

FOR THE RESPONDENTS: Mr. Muhammad Mushtaq
Chaudhary, Avocate.

Date of hearing: 25.10.2016.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— This appeal by leave of the Court has arisen out of the judgment of the High Court dated 30.04.2015 through which the appeal filed by respondents No. 1 to 3 has been accepted.

2. The brief facts of the case are that the appellant filed a suit for perpetual injunction in the Court of Civil Judge Dudyal, in respect of *Shamilat Deh* land measuring 1 *kanal* 1 *marla*, bearing survey No. 1884 min, situate at *Mozia* Chatarwara, Tehsil Dudyal. It was claimed that the land in dispute is in the possession of the plaintiff as owner in the village. The defendant-respondents are threatening to dispossess him from the said land. The defendant-respondent with the connivance of the revenue officials are intending to make changes in the revenue record. He also prayed that being an owner in the village he is entitled to retain possession of the *Shamilat* land to the extent of his share. His share in the *Shamilat* land comes to 1

kanal and 8 *marla* in accordance with law and at present he is in possession of 1 *kanal* 1 *marla*. After necessary proceedings, the learned trial Court dismissed the suit for want of jurisdiction and cause of action. The appellant filed an appeal before the Additional District Judge, Dudyal. The learned Additional District Judge vide judgment and decree dated 30.03.2011 accepted the appeal and restrained the defendant-respondents from evicting the plaintiff-appellant from the suit land as well as from making any change in the revenue record. However, on appeal filed by respondents No. 1 to 3 the learned High Court through the impugned judgment and decree dated 30.04.2015 while setting-aside the judgment of the Additional District Judge restored that of the trial Court, hence this appeal by leave of the Court.

3. Sardar Ejaz Nazir Khan, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that the trial Court as well as the High Court has failed to properly attend the proposition involved in the case. It has been wrongly held that the Civil Court has no jurisdiction. According to the settled law, the Civil Court is vested with the

jurisdiction to entertain the suit for perpetual injunction. The plaintiff-appellant has proved his suit through legal evidence. He submitted that if one of the prayed relief is not admissible the party cannot be deprived of the other prayed relief which is admissible and proved. The plaintiff-appellant is admittedly land-owner in the village and possession of the suit property. The first appellate Court has passed speaking judgment which is consistent according to law and through the impugned judgment the High Court without any legal justification and reason while setting-aside the judgment of the first appellate Court, restored the judgment of the trial Court. He referred to the cases reported as *Gulab Butt and others vs. Mir Abdul Ghani* [2009 SCR 382] and *Muhammad Maroof vs. Muhammad Zareef Khan and another* [PLJ 2012 SC(AJ&K) 21] and submitted that while accepting this appeal and setting-aside the judgment of the High Court the judgment of the first appellate Court may be restored.

4. Conversely, Mr. Muhammad Mushtaq Chaudhary, Advocate, the learned counsel for the respondents forcefully defended the impugned

judgment and submitted that the plaintiff-appellant has got no locus standi and cause of action. Neither he is in possession of the suit property nor has any legal right or interest in it. The matter is already subjudice before the competent revenue Court for partition of the common *Shamilat* land. In such state of affairs, the Civil Court has got no jurisdiction and the suit was not competent in its present shape. The plaintiff has failed to bring on record any legal evidence to prove his suit and averments of the plaint, thus, the suit has been rightly dismissed for want of proof and lack of jurisdiction. He referred to the case reported as *Barkat Ali and another vs. Sultan Mehmood and others* [2009 SCR 158].

5. We have considered the arguments of the learned counsel for the parties and examined the record made available. The plaintiff-appellant filed the suit with the following prayer:-

"اندریں حالات استدعا ہے کہ ڈگری حکم امتناعی دوائی بدیں مضمون کہ اراضی شاملات تعدادی ایک کنال 1 مرلہ مندرجہ کھیوٹ نمبر کھیوٹ 372/368 نمبر کھاتہ 1760/1741 نمبر خسرہ 1884 من بحد و در بعد ذیل جانب شمال نمبر خسرہ 1603 مفید عام غیر ممکن تالاب جانب جنوب بقیہ رقبہ نمبر خسرہ 1884 شارع عام جانب مشرق نمبر خسرہ مذکور کا بقیہ رقبہ شارع عام جانب غرب نمبر خسرہ 1604 ڈپنری غیر ممکن شفاخانہ حیوانات واقع موضع چھترہ تحصیل ڈڈیال ضلع میرپور ملکیتی و مقبوضہ مدعی ہے جس سے مدعا علیہم کا کوئی تعلق واسطہ نہ ہے۔ مدعا علیہم نمبر 1 تا 4 اراضی متدعویہ میں حقوق جتانے، مداخلت کرنے اور قبضہ کرنے سے اور مدعا علیہم نمبر 5 تا 7 مدعا علیہم نمبر 1 تا 4 سے ساز باز

کر کے ریکارڈ مال میں تغیر و تبدل کر کے حقوق مدعی کو نقصان پہنچانے اور کسی کو کسی بھی طریقہ سے ایوارڈ والاٹ کرنے سے ہمیشہ کے لیے باز و ممنوع رہیں۔ بحق مدعی بخلاف مدعا علیہم معہ خرچہ مقدمہ صادر فرمائی جائے۔ نیز جو دیگر دادرسی حالات و واقعات کے مطابق قرین انصاف معزز عدالت ہو بھی بخشی جائے۔"

