

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

AIR

Civil Appeal No.997 of 2010.

*(On appeal against the order dated 15.09.2010
passed by the Lahore High Court, Multan Bench,
Multan in RFA No.198-2003)*

Rana Muhammad Hanif Khan (decd) through LRs.

...Appellant(s)

Versus

Saddiq Khan (decd) through LRs.

...Respondent(s)

For the Appellant(s): Rana M. Zahid, ASC.
(via video-link from Lahore)

For Respondents.1(1-11): Nemo.

For Respondent No. 02: Ex-parte.

Date of Hearing: 14.02.2022

ORDER

IJAZ UL AHSAN, J.- This appeal is directed against a judgment of the Lahore High Court, Lahore dated 23.06.2010 rendered in RFA No.198 of 2003 filed by the Respondents. Through the impugned judgment, the judgment and decree dated 21.11.2003 passed by the Trial Court was set aside and it was held that the Civil Court(s) of Pakistan had no jurisdiction to entertain the suit which, even otherwise, was barred by time.

2. Briefly stated the facts necessary for disposal of this Appeal are that, the Appellants filed a suit for recovery of Rs.55,67,633/- as compensation/damages. As per the plaint, one Kalu Khan was a joint owner in equal share(s) with Atta Muhammad in respect of land measuring 1081 acres of Rich

Rice Ranch in Willow Glen, California, USA. He executed a Will in respect of his entire property and created a Trust. One Fazal Muhammad was appointed as Trustee through the Will and the beneficiaries of the Trust were his brothers namely Abdul Majeed Khan, Ahmed Khan and three sons of his deceased brother namely Siddique Khan, Rana Muhammad Hanif Khan and Aziz-ur-Rehman. The shares of the beneficiaries as determined in the Trust were 1/3rd to each brother and 1/9th to each nephew of the deceased Kalu Khan.

3. On 13.08.1962 the Trustee (*Muhammad Fazal*) terminated the Trust in consequence of which the nephews jointly inherited 180 acres apart from the Farm machinery. According to the contents of the plaint, in early March 1958, the predecessor of the Appellant and his brothers agreed that being a citizen of the USA, the Respondent should manage the share of the two brothers (nephew of Kalu Khan) in the property of Kalu Khan (deceased) inherited by them from Kalu Khan in the United States. He would perform the said duties without any salary. It was averred in the plaint that; in return it was agreed that the Appellant would manage the properties of the deceased in Pakistan. In order to implement this arrangement, a power of attorney was duly executed. The record indicates that the Appellants revoked their power of attorney on 03.11.1973 and appointed Nasim-ur-Rehman as their attorney. They also demanded their past share in the income of the property. It was alleged in the plaint that a sum of US \$ 88,599 was recoverable from the Respondent(s). The suit filed by the Appellants was decreed by the Civil Court of

Sahiwal vide judgment and decree dated 21.11.2003. The Respondent(s) appealed the said judgment and decree. This appeal was allowed through the impugned judgment dated 15.09.2010 by the Lahore High Court. Hence this appeal.

4. The learned counsel for the Appellants submits that the High Court erred in law in overturning the judgment of the Trial Court which was based upon valid reasons. He states that all relevant issues had properly been decided in accordance with law. He further submits that the findings recorded by the High Court in relation to the question of limitation as well as jurisdiction of the Civil Courts are patently erroneous. It is further argued that the findings of the High Court to the effect that the claim of the Appellants was barred by time was neither supported by the record nor by the law. He finally maintains that the suit in question sought a decree in personam. Admittedly, although permanent residents of the United States, the Respondents occasionally visited Sahiwal as mentioned in the plaint. As such, the Civil Courts of Sahiwal had jurisdiction on their person and could have passed an executable decree against them.

5. Respondent No.2 has already been proceeded against *ex parte*. No one has entered appearance on behalf of Respondent No.1.

6. We have heard the learned counsel for the Appellants and gone through the record.

7. It is clear and obvious to us from a plain reading of the plaint and Sections 16 and 20 of the Code of Civil Procedure, 1908 ("**CPC**") that the Civil Courts of Pakistan had no jurisdiction in the matter in light of the averments made in para 20 (i), (ii) & (iii) as well as paragraphs 22 and 23 read with the prayer made in the plaint. For ease of reference, Section 16 and Section 20 of the CPC are reproduced as under: -

"16. Subject to the pecuniary or other limitations prescribed by any law, suits; (a) for the recovery of immovable property with or without rent or profits; (b) for the partition of Immovable property; (c) for foreclosure, sale or redemption In the case of a mortgage of or charge upon immovable property, (d) for the determination of any other right to or Interest in immovable property; (e) for compensation for wrong to immovable property, (f) for the recovery of movable property actually under distraint or attachment; shall be instituted in the Court within the local limits of whose jurisdiction the property is situated, or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen: - Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen) or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain. Explanation. - In this section "property" means property situate in Pakistan.

