SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction**]**

PRESENT:
Mohammad Azam Khan, C.J.
Masood A. Sheikh, J**.**

Civil Appeal No.87 of 2015
(PLA filed on 18.11.2014)

Abdul Karim s/o Sufi r/o Sari Dara, Tehsil and District Muzaffarabad.

……APPELLANT

VERSUS

1. Sain,
2. Muhammad Din sons of Alam Din,
3. Muhammad Din,
4. Muhammad Maskeen sons of Sain Muhammad Residents of Seri Dara, Tehsil and District Muzaffarabad.
5. Revenue Department, through Secretary Revenue Azad Jammu & Kashmir Muzaffarabad.
6. Commissioner, Settlement Muzaffarabad.
7. Commissioner, Revenue Muzaffarabad.
8. Mohtamum Settlement Muzaffarabad.
9. Deputy Commissioner, Collector Muzaffarabad.
10. Tehsildar, Muzaffarabad.

11. Gardawar Halqa Seri Dara, Tehsil and District Muzaffarabad.

12. Patwari Halqa Seri Dara, Tehsil and District Muzaffarabad.

…..RESPONDENTS

[On appeal from the judgment & decree of the High Court dated 15.10.2014 in Civil Appeal No.151/2012]

FOR THE APPELLANT: Meer Tanveer Hussain, Advocate.

FOR THE RESPONDENTS: Mr. Muhammad Hafeez Bhatti & Sardar Muhammad Riaz Khan, Advocates.

Date of hearing: 17.05.2016.

JUDGMENT:

Mohammad Azam Khan, C.J.– The plaintiff-appellant filed a suit for declaration and perpetual injunction against the defendant-respondents in the Court of Senior Civil Judge, Muzaffarabad on 13th August, 2004 in respect of the land measuring 6 *kanal*, 11 *marla*, comprising survey No.1309. He also filed another suit for recovery of possession of the same land under section 9 of the Specific Relief Act, 1877, on 29th April, 2005. Both the suits were consolidated. After necessary proceedings,

the trial Court dismissed both the suits. An appeal filed before the District Judge Muzaffarabad was dismissed. Second appeal before the High Court also met the same fate on 15th October, 2014, hence this appeal by leave of the Court.

2. At the outset, Mr. Muhammad Hafeez Bhatti, Advocate, counsel for the respondents raised a preliminary objection that the appeal is not competent because the copies of relevant documents appended with the memorandum of petition for leave to appeal have not been obtained by the appellant himself, rather these have been obtained by an unconcerned person, therefore, the requirements of order XIII, Rule 3, of the Supreme Court Rules, 1978, are not fulfilled.

3. Meer Tanveer Hussain Advocate, counsel for the appellant submitted that the copies have been obtained by Imtiaz Hussain who is attorney of the appellant, Abdul Karim. The appeal has competently been filed.

4. We have perused the record. The copies of the mandatory documents i.e. copies of the impugned judgment and memorandum of appeal in the High Court,

have been obtained by Imtiaz Hussain, who is attorney of the appellant. There is also a copy of power of attorney annexed with the petition for leave to appeal. The appeal has competently been filed. The objection is over-ruled.

5. Meer Tanveer Hussain, Advocate counsel for the appellant submitted that all the three Courts committed misreading and non-reading of the record. He referred to the document annexure "PA", the record of rights pertaining to year 1998-99 and submitted that the name of the appellant is entered in the column of possession and he is in possession of the land. The respondents have snatched the possession of the said land six months prior to filing of the suit. He requested for acceptance of appeal.

6. Mr. Muhammad Hafeez Bhatti, Advocate, counsel for the respondents, submitted that the appellant filed two suits; one for declaration and perpetual injunction and the other for possession under section 9 of the Specific Relief Act, 1877. No appeal lies against the decree of the trial Court passed under section 9 of the Specific Relief Act, 1877. The suit under section 9 was dismissed by the trial Court. The appellant filed an appeal

before the District Judge. The appeal before the District Judge was not competent. It was liable to be dismissed being not competent. The District Judge dismissed the appeal on merit. Second appeal was dismissed by the High Court which was also not maintainable. The learned counsel submitted that on merit the two Courts below recorded concurrent finings of facts. The High Court affirmed the same. The concurrent findings of facts recorded by the two Courts below and affirmed by the High Court are immune from interference by this Court. He further submitted that the appellant and the respondents are co-sharers in the land. The decree of perpetual injunction cannot be passed against a co-sharer. He requested for dismissal of the appeal.

