

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

Civil Appeals No.8-L to 10-L of 2009

Against judgment dated 27.01.2003 of the Lahore High Court, Lahore passed in Civil Revision No.916-D to 918-D of 1993.

Tassaduq Hussain Shah & others

...Appellant(s)

Versus

Allah Ditta Shah & others

...Respondent(s)

For the Appellant(s): Mr. M. Zubair Saeed, ASC

For the Respondents: Malik Noor Muhammad Awan, ASC
Syed Rafaqat Hussain Shah, AOR

On Court's Notice: Mr. Shaukat Rauf Siddiqui, Addl.AG, Pb

Date of Hearing: 10.03.2022

JUDGMENT

IJAZ UL AHSAN, J.- Through this single judgment, we intend to decide Civil Appeal Nos.8-L to 10-L of 2009 (hereinafter referred to as "**CA**") as they involve a common question of law.

2. Through the present Appeals, the Appellants have challenged a judgment of the Lahore High Court, Lahore dated 27.01.2003 passed in Civil Revision No. 917-D of 1993 (hereinafter referred to as the "**Impugned Judgment**"). Through the Civil Revision Petition, the Appellants challenged the judgment and decree of the Additional District Judge dated 02.12.1991 whereby, the appeal of the Respondents was allowed and the judgment of the trial Court dated

18.10.1986, through which the suit of the Respondents was dismissed, was set aside, and the suit was decreed.

3. The necessary facts for the adjudication of this *lis* are that two types of owners of land existed in Mouza Daggar Yar Shah. These were Ala Maliks and Adna Maliks. As per the record, the land in dispute measures 111 Kanals of *Shamilat Deh* land, and falls in Mouza Daggar Yar Shah Sharqi, Tehsil and District Bhakkar (hereinafter referred to as "**Suit Land**"). In the year 1959, Martial Law Regulation No. 64 (hereinafter referred to as "**MLR of 1959**") was promulgated pursuant to which, Ala Malkiats were abolished. Pursuant to the MLR of 1959, Adna Maliks were declared as owners of the land which they were occupying and tilling. The Respondents filed a suit for declaration and possession, claiming Adna Malkiat of the Suit Land. It was averred in the plaint that the Respondents were in possession of the Suit Land since their ancestors and were recorded as Adna Maliks in the last Jamabandi of 1943-44. They further claimed benefit of the MLR. The suit was contested by the Appellants who stated that the Respondents were not Adna Maliks. Rather, they were tenants of the Appellants and were paying the Appellants a share from the produce generated from the Suit Land. The Suit was dismissed by the trial Court. The Respondents filed an appeal which was allowed. The Appellants filed a Civil Revision against the judgment and decree of the Appellate Court. The Civil Revision was dismissed. Hence, the Appellants have approached this Court for redressal of their grievances.

4. Leave to appeal was granted by this Court vide order dated 02.01.2019 in the following terms: -

"2. Inter alia contends that respondents' suit for declaration to the effect that they are Adna Malik of the suit land and are in possession of the custom of Notore and their challenge to mutations No. 48 & 49 dated 30.06.1982 (indicating ownership of petitioners-defendants) was dismissed by the learned trial Court in terms of its finding on Issue No. 4 but the same was reversed by the learned Appellate Court for reasons not sustainable in law. Further contends that the finding that respondents-plaintiffs were shown as owners in jamabandi for the year 1943-44 reflects misreading of evidence on record and even the learned High Court fell in error in not appreciating the same. Leave is granted to consider, inter alia, whether the suit of the respondents-plaintiffs could be decreed on the basis of documents produced in evidence by them and whether the concurrent judgments and decrees reflect misreading and non-reading of material evidence on record."

5. The learned ASC for the Appellants contends that the Respondents are not *Adna Maliks* of the Suit Land. He further contends that the Respondents cannot acquire the status of *Adna Malik* merely based on their possession as *Basharan Malik bawajah Nowtor*. As such, if they have a claim, their only entitlement in the *shamilat* land is proportionate to their share, according to the *Wajib-ul-Arz*. He has further contended that the *Jamabandi* of 1943-44 is not relevant to decide the present controversy since the said document only relates to 1 kanal and 9 marlas whereas the Suit Land measures 111 Kanals. The learned ASC has further argued that the Respondents did not produce any receipt of land revenue, which is a mandatory requirement of the law. It has further been argued that the Respondents were tenants

of the Suit Land. As such, the learned High Court erred in law and in fact to hold that they were *Adna Maliks*.

