

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

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE JAMAL KHAN MANDOKHAIL

(AFR)

**CIVIL APPEAL NO.339 OF 2016**

(Against judgment dated 09.12.2015 of Lahore High Court, Rawalpindi Bench, Rawalpindi passed in Regular Second Appal No.03/2003)

Dadu Khan (decd.) thr. LRs and 3 others **...Appellant(s)**

**VERSUS**

Ghulam Abbas and 23 others **...Respondent(s)**

For the Appellants: Ch. Afrasiab Khan, ASC

For Respondents No.1-2: Mr. Muhammad Shoaib Abbasi, ASC

Respondents No.3-24 Ex-parte

For the Federation: Mr. Sohail Mehmood, Addl.AGP

For Province of Punjab: Mr. Qasim Ali Chohan, Addl AG, Pb  
Shaukat Iqbal, Naib-Tehsildar Jand  
(Attock)

Date of Hearing: 23.06.2022

**JUDGMENT**

**IJAZ UL AHSAN, J.-** Through the instant Appeal, the Appellants have challenged the judgment of the Lahore High Court, Rawalpindi Bench, Rawalpindi dated 09.12.2015 (hereinafter referred to as the "Impugned Judgement") wherein the judgement and decree of the Additional District Judge, Attock (hereinafter referred to as the "Appellate Court") was set aside and the judgement and decree of the Senior Civil Judge, Attock (hereinafter referred to as the "Trial Court") was restored.

2. The necessary facts giving rise to this *lis* are that in 1979, the predecessor-in-interest of the Appellants, Sher Zaman, filed a suit for declaration to the effect that he may be declared owner in possession of land measuring 135 Kanals and 08 Marlas situated in Mithial, Tehsil Pindigheb, District Attock (hereinafter referred to as the "Suit Land") and that the entries in the revenue record showing the Central Government as mortgagee of the suit land were wrong and liable to be corrected. In the alternative, the predecessor-in-interest of the Appellants prayed that redemption of the mortgage may be decreed. It was averred in the plaint that Sher Zaman was the grandson of one Sooba Khan. Sooba Khan owned and possessed the suit land and subsequently mortgaged the said land to one Amar Chand for a sum of Rs.100/-. Subsequently, the mortgage amount was paid to the mortgagee through a receipt in 1892, but appropriate entries could not be made in the revenue record until 1933. After the fourth settlement of land in the area, a *fardbadr* was prepared, the mutation for redemption of mortgage was entered on 24.01.1933 but was subsequently cancelled on 25.09.1936. In the wake of the sub-Continent's partition, Amar Chand migrated to India and the suit land was treated as an evacuee property to the extent of Amar Chand's interest by the Central Government. By operation of law, Amar Chand's interest was transferred to the Central Government which, in turn, transferred 23-kanals of the suit land to Muhammad Sharif and rest of the suit land to Ghulam Mustafa under the Displaced Persons (Land Settlement) Act of

1958 (hereinafter referred to as the "Land Settlement Act"). The suit of the Appellants was dismissed by the Trial Court vide judgement dated 17.09.1981. On appeal, the suit of the Appellants was partially decreed to the extent of 23 Kanals. On second appeal before the High Court, the suit of the Appellants was decreed as prayed for vide judgement and decree dated 12.10.1998. However, the Supreme Court, vide its judgement dated 19.11.1999, remanded the matter to the Learned High Court for decision afresh. After the matter was remanded to the High Court, the High Court further remanded the matter to the Trial Court and allowed all the parties to raise their respective factual and legal pleas/grounds before the Trial Court. After pro and contra evidence was led, the Trial Court, vide its judgement and decree dated 31.10.2002 dismissed the suit of the Appellants for the second time. On appeal, the Appellate Court set aside the judgement and decree of the Trial Court and decreed the suit of the Appellants vide its judgement and decree dated 27.12.2002. This judgement of the Appellate Court was challenged before the High Court which, vide the impugned judgement, set aside the judgement of the Appellate Court and restored the judgement and decree of the Trial Court, essentially dismissing the suit of the Appellants. It is against the judgement of the High Court that the Appellants have preferred the instant appeal.

