

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE AMIN UD DIN KHAN

MR. JUSTICE JAMAL KHAN MANDOKHAIL

Civil Petition Nos. 189-Q & 190-Q of 2017

(On appeal from the judgment of the High Court of Balochistan dated 22.09.2017 passed in C.R. Nos. 274 & 275 of 2014)

Abdul Habib & others *(in both petitions)*

... Petitioner(s)

VERSUS

Mst. Noor Bibi & others *(in both petitions)*

... Respondent(s)

For the Petitioner(s)
(in both cases)

: Mr. Kamran Murtaza, Sr. ASC *(through video link from Quetta)*

For Respondent No.1

: Mr. Gul Hassan Tareen, ASC

For Respondents (2-14)

Mr. Tanveer Iqbal, ASC

Date of Hearing

: 12.05.2022

JUDGMENT

Jamal Khan Mandokhail, J. Facts in brief are that the

respondents filed an application before the revenue authorities Quetta, alleging therein that the parties are the legal heirs of late Abdul Hameed, who owned House No. 4-12/27, bearing mutation No. 125, Khasra Nos. 1749, 450, 2470, 1459, two Qitas situated in Ward No. 4, Tappa Urban Tehsil and District Quetta. The respondents alleged that after the death of their predecessor, the house devolved upon his legal heirs i.e., the parties to the petitions, but the petitioners mutated it in their names fraudulently, depriving the respondents from their share of inheritance. Through the application, the respondents sought cancellation of the mutation, which was accepted on 22nd September 2007. Consequently, the mutation was

cancelled from the names of the petitioners and it was recorded as joint property of all the legal heirs of late Abdul Hameed.

2. The petitioners feeling aggrieved, filed a suit for declaration, cancellation of the order dated 22.09.2007 and injunction against the respondents in the Court of Civil Judge-II, Quetta. The petitioners in their plaint alleged that the predecessor of the parties owned properties (a) House No. 4-12/27 having mutation No. 125, Khasra Nos. 1749, 450 2470, 1459, two Qitas, situated in Ward No. 4, Tappa Urban Tehsil and District Quetta; (b) House No. 1197, situated in Galli Khushi Muhammad Chaman; and (c) a plot situated at Nawa Killi Quetta. According to the petitioners, the parties entered into a written agreement to privately partition the left-over properties, as a result whereof, the house situated at Quetta (a) came into their share, whereas, the house situated at Chaman (b) came into the share of the respondents and since then, both the parties are in possession of the properties respectively. It is important to mention here that the learned counsel for the petitioners did not press the claim of the petitioners to the extent of the plot (c) situated at Nawa Killi Quetta. The respondents through their written statement denied the contention of the petitioners with regard to the alleged private partition. They, however, conceded the fact that though both the houses belonged to their predecessor, but the house at Chaman was given by the father in his life time to the respondent No.8, who sold it to pay off the bank loan, therefore, it is not the left-over property. The respondents contended that the house situated at Quetta was the only property, which was inherited by the parties being the legal heirs, as such, the record was rightly corrected by the revenue authorities. Subsequently, the respondents also filed a suit for partitioning of the

house situated at Quetta, in the same Court at Quetta. The petitioners then filed an amended plaint with permission of the Court, wherein, the transfer of the house (b) situated at Chaman, in the name of the respondent No.8, was also challenged.

3. The trial court consolidated both the suits and upon conclusion of the trial through the consolidated judgment and decree, dismissed the suit filed by the petitioners and decreed that of the respondents, declaring that the only property left by late Abdul Hameed was the house (a) situated at Quetta, which devolved upon his legal heirs according to their share and directed its partition. The petitioners filed appeals against the judgment and decree. The appellate court through consolidated judgment and decree, maintained the judgment and decree of the trial court to the extent of the property at Quetta, whereas, modified the judgment and decree of the trial court to the extent of the property at Chaman (b), declaring it too as joint amongst the legal heirs. Feeling aggrieved, the respondents filed a civil revision petition before the learned High Court of Balochistan, which was accepted, in result whereof, the appellate court's judgment and decree to the extent of the modification were set aside and the judgment and decree of the trial court were maintained. However, the learned High Court in Paragraph No. 68 of its judgment has held that the house at Chaman is situated beyond the territorial jurisdiction of the courts at Quetta, therefore, it cannot be made a subject matter of the suit filed at Quetta. The petitioners being aggrieved, filed these petitions for leave to appeal.

4. Arguments heard and have perused the record. In the first instance, we would like to dilate upon the findings of the learned High Court with regard to the jurisdiction of the Court at Quetta in respect of

the property situated at Chaman. Sections 16 and 17 of the Code of Civil Procedure (**the CPC**) regulate the territorial jurisdiction, which are reproduced herein below:

16. Suits to be instituted where subject matter situate.—Subject to the pecuniary or other limitations prescribed by any law, suits--.....shall be instituted in the Court within the local limits of whose jurisdiction the property is situate, [or in case of suits referred to in clause (c) at the place where the cause of action has wholly or partly arisen.

17. Suits for immovable property situate within jurisdiction of different Courts.—Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

The words “any portion of the property” occurring in sections 16 and 17 of the CPC, cannot be limited to only one property. It may be a single immoveable property and may also include more than one property of different descriptions. In case, a person wants to obtain a relief through a suit, in respect of immoveable properties, situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction, any one of the immovable properties or a portion thereof is situated, provided that the cause of action in respect of the properties must be one and the same. The issue of territorial jurisdiction came up before the Supreme Court of India in **Shivnarayan (D) by LRs v. Maniklal (D) through LRs and others¹**, wherein it was held as under:

28. Sections 16 and 17 of the C.P.C. are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject-matter is situate whereas Section 17 engrafts an exception to the general rule

¹Civil Appeal No. 1052 of 2019

as occurring in section 16. From the foregoing discussions, we arrive at following conclusions with regard to ambit and scope of Section 17 of C.P.C.