7. We have heard the learned counsel for the parties and perused the record. The plaintiff-appellant herein, filed two suits: one for declaration and perpetual injunction on 13th August, 2004 in respect of land measuring 6 *kanal* 11 *marla*, comprising (old) survey Nos.870 and 871 (new) 1309, to the effect that he is owner in possession of the land measuring 6 *kanal* and 11 *marla*

along with the *shamilat-deh* land measuring 3 *kanal* 8 *marla*. He filed another suit in respect of the same land on 29th April, 2005, under section 9 of the Specific Relief Act, 1877, for possession alleging therein that the defendants have snatched the possession by cutting grass in March, 2005. The trial Court dismissed both the suits through judgment and decree dated 26th December, 2011. The appeals filed by the appellant before the District Judge, Muzaffarabad and the High Court have been dismissed.

8. It may be observed that under section 9 of the Specific Relief Act, 1877, if any person is dispossessed without his consent, of immovable property otherwise than in due course of law, he may file a suit for recovery of possession and the period of limitation for such suit is 6 months. For proper appreciation section 9 is reproduced as under:-

> "9. **Suit by person dispossessed of immovable Property.** If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.

> Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.
>
> No suit under this section shall be brought against the Central Government or any Provincial Government.
>
> No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.”

A perusal of the above reproduced section reveals that if a person is dispossessed of the immovable property without his consent, he may file a suit within a period of 6 months for recovery of possession and it is not necessary to establish the title in the property for recovery of possession. It is sufficient that a person is successful in proving that he has been dispossessed from the land within a period of 6 months. The statutory provision in categorically terms provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. The said section also bars a review from any order or decree passed under this section. A plaintiff suing for possession has to prove that; (a) he was in possession of the land; (ii) he has been dispossessed by the defendant; (iii) the dispossession is not in accordance with the law

and; (iv) the dispossession has taken place within a period of 6 months. All the three Courts have observed that the appellant failed to prove his possession on the land and dispossession in March, 2005.

9. Under section 9 of the Specific Relief Act, 1877, an appeal is not competent from the order or decree of the trial Court. When an appeal does not lie under the law; whether, the same can be converted into a revision petition or not. It is settled law that if an appeal is filed which was not otherwise competent and the period of limitation is available and if the Court comes to the conclusion that the order has been passed in violation of law and the subordinate Court has failed to exercise the jurisdiction vested in it, then the appeal may be converted into revision petition. The appellate Court may exercise revisional jurisdiction and decide the same while treating it as a revision petition. It appears from the record that no request was made to the District Judge for treating the appeal as a revision petition, thus the appeal from the judgment and decree of the trial Court whereby suit No.422 of 2005 was dismissed, was not competent. It was

liable to be dismissed on the ground that no appeal lies in the suits filed under section 9 of the Specific Relief Act, 1877. Though the District Judge dismissed the same on merit but we hold that the appeal was not competent before the District Judge.

10. As regard the appeal arising out of suit No.420 of 2004, there are concurrent findings of facts recorded by the two Courts below which have been affirmed by the High Court. The only argument of the counsel for the appellant is that the document, annexure "PA" has not been considered by the Courts below. Had the Courts below gone through this document, the suit of the appellant would have been decreed. We have carefully perused the judgment of the trial Court as well as the first appellate Court. While resolving issue No.1, the trial Court has discussed Ex. "PA" the record of rights pertaining to year 1998-99. The argument of the counsel for the appellant that Ex. "PA" was not considered and there is misreading of the record, has no force. The two Courts below have recorded concurrent findings of facts based on the record including Ex. "PA" and the High

Court has affirmed the findings recorded by the two Courts. There is no misreading or non-reading of the record.

The result of the above discussion is that the appeal has no merits, it is hereby dismissed with no order as to costs.

CHIEF JUSTICE **JUDGE**

Muzaffarabad.
.05.2016.