3. The Learned Counsel for the Appellant has argued that in light of the receipt dated 18.07.1892, the Appellants'

rights to redeem the suit land had been exercised and Amar Chand no longer had any interest in the suit land as a mortgagee. Since the mortgage had been redeemed by the predecessor-in-interest of the Appellants, the Central Government could not become subsequent mortgagee of the land by operation of law in the absence of Amar Chand's mortgage interest in the land. He has relied, *inter alia*, on a judgement of this Court passed in Muhammad Hanif and another vs. Ghulam Rasool etc. (2005 SCMR 1004) to support his arguments. He further contends that the Appellants had been non-suited by the Learned High Court by holding their suit incompetent in light of an order of this Court passed in Member BOR Punjab and another vs. Mst. Siddiqan through L.Rs and others (2015 SCMR 1721) whereas in a judgement passed by this Court in Malik Raees vs. Abdul Mannan and another (1992 SCMR 1822), the jurisdiction of the Civil Court for redemption of mortgage is not ousted if the Central Government is vested with mortgagee rights by operation of the Land Settlement Act. He prayed that the impugned judgement may be set aside and the judgement and decree of the Appellate Court be restored.

4. The Learned Counsel for Respondents No.1 & 2 on the other hand has defended the impugned judgement.

5. Notice was issued to the Attorney General for Pakistan as well as the Advocate General of Punjab to assist with the matter since after the passing of the Land Settlement Act, the suit land to the extent of Amar Chand's mortgage

rights had been vested with the Central Government. The Additional Attorney General as well as the Additional Advocate General Punjab were heard and both of them have defended the impugned judgement.

6. We have heard the learned counsels for the parties at length and gone through the case record with their assistance. The following questions need to be determined by this Court:-

- i. *Did the Central Government have mortgagee rights in the suit land? If it did, its effect thereof? If it did not, its effect thereof?*
- ii. *Was the Civil Court the competent forum to adjudicate the instant matter?*

DID THE CENTRAL GOVERNMENT HAVE ANY MORTGAGEE RIGHTS IN THE SUIT LAND? IF IT DID, ITS EFFECT THEREOF? IF IT DID NOT, ITS EFFECT THEREOF?

7. In order to ascertain if there were any mortgagee rights in the suit property, it may be prudent to first determine what a mortgage is and what rights accrue once a mortgage deed is executed between two parties.

Under the law, mortgage is defined under the Transfer of Property Act, 1882 (hereinafter referred to as the "TPA 1882") in Section 58 of the said Act. The same is reproduced below for ease of reference:

58. 'Mortgage' 'mortgagor' 'mortgagee,' 'mortgage-money' and 'mortgage' defined

(a) A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an engagement which may give

rise to a pecuniary liability. The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

In essence, a mortgage is a contract between two parties (i.e. a borrower/mortgagor and a lender/mortgagee) where a capital sum of money is lent in exchange for a proprietary interest in land. It is important to note that unlike other proprietary interests in land, a right accrues to both the mortgagor and a mortgagee once a mortgage deed has been executed between two parties. These interests are: 1) the mortgagor's/borrower's right to have the land redeemed/returned once the capital money lent has been repaid; and 2) the mortgagee's/lender's right to possess and acquire the property if the capital money lent is not repaid as stipulated in the mortgage deed. The proprietary rights of both the mortgagor and mortgagee are independent proprietary interests and there is oftentimes no bar on the parties to transfer and/or sell their respective rights in the mortgage to subsequent parties.