(i) The word 'property' occurring in Section 17 although has been used in 'singular' but by virtue of Section 13 of the General Clauses Act it may also be read as 'plural', i.e., "properties".

(ii) The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

(iii) A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

(iv) A suit in respect to more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.

The purpose of section 17 of the CPC is to avoid conflicting decisions, multiplicity of litigation and to give option to the parties to choose the court for adjudication of their disputes according to their convenience, in order to facilitate them.

5. In the case in hand, the subject matter of both the suits is respecting the left-over properties of the predecessor of the parties, situated within the jurisdiction of two courts. Their claim includes the relief of partition amongst them as well. Under such circumstances, the cause of action of both the suits is one and the same, therefore, both the Courts at Quetta and Chaman had the jurisdiction to adjudicate the suits in respect of the left-over properties of the predecessor of the parties. The parties opted to file their suits at Quetta. The trial court after taking cognizance of the matter, consolidated both the suits and decided them

through the common judgment and decree. The trial court did not exclude its jurisdiction with regard to the property at Chaman and assumed the jurisdiction. The learned High Court though upheld the findings of the trial court, but at the same time, it was observed that the suit in respect of the house at Chaman was not competent before the civil court at Quetta. Such findings of the learned High Court are contrary to the basic structure of section 17 of the CPC, hence are not sustainable.

6. As far as merits of the case are concerned, it is a fact that the house situated at Quetta was an evacuee property. The father of the parties applied for its allotment, but the process could not be matured in his life time. The matter was pursued by the petitioners, who finally succeeded in getting its allotment in their names, after deposition of the consideration amount themselves. Despite the fact that the house at Quetta never entered in the name of the predecessor of the parties, but still, the petitioners considered it to be one of the left-over properties of their predecessor. The petitioners are though claiming private partition amongst the legal heirs, respecting both the houses, but all the three *fora* concurrently did not agree with their contention. The claim of the respondents as set out in their written statement, respecting the house at Chaman is that it was transferred/disposed of by their father to the respondent No.8, whereas, the petitioners are denying their contention. Admittedly, the land underneath of the house at Chaman belonged to the Municipal Corporation Chaman (**the MCC**), which was leased out to one Sayed Ghafoor Shah (the lessee), and the *Patta* (the lease document), was issued in his name. The predecessor of the parties purchased its lease-hold rights from the lessee through a registered lease deed, in the name of the petitioner No.1, who was minor at that time. It is a fact that

the lease-hold right of the said property never transferred in the name of their predecessor in the record of the MCC. The record of the MCC in respect of the house in question produced before the trial court reveals that the lease-hold right of the said property was subsequently transferred in the name of the respondent No.8 from the name of its previous lessee, simply on the instructions of their predecessor. However, the record of the MCC reflects that it was sold out by the father to the respondent No.8. The respondents in their plaint, did not disclose the basis of the transfer. The respondent No.10 appeared as attorney for the respondents, but he in his statement too, did not explain about the transfer of the house at Chaman in the name of the respondent No. 8. The respondents have failed to produce any evidence to prove an offer by the donor and its acceptance by the donee. They did not disclose the amount of the sale consideration, the date of the alleged transaction and the amount if any paid.

7. Besides, as per the record, the house has directly been transferred from the name of the previous lessee Sayed Ghafoor Shah in the name of the respondent No.8. The registered lease deed executed in the year 1952 between the previous lessee and the predecessor of the parties is still intact, which reflects that the lease-hold right of the house was purchased by the predecessor in the name of the petitioner No.1, but in the record of the MCC, it remained in the name of the previous lessee. Here a question arises as to how the leasehold rights of the property were transferred from the name of its previous lease holder in the name of the respondent No.8, without the consent and knowledge of the petitioner No.1? Even there is no evidence to prove the fact that the predecessor of the parties and the previous lessee ever appeared before the MCC

authorities for transferring the lease-hold rights respecting the property in the name of the respondent No.8. Moreover, the respondents in their written statement contended that after the transfer of the property to the respondent No.8, it was sold in order to clear the outstanding amount of loan. The respondents did not produce any document to prove the transaction with any bank and the payment of the outstanding amount of loan. Even, the respondent No. 10, who appeared as attorney for the respondents did not utter a single word in this behalf, which negates their contention raised in the written statement. The respondents have failed to establish the valid transfer of the leasehold rights of the house at Chaman in the name of the respondent No. 8 by the predecessor and its disposal during the lifetime of the predecessor. In the given circumstances, the transfer of the lease-hold right in the record of the MCC, regarding the house at Chaman in the name of the respondent No.8 is illegal and unlawful. Under such circumstances, the house at Chaman is also one of the left-over properties of the late Abdul Hameed, which devolved upon his legal heirs accordingly.

Thus, for the foregoing reasons, the petitions are converted into appeals and are allowed. It is declared that both the houses are leftover properties of late Abdul Hameed, which devolved upon his legal heirs according to their share of inheritance. The judgments and decrees of the learned High Court and the trial court to the extent of the house at Chaman are not based on law and facts, hence, are not sustainable. According to the learned counsel for the parties, the house at Quetta has already been partitioned amongst the legal heirs as per their right of inheritance. The house at Chaman is ordered to be partitioned amongst the legal heirs of late Abdul Hameed, according to their respective

shares. In case, for any reason, the house at Chaman could not be partitioned, the respondents should compensate the petitioners accordingly.

ANNOUNCED IN OPEN COURT AT QUETTA ON 26.07.2022

APPROVED FOR REPORTING

K.Anees/-