

112/18

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE FAISAL ARAB

AFR

CIVIL APPEAL NO. 185-L OF 2015

(On appeal against the judgment dated 20.05.2015
passed by the Lahore High Court, Multan Bench in
Civil Revision No. 1170-D/2004)

Mian Zafar Ali and another

... Appellants

VERSUS

Mian Khursheed Ali

... Respondent

For the Appellants: Mr. Muhammad Irfan Malik, ASC

For the Respondent: Sh. Naveed Shehryar, Sr. ASC
Ms. Najma Parveen, ASC

Date of Hearing: 28.10.2019

JUDGMENT

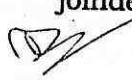
FAISAL ARAB, J.- Mian Rustam Ali and Mian Khursheed

Ali were brothers. They jointly owned agricultural land measuring 113 kanals 14 marlas in Mauza Mansa Ram Khas and Mauza Mansa Ram Sandila, Tehsil Kot Addu. After the death of Mian Rustam Ali, his sons i.e. the appellants filed a suit for declaration against their uncle Mian Khursheed Ali (respondent herein) in the year 1997 claiming that during the lifetime of their father, the joint property was partitioned in the year 1960 and land measuring 57 kanals 03 marlas in Mauza Mansa Ram Khas fell to their father's share and the remaining land in Mauza Mansa Ram Sandila to the share of the respondent. It was claimed in the suit that respondent wants to reopen an already settled question of partition of the land by seeking partition afresh before the revenue authorities as the value of the land in their possession has enhanced. The suit was dismissed on 31.03.2003 on the ground that the appellants failed to establish that private partition had taken place in the lifetime of their father with the respondent. The appellants then

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filed appeal before the Additional District Judge, which reversed the findings of the Trial Court on 10.11.2004 after holding that during pendency of the proceedings, the parties had agreed that the dispute will be resolved through arbitration that was infact conducted by Mian Shan Ali Sukhera who is uncle of the appellants and real brother of the respondent. This decision of the Appellate Court was challenged by the respondent in Civil Revision before the Lahore High Court. The High Court held that Mian Rustam Ali was survived not only by his two sons, who are appellants herein but also by two daughters namely Shameem Akhtar and Anees Akhtar and a widow who were not made party to the suit; that an application for partition of the joint khata was filed by the respondent before the revenue authorities on 20.01.1997, whereas another application was filed by the two sisters of the appellants on 22.05.1996 before even the suit was filed; that during the pendency of the suit the revenue authorities on such applications passed order of partition and accordingly mutation entry reflecting partition was also attested on 04.11.1997, therefore, without impleading all the co-sharers and the revenue officials in the suit the same was not competent. The High Court also held that the Appellate Court erred in allowing the appeal by relying upon the award overlooking the objections raised by the respondent against the award.

2. Learned counsel for the appellants argued that the learned High Court was not justified in rejecting the decision of the arbitrator and that it was also not justified to ignore the clear cut provisions of Order I Rule 9 CPC wherein it is specifically mentioned that the suit of the parties shall not be dismissed on account of non-joinder or mis-joinder of a party.



3. Learned counsel for the respondent mainly argued that the name of the respondent is available as one of the shareholders in khasra gardawri along with the appellants and their mother and two sisters, therefore, in the suit for partition the mother and sisters of the appellants were necessary parties.

4. No doubt that non-joinder of a party does not amount to dismissal of the suit in terms of Order I Rule 9 CPC, however, in this case where the question has arisen as to whether private partition of the property in joint khata has taken place way back in 1960 and the fact that Mian Rustam Ali who was survived not only by the appellants but by two daughters and a widow, we consider it necessary that they ought to have been made party in the suit. In this view of the matter, we dispose of this appeal, set aside the impugned judgment and remand the case back to the Trial Court to decide the suit afresh. The appellants shall implead in the suit the remaining surviving heirs of Mian Rustam Ali as party. They shall also implead the revenue officials as party. The learned Trial Court shall then allow the newly added parties to file their respective written statements and then frame fresh issues for determination. The parties shall be free to adduce evidence afresh.

8d1 ————— J
8d1 ————— J



Announced on 20.12.2019 by Hon'ble Mr. Justice Faisal Arab

Approved For Reporting

Khatram

13/12/19