

*for reporting***JUDGMENT SHEET**

PESHAWAR HIGH COURT, PESHAWAR.
(Judicial Department)

C.R. No. 370-P/2025 with CM No.543-P/2025

“Zeeshan Ahmad and others

Versus

Shaukat Ali and others”

JUDGMENT

Date of hearing: **04.04.2025.**

For petitioners: Mr. Javed Ali Ghani, Advocate.

For respondents: Nemo (in motion).

KAMRAN HAYAT MIANKHEL, J.- Impugned herein is the judgment and order of learned Additional District Judge-I, Charsadda, dated 07.12.2024, whereby the appeal of petitioners was dismissed and maintained the order of the learned Civil Judge-III, Charsadda, dated 05.04.2023, vide which the suit was partially decreed against the petitioners.



2. Briefly stated that facts of the case as per plaint are that respondent No.1 Shaukat Ali alongwith her two sisters Nusrat Begum and Nihar Begum being the legal heirs of Mst. Zojan widow of Syed Ali Shah instituted a suit No.122/1 on 17.02.2015 for declaration, perpetual injunction and possession against defendants/petitioners in respect of the property measuring 02-

Kanals comprising of different khasra numbers mentioned in the head note of the plaint with assertions that they are the legal heirs of Mst. Zojan and after her demise, had received the suit property as her legacy. They challenged the sale deeds executed by defendant (Sharafat) in favour of defendant (Basheer, which was further alienated by him to other defendants. Plaintiffs/respondents alleged that the same are ineffective and inoperative upon their rights and the defendants/petitioners in collusion each other executed the sale deeds which effected the area of plaintiffs/respondents' ownership and their possession. They prayed for cancellation of the same. It was further asserted that defendants/appellants are collusively bent upon to make entries in revenue record in their favour, dispossess the plaintiffs/respondents from their land, changing its nature and blocking their access to their land, to which they are not competent. They were privately asked time and again to refrain from their illegal acts but denied, which constrained the plaintiffs/respondents to approach the Court.

3. The defendants when summoned, resisted the suit through submission of written statements, wherein several legal as well as factual objections were raised. From the divergent pleadings of the parties the learned Trial Court framed issues and both the parties were given full opportunity to adduce their evidence.

After recording of partial statement of Patwari Halqa Mauza Aziz Abad as PW-1, the suit of plaintiff was dismissed in default vide order dated 28.04.2022, however, the same was later on restored with cost of Rs.2000/- vide order dated 13.10.2022. Subsequently, the defendants/petitioners moved an application for return and rejection of the plaint. After procuring the reply and hearing arguments of both the parties, the learned Trial Court vide order dated 12.01.2023 issued notice to the Patwari Halqa for requisitioning "Goshwara-e-Malkiyat" of the parties. The Patwari Halqa appeared before the court and apprised him that Revenue Estate of Mauza Aziz Abad had been made online and the latest record is with STC Department. Thereafter, the parties were directed to obtain the certified copies of the Jamabandi Zer-e-Kar alongwith Goshwara-e-Malkiyat. The same were submitted by the plaintiffs/respondents. The said documents were made part and parcel of the record vide order dated 11.3.2023. On the next date of hearing, the detailed Jamabandi of Khata No.162/158, 165/161, 168/164, 169/165, 170/166 and 171/167 of Mauza Aziz Abad was produced by the petitioners/defendants' side which were also placed on file and exhibited as Ex.D-1 under Order-XIII Rule-4 CPC. Afterwards, the learned Trial Court decided the suit as follows with the summary judgment

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“Plaintiffs were declared as co-sharer in the suit property and were held entitled only to its symbolic possession with the dismissal of their prayer for possession while the decree of perpetual injunction was also granted to them”.


4. The petitioners being discontented filed a Civil Appeal bearing No.52/13 of 2023 before the Appellate Court, who also maintained the summary judgment and decree of the learned Trial Court vide its order dated 15.04.2023. Hence, this civil revision petition.

5. Arguments of learned counsel for both the parties heard and perused the available record with their valuable assistance.

6. It is the contention of respondents/plaintiffs that they being the legal heirs of late Mst. Zojan widow of Syed Ali Shah and are entitled to receive their shares in her legacy. They further contended that the defendants/petitioners executed a fake and fictitious sale deeds in respect of suit property, which are liable to cancellation.