Relying on the averments made by the Appellants to the extent that possession had never been handed over to Amar Chand during the life of the mortgage and that they had always been in possession of the suit land, the mortgage in question would be deemed to be a simple mortgage as is defined in sub-section (b) of Section 58, TPA 1882. It is reproduced below for reference: -

(b) Simple mortgage

Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage money, and agrees expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

The rights of both the mortgagor as well as the mortgagee are also enumerated in the TPA 1882. The relevant portion of section 60 deals with the right of the mortgagor to redeem the property he has mortgaged. It is reproduced below: -

60. Right of mortgagor to redeem

At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgage (a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by the act of the parties or by [decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment of tender of such money.  
(Underlining is ours)

Mortgages are regulated in the province of Punjab by the Punjab Redemption and Restitution of Mortgaged Lands Act,

1962 (hereinafter referred to as the "Mortgage Act"). For the purposes of the present appeal, it may be prudent to reproduce the relevant portions of the Mortgage Act for ease of reference. Section 1 of the Mortgage Act deals with the extent of the Act. It is reproduced below: -

1. Short title, extent and commencement

(1) This Act may be called the [Punjab] Redemption and Restitution of Mortgaged Lands Act, 1964.

(2) It extends to the whole of the province of [the Punjab], except the Tribal Areas.

(3) It shall come into force in such areas and from such dates as Government may, by notification in the official Gazette, direct. (Underlining is ours)

Section 2 of the Mortgage Act deals with definitions. It is reproduced below: -

2. Definitions

In this Act, unless the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them that is to say-

(a) "Board of Revenue" means the Board of Revenue established under the [Punjab] Board of Revenue Act, 1957;

(b) "Collector" means the Collector of the district in which the mortgaged land or any part thereof is situated, and shall include any Revenue Officer specially empowered by the Board of Revenue to perform the duties of a Collector, for the purposes of this Act;

[(c) "Commissioner" means a Commissioner of a Division appointed under the Punjab Land Revenue Act, 1967 (XVII of 1967) and includes an Additional Commissioner;]

(d) "Government" means the [Provincial Government of the Punjab];

(e) "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes-

(i) the sites of buildings and other structures on such land;



(ii) a share in the profits of an estate or holding;

(iii) a right to receive rent;

(iv) any right to water enjoyed by the owner or occupier of land as such; and

(v) all trees standing on such land;

(f) "mortgagor" or "mortgagee" includes the assignee and the representative in interest of such "mortgagor" or "mortgagee" as the case may be;

(g) "prescribed" means prescribed by rules made under this Act. (Underlining is ours)

Section 3 of the Mortgage Act deals with petitions for redemption of mortgaged land. It is reproduced below: -

### 3. Petition for redemption

After the principal money becomes due and before a suit for redemption is barred, a mortgagor of land not exceeding fifty acres in area or of land the principal money secured by which does not exceed five thousand rupees, may apply to the Collector for an order directing that the mortgage be redeemed and that he be put in possession.

Explanation I- The area of any share in the common land of the village or of sub-division appertaining thereto and mortgaged with the land, shall not be taken into consideration while determining the area of the land mortgaged.

Explanation II- This section shall not apply to usufructuary mortgage effected for a specific number of years and intended to terminate without the repayment of any part of its consideration.

Section 3 falls within Chapter II (i.e. Redemption of Mortgages) of the Mortgage Act. The Mortgage Act has not barred the jurisdiction of Civil Courts to adjudicate on matters pertaining to redemption of mortgages insofar as Chapter II is concerned.

8. It is important to note that at the time the mortgage deed between Sooba Khan and Amar Chand was executed in 1888 (i.e. before the UK's Land Property Act of 1925 was passed), it was normally assumed that once a

mortgagor had mortgaged his land, he had divested himself of all interest in the land in lieu of the monies lent to him by the mortgagee. This meant that Sooba Khan no longer had any interest in the land until and unless he had paid the entire Rs.100/- lent to him by Amar Chand. The rationale behind the entire divestiture of the land was that the mortgagor would do everything in his power to repay the loan lent to him in order to be reinvested with his proprietary interest in the mortgaged land. If the capital sum had been paid by 1933, as was claimed by the Appellants, then there was no need for the revenue officials to cancel the mutation which cancelled the mortgage in 1936. It can therefore be reasonably be presumed that the capital sum had not been paid by 1936 and that payment of the capital sum was still due on the Appellants. However, keeping in view the equities of the parties when entering into a mortgage deed, the mortgagor of a mortgage would still retain the equitable right to redeem the property. Under the law, that equitable remedy has been safeguarded by Section 4 read with Section 3 of the Mortgage Act. Section 4 of the Mortgage Act reads as follows:-

4. Deposit of amount due under mortgage

The mortgagor shall in his application declare what sum is to the best of his knowledge due under the mortgage and deposit such sum with the Collector at the time of making the application. (Underlining is ours).