"20. Subject to the limitations aforesaid, every suit shall be in a Court within the local limits of whose jurisdiction. (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either of the Court is given, or the defendants who reside, or carry on business, or personally work as aforesaid, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises. Explanation I.- Where a person has- a one place and also a temporary residence shall be deemed to reside at both places in action arising at the place where he residence." (Underlining is ours)

It is clear and obvious from the record that the subject matter of the suit was situated in USA. This is fact admitted in the plaint of the Appellants that the property in respect of which the suit for rendition of accounts and recovery was filed, is situated in the County of Glenn, California. Section 16 of the CPC clearly stipulates that all suits in respect of immovable property shall be filed in the Court within the local limits of whose jurisdiction the property in question is situated. The only exception to this rule is suits filed under Section 16(c). There is nothing on the record to establish that the suit in question was related to redemption of a mortgage or charge regarding the property in question. We are therefore in no manner of doubt that the even according to the averments made in the plaint the suit of the Appellants did not fall within the parameters of Section 10 of the CPC.

8. Section 20 of the CPC clearly provides that every suit shall be filed in a Court within the local limits of whose jurisdiction the defendant or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain. It is a fact stated by the Appellants in Para 5(a) of the plaint that the Respondent was permanently residing in the US. It is for this reason that an agreement was reached between the brothers to the effect that the Respondent would manage the property inherited by the Appellants, situated in USA. The fact that the Respondent was a US citizen is further admitted at Para 20(iii) of the plaint which states that the Respondent acquired US

citizenship somewhere during the 1950s. It is the case of the Appellants that the Respondent neither permanently resides nor works for gain anywhere within the jurisdiction of the Civil Courts of Sahiwal. However, in an attempt to create jurisdiction it has been stated in the plaint that Civil Courts of Pakistan have jurisdiction since the suit does not involve any question regarding immovable property and involves rendition of accounts and recovery of money. The argument has been repeated by the learned ASC for the Appellants before us. With all due respect, we find the argument to be erroneous and misconceived. We are therefore unable to agree with this assertion since the amount claimed is income generated from the land in question is inextricably related to the property inherited by the Appellants, which is situated in USA. The language of Section 16(d) clearly provides that, for the determination of any right or interest in respect of immovable property, a suit must be filed in a Court within the territorial jurisdiction of which the property situated.

9. We are therefore in no manner of doubt that even if the averments made in the plaint are taken on their face value the Civil Courts of Sahiwal lacked jurisdiction in the matter. The learned High Court has therefore correctly come to the conclusion that in light of the averments made in the plaint read with the requirements of Sections 16 and 20 of CPC, the Civil Courts of Sahiwal lacked personal and subject matter jurisdiction in the matter. There is nothing on the record which shows that the Respondent was actually and voluntarily residing in Pakistan when the suit in question was

filed. On the contrary, it has been admitted that the Respondent is a permanent resident in the US and is a US citizen and visits Pakistan/Sahiwal occasionally. The understanding with the Respondent was also in respect of the property inherited by the Appellants, situated in the United States. The alleged breach of the agreement was purportedly on part of the Respondent who at all relevant times resided in the USA. Thus, the alleged cause of action also arose in the USA when the Appellants found out about the money which the Appellants claim is owed to them by the Respondent. Even otherwise, presence of a Respondent within the territorial jurisdiction of Pakistan does not *ipso facto* grant jurisdiction to Pakistani Courts on the touchstone of Sections 16 or 20 of the CPC when the property in question is situated outside Pakistan. Reliance in this regard is placed on **Muhammad Ramzan (deceased) v. Nasreen Firdous (2016 PLD 174 Supreme Court)**.

10. We also find that admittedly the Appellants came to know about the alleged income on which they lay claim, in early 1990 during Siddique's divorce proceedings. They did not file such claim by way of a suit if at all was legally possible till the 04.09.2001 before a competent forum. Further, the High Court has correctly come to the conclusion that the record indicates that a settlement was reached between the parties in the US which had been filed in the US Courts and incorporated in judicial verdicts. We also find that the suit in question was filed on the basis of two documents which were allegedly discovered by a person namely

Zafarullah who handed over the same to Naseem Ahmed which constituted the basis for filing of the suit. Despite making an effort to establish the fact that in the facts and circumstances of the matter and the claim made in the plaint furnished sufficient basis for conferring jurisdiction on Pakistani Courts. The learned ASC for the Appellant has been unable to point to any provision of law that may vest jurisdiction of Pakistani Courts. Admittedly, there existed a financial relationship between the three brothers which came to an end in 1973. Thereafter, a financial settlement appears to have taken place and the relevant financial issues were settled between the parties as is evident from Exh.D-93 which was produced before the Trial Court and the said document has not been denied by any of the parties. In consequence of which, if at all, it could be raised before a Pakistani Court. Such claim could only have been raised within the prescribed period of limitation. It is clear and obvious from the record that the suit has been filed at least 28 years thereafter for which no valid reason or justification has been furnished nor has the learned counsel for the Appellants been able to convince us that there was any lawful basis to do so.

11. We have carefully examined the record, gone through the documents produced before the Trial Court as well as the all legal and factual aspects examined by the High Court and the reasons assigned by the High Court in support of its conclusions. We have not found any legal, procedural or jurisdictional defect, error or flaw in the impugned judgment that may furnish basis or justification to overturn the

impugned judgment of the High Court. Further, we find ourselves in agreement with the reasoning adopted by the High Court and the conclusions drawn are duly supported by the record as well as the evidence produced by the parties. Consequently, we do not find any merit in this appeal. It is accordingly dismissed.

ISLAMABAD.

14.02.2022.

ZR/

~~Not Approved For Reporting~~