenged by the defendants before the appropriate forum. In these circumstances, we cannot disagree with the learned High Court, the findings of which are in

accordance with the record and law, therefore, this appeal cannot succeed and stands dismissed. No order as to costs.

C.M.A.No.10839/2021

This application has been filed by the appellants with a prayer for appointment of Local Commission to carry out demarcation of the suit property of the plaintiffs-defendants. We do not see any justification for filing of this application at this stage which is not maintainable and stands dismissed.

Islamabad, the
13th of October, 2021
(Mazhar Javed Bhatti)

“Approved for reporting”