6. The learned Counsel for the Respondents have supported the Impugned Judgment of the learned High Court.

7. We have heard the learned Counsel for the parties and have perused the record. The basic question which needs to be answered by this Court is whether or not the Respondents were rightly held to be *Adna Maliks* by the High Court.

8. The conditions which must be fulfilled in order to be declared an *Adna Malik* were discussed by this Court in **Muhammad Ahsan v. Pathana (PLD 1975 Supreme Court 369)**. The two essential conditions for *Adna Malkiat* are, cultivating possession and, payment of land revenue to the State. Previously, land revenue was paid to *Ala Maliks*, who were superior owners, having a superior proprietary interest over the land either by virtue of settlement as first migrants or, as *Jagirdars Ala Maliks* then gave their land for tilling/cultivation to *Adna Maliks* and received revenue/compensation from them. However, their proprietorship was abolished after the promulgation of MLR 1959. As such, *Ala Malkiat* and similar other interests stood abolished and, *Ala Maliks* were held not entitled to any compensation from *Adna Maliks*. Paragraph 22 of the MLR of 1959 is reproduced below for ease of reference:

"22. Intermediary interests. *Alla-Milkiat and similar other interests subsisting immediately before the commencement of*

this Regulation shall on such commencement, stand abolished, and no compensation shall be claimed by, or paid, any person affected by the abolition”

Subsequently, the West Pakistan Land Commission on 03-03-1960 issued a notification to the effect that *Adna Maliks* shall be made full proprietors of the land “held by them as such” and they shall discontinue payment of any compensation to *Ala Maliks*. The only exception provided in the said notification was that if there were no *Adna Maliks* then, *Ala Maliks* would be considered as full proprietors if they were in cultivating possession. This in effect made them *Ala-cum-Adna-Maliks*.

9. The argument advanced by the learned ASC for the Appellants is that the Respondents were in fact tenants of the Appellants and were not *Adna Maliks*. We are unable to agree with this argument for the reason that, the Appellants have taken a contradictory stance. They have claimed that the Respondents were in possession of the Suit Land as their tenants. At the same time, before the High Court, the Appellants have claimed to be self-cultivating the land. As such, they cannot claim in the same breath that the Respondents are their tenants in possession and, that the Appellants are self-cultivating the land. Further, the learned Counsel for the Appellants has not shown us any document from the record which could establish that the Respondents were the tenants of the Appellants. The Appellants have neither produced a tenancy agreement, nor produced any receipts of rent or any witnesses in the lower *fora* who may

have deposed that there existed a landlord-tenant relationship between the parties. In the absence of any such agreement, we are unable to agree with the argument that the Respondents were tenants of the Appellants. The argument of the learned ASC for the Appellants in this regard is misconceived. This is especially so because there exists documentary evidence on the record, showing cultivating possession of the Respondents since before promulgation of the MLR of 1959 which abolished the status of *Ala Malkiat* and paragraph 22 of the MLR of 1959 read with the Notification of the West Pakistan Land Commission dated 03-03-1960 conferred rights on the Respondents who were admittedly in cultivating possession since long and at the relevant time as well, that is, at the time of promulgation of MLR of 1959, which confers rights on the Respondents.