Admittedly, the Appellants have consistently taken the stance that they had paid the capital sum back to Amar Chand in 1892 and therefore had been reinvested with their proprietary interest in the land. If that is the case, then the Appellants

never filed a suit for redemption prior to the passing of the Mortgage Act on the strength of Section 60 of the TPA 1882 in order to redeem the suit land. Even after the Mortgage Act was passed, the Appellants had failed to approach the concerned Collector and file an application under Section 3 of the Mortgage Act in order to redeem their property. Instead, the Appellants instituted their declaratory suit in 1979 *i.e.* ninety-one years after the mortgage had been made and forty-three years after the mutation for cancellation of mortgage had been cancelled by the revenue authorities. If the averments of the Appellants are to be accepted, then the mortgage was redeemed and a suit for declaration was the correct course of action. If a suit for declaration was the legal remedy available to the Appellants under the law, then the suit of Appellants was blatantly time-barred in light of Article 120 the Limitation Act of 1908 since the suit had been filed well after the six-year limitation period prescribed for the filing of declaratory suits. On being confronted as to whether the suit of the Appellants was time-barred or not if the mortgage had indeed been redeemed in 1892, the Learned Counsel for the Appellants has contended that limitation would stop running in terms of Section 13 of the Limitation Act, 1908 since Amar Chand had migrated to India after 1947 and therefore had become absent for the purposes of the said Section. Section 13 of the Limitation Act is reproduced below:-

13. Exclusion of time of defendant's absence from Pakistan etc. and certain other territories

In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from [Pakistan] and from the territories beyond [Pakistan] under the administration of [the [Federal] Government] shall be excluded.

We are afraid that the benefit of the said provision is not attracted to the instant case since the Appellants have no grievance against Amar Chand and their only grievance is against the present Respondents. Therefore, Amar Chand would not fall within the definition of a "defendant" for the purposes of the Section 13 and as a result, limitation would still run even after 1947. Even otherwise, the alternative suit for redemption of the Appellants would be incompetent if it is accepted that the Appellants had redeemed the property in 1892 since there would be no rights that would be left to redeem. Therefore, it would seem that the Appellants still retained the right to redeem the mortgage even after failing to exercise their right to redemption within the prescribed period of limitation. As a natural corollary, if the Appellants had the right to redeem the land, then the subsequent mortgagee *i.e.* the Central Government which had stepped into the shoes of Amar Chand had been invested with all the mortgagee rights associated with the suit land after the Land Settlement Act was passed.

WAS THE CIVIL COURT THE COMPETENT FORUM TO ADJUDICATE THE INSTANT MATTER?

9. If the Appellants had the right to redeem the suit land, the next question would be whether the Civil Courts were the competent forum for adjudicating the instant matter.

In that respect, it may be prudent to reproduce Section 25 of the Land Settlement Act. It reads as follows: -

25. Bar of jurisdiction

Save as otherwise provided in this Act, no civil or revenue Court shall have jurisdiction in respect of any matter which the Central Government or an officer appointed under this Act is empowered by or under this Act to determine, and no injunction or process or order shall be granted by any Court or other authority in respect of any action taken or to be taken in exercise of any power conferred by or under this Act.

