

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

**Present:**

**MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL**  
**MR. JUSTICE SYED MANSOOR ALI SHAH**

AER

**Civil Appeal No.180/2015**

(On appeal from the judgment dated  
23.12.2013 passed by the Peshawar  
High Court, Abbottabad Bench in  
C.R. No.138/06)

Muhammad Iqbal

Versus

**...Appellant**

Mati ur Rehman and others

**..Respondents**

For the petitioner:

Ch. Afrasiab Khan, ASC

For the respondents:

Mr. Muhammad Munir Piracha, ASC

Date of hearing:

9.2.2022

**ORDER**

**Mazhar Alam Khan Miankhel, J.-** The appellant, being defendant in the main case, has questioned the impugned judgment dated 23<sup>rd</sup> December, 2013 of the Peshawar High Court, Abbottabad Bench whereby suit filed by predecessor of the respondents for issuance of permanent injunction and possession was concurrently decreed by the Courts below, hence the present appeal with the leave of this Court dated 13<sup>th</sup> March, 2015.

2. Learned counsel for the parties were heard and record of the case was perused.

Perusal of the record would reveal that predecessor of the respondents had filed a suit for permanent injunction and possession of the property in dispute against the present appellant who admittedly was in possession of the suit property by constructing a

house over the same. It is an established fact that the suit house is situated in Town Committee Nawan Shehar, Abbottabad and the house over the land/plot was constructed somewhere in 1981 by the present appellant for which he properly got an approval of a site plan and other necessary documents for the purpose. The case of the respondents was that the land beneath the house constructed by the appellant is comprising Khasra No.2222/1 (**'Khasra in question'**), area measuring 02 kanal, situated in "*Shamlat Deh Mauza Nawan Shehar Janubi Tehsil and District Abbottabad*" which as per revenue record, is owned by him, and this very fact was categorically denied by the appellant by submitting his written statement and alleged that the same was purchased by him through a registered sale deed bearing No.90 dated 29<sup>th</sup> January, 1981 from one Muhammad Yousaf Khan son of Hidayat Khan and record of the same was also confirmed by the Clerk Town Committee Nawan Shehar. Besides the above, he also alleged that the property he purchased is situated in town committee, Nawan Shehar. It is worth to be mentioned that the suit filed by the predecessor of the respondents was not for declaration of his title rather the same was for permanent injunction as stated above. The facts and circumstances of the case reflect that the respondents, under the law, were supposed to establish their title first by filing a suit for declaration along with possession of the property as a consequential relief as the appellant was admittedly in possession of the plot by further establishing the fact that the plot in possession of the appellant is situated in khasra in question. Mere a suit for permanent injunction, in the given circumstances, is not maintainable and cannot encompass the claim of respondents.

3. During the course of trial, the learned Judge deemed it appropriate to appoint a Local Commission vide its order dated 24<sup>th</sup> June, 1993 which is reproduced herein below:-

“ It is therefore necessary to appoint a local commission who should visit the spot in presence of Patwari Halqa and both the parties. After pointation of the suit Khasra number by Patwari Halqa, he should prepare report about any construction existing thereon, the nature of material used in the construction, the period of construction, the persons in its possession and assess its market value.”

The Local Commissioner, in the light of the directions of the trial Court, visited the spot along with revenue officials and Altaf Hussain, Record Clerk, Town Committee Nawan Shehar. As per report of the Local Commissioner, the suit house is situated in Khasra in question but record of the case reflects that the said conclusion by the Local Commissioner was made on the basis of statement/version of the *Patwari Halqa* accompanying him at the time of spot inspection. Such type of oral version, in absence of proper proof of the fact, can in no way be considered as a poof required under the West Pakistan Land Revenue Act, 1967. This is the moot question to be resolved, if it is established that the suit house admittedly owned, possessed and constructed by the appellant is situated in Khasra in question then that khasra as per revenue record produced by the *Patwari* is part and parcel of *Shamlat Deh* which is jointly owned by the persons whose names appear in the proprietary body of the village (proprietary body of the village is a body of persons who are already owners of the agricultural land in the village). The respondents could lay hand on this khasra number as owner if it is established on the record that their names appear in the proprietary body and they

are/were in physical possession of this khasra number prior to the purchase of appellant. They would also be obliged to prove their dispossession either by the vendor of the appellant or the appellant himself. Besides the above, it should also have been established through cogent and reliable evidence that the property in dispute is part and parcel of *Shamlat Deh*. The entire exercise done by the Local Commissioner as well as the evidence produced by the respondents during trial do not reflect that the suit house is situated in khasra in question being part of *Shamlat* land. There is no proper demarcation of the property comprising *Shamlat Deh* and specifically khasra No.2222/1. The revenue record produced by the *Patwari Halqa* and Sadar Office Qanungo during the trial, will in no way help out the respondents to establish their case unless the above facts are established through demarcation on the spot. In absence of such evidence, the documents so produced would have no evidentiary value. The original mutation of the vendor of the Respondents has not been produced by PW-1. Mere reference of the mutation in the record of rights, as produced as Ex-PW-1/3 is not sufficient to establish title of Respondents. The record produced by the Appellant from the proper lawful custody with his possession at the spot is sufficient to hold him owner of the house in question. This exercise could have been done by the revenue officer to define the boundaries of a<sup>n</sup> estate or khasra number under Section 117 of the West Pakistan Land Revenue Act, 1967 or demarcation of the property in question under Rule 67-A of West Pakistan Land Revenue Rules, 1968. Proper location of a khasra number is not possible without such exercise. The record of the case would reflect that no such exercise was made in this case. Besides the above, the nature and status of the property has been changed to commercial and residential since long. In such a

situation, a special kind of expertise would be required to locate and demarcate a specific khasra number.

4. We have gone through the judgments rendered by the Courts below specially the judgment of the Civil Judge dated 29<sup>th</sup> June, 2002 which is totally based on surmises and conjectures and not on proper appraisal of evidence and the relevant law and the record. The appellate Court and the High Court have simply concurred with the findings of the trial Court and have failed to apply their judicial mind in the peculiar facts and circumstance of the case. We, in view of the above, are left with no option but to allow the instant appeal by setting aside the judgments and decrees passed by the Courts below and suit of the Respondents stands dismissed with no order as to costs. However, they may seek their lawful remedy, if any, in view of the above discussion, if so advised.

Bench-V  
Islamabad,

9<sup>th</sup> February, 2022

NOT APPROVED FOR REPORTING

Nasir Khan /-