10. The learned High Court has rightly observed that the Respondents had categorically stated that they were paying land revenue and, their statement was not seriously contested by the Appellants. The fact that the statement of the Respondents was not contested raises the presumption that it was admitted by the Appellants. The Appellants were required to challenge the statement made by the Respondents to the effect that land revenue was being paid by them (Respondents). This was never done and the stance stood admitted by implication. Since the Appellants did not challenge the Respondent's statement; they themselves have failed to challenge the *Adna Malkiat* of the Respondents. It is

further crucial to note that the Jamabandi of the year 1943-44 clearly shows that the Respondents were paying land revenue and, are recorded in the said Jamabandi as "*Basharah Malik Bawajah Nowtor*". The only contention raised in this respect by the learned ASC for the Appellants is that the said Jamabandi was for 1 Kanal and 9 Marlas. The Counsel for the Appellants has, however, been unable to dispute the fact that the Respondents were recorded in the Jamabandi as "*Basharah Malik Bawajah Nowtor*". The Jamabandi in question is an admitted document, and its authenticity has not been challenged on any legally sustainable ground. The said Jamabandi has been examined not only by the High Court, but has also been adjudicated upon earlier vide judgment dated 17.11.1981 whereby, the Respondents were declared as *Adna Maliks*.

11. In the revenue documents, the ancestors of the Respondents have been shown in possession of the Suit Land as "*gher dakheel kar bawajah nawtor*". As noted above, the judgment passed by the District Judge, Mianwali dated 17-11-81, the Respondents were declared as *Adna Malikan*. The Respondents were consequently held entitled to the benefit of the MLR of 1959. The Jamabandi of 1943-44 predates MLR of 1959 by almost a decade, meaning thereby, that rights had accrued in favour of the Respondents as *Adna Malikaan* even before MLR of 1959 was promulgated. There is also a presumption of genuineness attached, the Revenue Records within the meaning of the Qanun-e-Shahadat Order, 1984.

The learned Additional District Judge in the judgment dated 02-12-91 has held that the Appellants did not produce any document in rebuttal of the Jamabandi of 1943-44. Even otherwise, the learned ASC for the Appellants, when confronted with the fact that the same matter had been adjudged previously vide judgment dated 17-11-81, was unable to rebut the same.

12. The learned ASC for the Appellants has argued that the Jamabandi in question is irrelevant. This argument has not appealed to us for the reason that the documents in question are material in determining the status of the Respondents and being official records, have a presumption of truth attached to them. No evidence in rebuttal was placed before the lower *fora* nor is any such material available on record. This aspect of the case has also been thoroughly examined by the Appellate Court as well as the Revisional Court. It is to be noted that the learned ASC for the Appellants was required to raise legal questions before this Court rather than factual ones on the basis of which the Appellants have been non-suited by the lower *fora*. The trial Court has held that PW-1, Allah Ditta's evidence was vague and unreliable. The same stance has been taken by the learned ASC for the Appellants. There is nothing on the record to show that the stance of Allah Ditta was challenged through evidence in rebuttal. It is settled law that documentary evidence takes precedence over oral evidence. The documentary evidence in the instant case clearly

supports the stance of the Respondents. The Appellants could not have been given benefit, merely by stating that the evidence of PW-1 was vague. The stance of PW1 is duly substantiated by documentary evidence, which, in our opinion has correctly been appreciated by the Appellate as well as Revisional Court. His evidence had to be analyzed, in conjunction with the available record in order to reach a just conclusion on the basis of balance of probabilities. This in our opinion has correctly been done by the Appellate as well as Revisional Courts. It is pertinent to mention here that even if PW-1's evidence was found to be vague, a mere oral assertion on part of the Appellants was not sufficient to rebut and dislodge documentary evidence in the form of Revenue Records and long standing entries therein. Reliance in this regard is placed on **Abdul Ghani v. Mst. Yasmeen Khan (2011 SCMR 837 Supreme Court)**.

13. The learned High Court has, in our opinion, proceeded on correct factual and legal premises in the impugned judgment. The learned ASC for the Appellants has been unable to point out any misreading or non-reading of evidence by the High Court. No jurisdictional error or legal flaw in the Impugned Judgment has been pointed out that may warrant interference of this Court. After hearing the learned ASC, and examination of the record, we have reached the same conclusions as the High Court and find no lawful ground, reason or justification to take a view different from the one taken by the High Court.

14. For the reasons recorded above, these appeals fail.

The same are accordingly dismissed.

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ISLAMABAD.

10.03.2022

Haris Ishtiaq/*

'Not Approved For Reporting'

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