7. Perusal of revenue record reveals that the suit property was originally the ownership of one Muhammad Afzal Khan (herein predecessor in interest of parties). Patwari Halqa appeared as PW-1, who produced the inheritance mutation No.881 dated 19.3.1973 as Ex.PW-1/1, shows that his legacy was devolved upon his widow Mst. Maryam, tow sons Muhammad Saeed (here father of the

petitioner/defendant Sharafat), Abdul Majeed (not party to the suit) and two daughters Mst. Zojan (herein mother of respondents/plaintiffs) and Mst. Shabnama (not party to the suit). Consequently, plaintiffs/respondents inherited the suit property from Mst. Zojan and the defendant/petitioner Sharafat from his father Muhammad Saeed. The said Sharafat through unregistered deed sold out some land out of his share to defendant/petitioner namely Basheer, which he further transferred to defendants No.3 to 7. Beside this, the petitioners/defendants categorically admitted in their written statement that the respondents/plaintiffs are the legal heirs of Mst. Zojan. They further admitted that the suit property has not been partitioned officially.



8. The revenue record clearly enunciate that the respondents/plaintiffs are co-sharers in the suit land, so, the decision of both the courts that declaration cannot be granted to the respondents/plaintiffs as nobody has usurped their right, is not open to any exception. Both the Courts below also rightly not granted permanent injunction as permanent injunction cannot be granted against a co-sharer. As for as findings of both Courts below about possession of land needs no interference as by now it is trite law that no suit for declaration, permanent injunction and possession

could be filed by a co-sharer against other co-sharer and only remedy is for him to ask for partition.

9. As for as finding of two Courts below about not changing the nature of suit property is concerned, it needs no interference for the reason if valuable undivided property's nature is changed from agriculture to constructed one and also third party interests intervened, such fact would lead to multifariousness of proceedings even if petitioners' undertaking as regards the imminent construction was accepted. Reliance in this respect is placed on the case of "Ali Gohar Khan Vs. Sher Ayaz and others" (1989 SCMR 130), the relevant portion of the same is reproduced as under: -

"The question now is whether a co-sharer in such a situation can deal with a joint property in the manner he likes without the express permission of other co-sharers and to their detriment. The answer obviously is in the negative as it is a settled principle of law that in case of joint immovable property each co-sharer is interested in every inch of the subject-matter irrespective of the quantity of his interest. A co-sharer thus will not be allowed to act in a manner which constitutes an invasion on the right of the other co-sharers. A co-sharer in possession of a portion of the joint property, therefore, cannot change the nature of the property in his possession unless partition takes place by metes and bounds."

Similarly, reliance in this respect is also placed on the case of Zeenat Begum and 3 others. Vs. Muhammad Yaqoob Khan and 3 others [2009 CLC 92 (Peshawar)], it was held that: -

“a co-sharer cannot be allowed to alter the nature of the joint land unless it is partitioned.”

10. Hence, the suit has been rightly decreed in favour of respondents/plaintiffs and the appeal against the same was also rightly dismissed by the learned Appellate Court by appreciating the evidence/revenue record in its true prospective.

11. It is by now well settled that concurrent findings of facts recorded by the courts below, which are based on proper appreciation of evidence, oral and documentary produced by the respective parties before the learned Trial Court, are not liable to be interfered with in revisional jurisdiction under Section 115 CPC. In this respect, reliance is placed on the case of Alamgir Khan through L.Rs and others. Vs. Haji Abdul Sittar Khan and others (2009 SCMR 54). Likewise, in the case of Moulvi Muhammad Azeem. Vs. Alhaj Mehmood Khan Bangish and another (2010 SCMR 817) it was held that: -

“It is also settled principle of law that findings on the question of fact or law, however, erroneous the same may be, recorded by any Court of competent jurisdiction, cannot be interfered with by the High Court, in exercise of its revisional jurisdiction under section 115, C.P.C unless such finding suffers from jurisdictional defect, illegality, or material irregularity.”

12. For what has been discussed hereinabove, I find no illegality or material irregularity of jurisdictional defect in the impugned judgments of the learned Courts below calling for interference.

Resultantly, this revision petition is hereby dismissed in *limine*.

Announced

04.04.2025

Imran, Steno



JUDGE

(S.B) Hon'ble Mr. Justice Kamran Hayat Miankhal