In order to challenge an order passed under the Land Settlement Act, the relevant provision of the Land Settlement Act is Section 18. It is reproduced for ease of reference: -

18. Appeals

(1) Any person aggrieved by an order under this Act may prefer an appeal to-

(a) the Deputy Settlement Commissioner where an order has been passed by an Assistant Settlement Commissioner;

(b) the Additional Settlement Commissioner where an order, not being an order, passed in appeal under clause (a), has been passed by the Deputy Settlement Commissioner;

(c) the Settlement Commissioner where an order, not being an order passed in appeal under clause (b) or in revision under subsection (3) of section 19, has been passed by an Additional Settlement Commissioner; and

(d) the Chief Settlement Commissioner, where an order, not being an order passed in appeal under clause (c) or in revision under subsection (2) of section 19, has been passed by a Settlement Commissioner.

(2) The appeal shall be presented within sixty days of the date of the order appealed against, in such form and manner as may be prescribed.

Settlement Laws were subsequently repealed in 1975 by virtue of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975, (hereinafter referred to as the "Repealing

Act"). Section 2 of the Repealing Act is of paramount importance for the purposes of the present appeal. It is reproduced below for ease of reference:-

## 2. Repeal of certain laws

(1) The following Acts and Regulations are hereby repealed, namely:-

(i) the Registration of Claims (Displaced Persons) Act, 1956 (III of 1956);

(ii) the Pakistan Rehabilitation Act, 1956;

(iii) the Pakistan (Administration of Evacuee Property) Act, 1957;

(iv) the Displaced Persons (Compensation and Rehabilitation) Act, 1958;

(v) the Displaced Persons (Land Settlement) Act, 1958;

(vi) the Scrutiny of Claims (Evacuee Property) Regulation, 1961; and

(vii) the Price of Evacuee Property and Public Dues (Recovery) Regulation, 1971.

(2) Upon the repeal of the aforesaid Acts and Regulations, all proceedings which, immediately before such repeal, may be pending before the authorities appointed thereunder shall stand transferred for final disposal to such officers as may be notified by the [Government] in the official Gazette and all cases decided by the Supreme Court or [the Lahore High Court] after such repeal which would have been remanded to any such authority in the absence of such repeal shall be remanded to the officers notified as aforesaid.

(3) Any proceedings transferred or remanded to an officer in pursuance of sub-section (2) shall be disposed of by him in accordance with the provisions of the Act or Regulation hereby repealed to which the proceedings relate.

(4) The final orders passed under sub-section (3) shall be executed by the [Board of Revenue] in accordance with the provisions of the Act or the Regulation hereby repealed to which the proceedings related. (Underlining and highlighting is ours)

Section 4 of the Repealing Act lays down the manner of how residual work dealing with the repealed acts and laws are to be disposed of. It is reproduced below for reference:-

#### 4. Disposal of residual work

All the work regarding documentation, both for the urban and rural properties, recovery of outstanding transfer price, rent or mortgage money of such property already disposed of and discharge of miscellaneous liabilities out of these recoveries, which may remain pending immediately before the repeal of the aforesaid Acts and Regulations shall stand transferred to the [Board of Revenue].

Admittedly, the Appellants never challenged the mutation which vested in the Central Government's mortgagee rights in the suit property, until 1979 by approaching the Civil Court. There is also nothing on the record to suggest that the Appellants had ever approached the competent Revenue Officials for resolving their grievance in light of the ouster of jurisdiction in Section 25 of the Settlement Act. It was held by a three-member bench of this Court in Member BOR Punjab and another vs. Mst. Siddiqan through L.Rs and others (supra) that:-

2. Learned counsel for the petitioner has argued that as Pujara Ram and Roshan Das had failed to pay the balance consideration, therefore, the land was resumed as per the terms and conditions of auction. However, when queried, neither the terms and conditions pertaining to auction of government land in relevant period nor any resumption order of the land in dispute has been placed on the record. Except for the bald allegation by the petitioner there is no material to show if the auction purchaser had defaulted in the payment of any balance consideration or that the revenue authorities took any action to confront or penalize the same. Anyhow, entries in the revenue record show seizing of the land in dispute by the rehabilitation authorities prior to 1957 who treated the property as an evacuee property and in 1966 transferred it in favour of the predecessor-in-interest of the respondents. It is a settled principle of law that where a property is rightly or wrongly treated to be an evacuee property, such treatment of the property, can only be assailed through proceedings before the appropriate forum. In this case, the relevant law is the evacuee law and the competent forum created by such law namely, is the Custodian or his successor the Notified Officer. Reference is made to Azizuddin v. Muhammad Ismail (1985 SCMR 666). Reference can be made to the judgment dated 1-10-2014 of this Court passed in Civil Appeal No.514/2008 titled "Nasir Fahimuddin and others v. Charles Philips Mills son of Patrick