The trial Court after completion of required proceeding, framing of issues and production of evidence by the parties, vide judgment dated 31.12.2010 dismissed the suit for want of proof and jurisdiction. However, on first appeal the learned Additional District Judge decreed the suit in the following terms:-

"لہذا بمنظوری اپیل اپیلانٹ فیصلہ و پرچہ ڈگری مصدرہ 2010-12-31 منسوخ کی جا کر ڈگری حکم امتناعی دوائی تا تقسیم شاملات نسبت اراضی مندرجہ خسرہ نمبر 1884 تعدادی ایک کنال ایک مرلے واقع موضع چھترہ تحصیل ڈڈیال بحق اپیلانٹ بخلاف ریسپانڈنٹس نمبر 1 تا 7 بدیں طور صادر کی جاتی ہے کہ ریسپانڈنٹس اراضی متدعوئیہ میں مداخلت کرنے قبضہ کرنے یا اپیلانٹ کو without due course of law بیدخل کرنے اور، موقع کے مغائر اندراج ریکارڈ مال کرنے سے باز رہیں۔ حکم سنایا گیا۔"

Through the impugned judgment, the learned High Court while setting-aside the judgment of Additional District Judge restored that of trial Court. The appellant-plaintiff in his plaint has prayed for multiple reliefs. According to the celebrated principle of law, the Court has to determine that as to which of the reliefs, according to the facts and law of the case, can be granted and which has to be refused but the whole suit cannot be dismissed if some of the prayed reliefs

are not admissible. In this case, the main relief prayed for is of perpetual injunction for restraining the respondents from interference and threatened invasion of the plaintiff's right or enjoyment of the property. To this extent, now the law is almost settled that the jurisdiction only vests in the civil Court. There is a chain of judgments on this principle one of which has already been referred by the learned Additional District Judge in the judgment i.e., the case reported as *Gulab Butt and others vs. Mir Abdul Ghani* [2009 SCR 382]. We would like to further adhere to the statutory provisions dealing with the subject i.e., section 54 of the Specific Relief Act, 1877 which reads as follows:-

"54. Perpetual injunctions when granted. Subject to the other provisions contained in, or enforced to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in following cases (namely):-

- (a) where the defendant is trustee of the property for the plaintiff;

- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
 - (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
 - (d) where it is probable that pecuniary compensation cannot be got for the invasion;
 - (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.
- Explanation: For the purpose of this section a trade-mark is property."

(underlining is ours)

The phraseology of this statutory provision clearly speaks that it is not necessary for the plaintiff to prove actual invasion/encroachment or trespass upon the rights of the plaintiff made by the defendant rather under this provision even the Court can grant perpetual injunction if there is threat of invasion to the plaintiff's right or to the enjoyment of the property. Thus, in our opinion the trial Court as well as the High Court has over sighted this aspect of the matter and taken the impression that for grant of perpetual injunction the actual invasion, encroachment or trespass upon the rights is necessary ingredient, whereas, threat of invasion, encroachment or trespass upon the rights of the plaintiff relating to the enjoyment of the property is also justified for grant of relief of perpetual injunction.

As the evidence produced by the parties clearly indicates the threat of invasion to the right and enjoyment of the property of the plaintiff, therefore, we are unable to agree with the findings recorded by the trial Court and the High in this regard. In our opinion, the conclusion drawn by the first appellate Court is quite consistent with the principle of law and justice which has been unnecessarily set-aside by the High Court.

6. The examination of the impugned judgments of the High Court as well as the trial Court also reveals that the conclusion has been drawn on the impression that the plaintiff-appellant sought remedy against the revenue authorities for restraining them from partition proceeding or performing functions according to law. In the light of pleadings of the parties and evidence brought on record, this conclusion appears to be misconceived. In the prayer clause, the remedy sought regarding refraining from awarding the land appears to be uncalled for. The rest of the remedy cannot be treated to be beyond the competence of the civil Court. As we have already reproduced hereinabove the relief granted by the first appellate Court which clearly

speaks that the respondents will not interfere with or eject the plaintiff-appellant from the land without due course of law or make entries in the record against on ground realities. Moreover, the decree has also been granted conditionally till partition of the land by the competent forum. Through this decree neither the proceedings of partition have been interfered with nor restrained, infact, the proceedings have been affirmed and the decree has been conditionally granted till such partition proceeding is completed. Same like, the revenue authorities have not been prohibited from performing their functions according to law as it has been clearly mentioned that the rights of the appellant should not be interfered without due course of law. The due course of law means that the functions and duties of the revenue authorities whatever may be, have not been interfered with by the first appellate Court. The opinion formed by the High Court and the trial Court appears to be mere imaginary and without deeply scrutinizing the factual and legal propositions involved in this case. Therefore, such like opinion which is not consistent with law and facts of the case, cannot sustain.

7. For the above stated reasons while accepting this appeal and setting-aside the impugned judgment of the High Court the decree passed by the first appellate Court stands restored.

This appeal stands accepted. No order as to costs.

Mirpur,
27.10.2016

JUDGE
(J-I)

JUDGE
(J-II)