Mills, resident of 4/2-A, Habib Ullah Road, Lahore and others"; besides the law laid down in Muhammad Din and 8 others v. Province of the Punjab through Collector and others (PLD 2003 Lah. 441)...

However, no challenge was thrown by the petitioner or Mst. Hafeczan Khanum either before the Custodian or before the Rehabilitation Department against the issuance of the allotment order of 1966 or issuance of RL-II to the respondent allottee. In such circumstances the petitioner cannot take up the plea that the allotment made in favour of the respondents is invalid for any reason. Indeed, we are not convinced that the property was resumed because as mentioned above there is neither any order of resumption available on record, nor are the terms and conditions of auction postulating that auctioned land could be resumed for non-payment of one instalment. Admittedly, only a small amount was payable by Pujara Ram etc; and without a clear legal basis, the presumption of cancellation of auction sale and resumption of auctioned land is a harsh measure that we cannot approve. Resultantly, we do not find this case to be fit for interference. Dismissed accordingly. (Underlining and Highlighting is ours)

It would have been appropriate for the Appellants to challenge the allotment made by the then Settlement Officers by exercising their right to appeal provided in Section 18 of the Land Settlement Act. However, the Appellants never challenged these allotments and also failed to approach the competent forum (i.e. the competent Revenue Officer after the Repealing Act) for redressal of their grievances *qua* the suit land. While there may be no ouster of jurisdiction in the Mortgage Act with respect to redemption of property, there is a clear ouster of jurisdiction with respect to mortgaged land that has subsequently been declared an evacuee property under Section 25 of the Land Settlement Act read with Section 2 of the Repealing Act.

9. We have gone over the judgements relied on by the Learned Counsel for the Appellants and found them to be distinguishable on facts. The same are of no help to the



Appellants seen in the context of the present Appeal. The Learned Counsel for the Appellant has failed to point out any ground which could reasonably persuade us to take a view different from the one taken by the High Court and to hold that the Revenue Department was not the competent forum and that the Civil Court had exclusive jurisdiction to adjudicate on the matter. The Learned Counsel also could not point out any mis-reading or non-reading of evidence by the High Court. We therefore conclude that even if the Appellants may have had the equitable right to redeem their property, their right to redeem the property stood extinguished after non-payment of the mortgage money within sixty years of the mortgage (*i.e.* till 1976 after taking into consideration the limitation period that stood frozen (from 1947 to 1960) until the suit land was allotted to the predecessor-in-interest of Respondents No.5 to 11 for the first time in 1960). Even otherwise, the entire proceedings before the Civil Court were *coram non judice* in light of the ouster of jurisdiction as per Section 25 of the Settlement Act. The Trial Court as well as the Learned High Court had rightly dismissed the suit of the Appellants owing to a lack of jurisdiction to adjudicate the matter.

10. In light of what has been discussed above, the Learned Trial Court, and subsequently, the Learned High Court had correctly come to the conclusion that the Civil Court was not the appropriate forum for adjudicating the present matter. As a result, the Learned High Court had

rightly set aside the judgement of the Appellate Court and restored the judgement and decree of the Trial Court. The Impugned Judgement dated 09.12.2015 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi is accordingly upheld. This appeal is accordingly dismissed.

**ISLAMABAD, THE**

23<sup>rd</sup> of June, 2022

*Khail Sahibzada, LC 1926/\**

**NOT APPROVED FOR REPORTING\***