SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.

Ch. Muhammad Ibrahim Zia, J.

Civil Appeal No.138 of 2014

(PLA filed on 14.4.2014)

1. Said Akbar,
2. Jamaat Ali, sons,
3. Mst. Anwar Begum,
4. Mst. Parveen Begum, daughters of Karam Elahi.
5. Mst. Shah Begum, widow of Karam Elahi, daughter of Mohammad Razzzaq,
6. Mst. Safaida Begum, widow of Mohammad Razzaq.
7. Zulqarnain Razzaq,
8. Hussain Razzaq, sons,
9. Samman Razzaq daughrer of Mohammad Razzaq,
10. Mohammad Shakoor,
11. Mohammad Sharif,
12. Mohammad Khan, sons of Raju, caste Jat, r/o Panakha, Tehsil and District Kotli.

.... APPELLANTS

VERSUS

1. Muhammad Shakoor (deceased) represented by;
   i) Maqsood Begum, widow of Muhammad Shakoor, r/o Panakha, Tehsil and District Kotli.
2. Mohammad Sadiq son of Abdullah, caste Qureshi r/o Panakha, Tehsil and District, Kotli.

3. Mohammad Saleem s/o Hassan Mohammad, caste Malik r/o Klah, Tehsil and District Kotli.

..... RESPONDENTS

(On appeal from the judgment and decree of the High Court dated 22.2.2014 in Civil Appeal No. 93 of 2007)

FOR THE APPELLANTS: Mr. Muhammad Reaz Alam, Advocate:

FOR RESPONDENT NO.3: Raja Imtiaz Ahmed Khan, Advocate.

Date of hearing: 22.12.2016.

JUDGMENT:

Mohammad Azam Khan, C.J— The captioned appeal by leave of the Court arises out of the judgment and decree of the High Court dated 22.2.2014, whereby the appeal filed by the appellants, herein, has been dismissed.

2. The predecessor-in-interest of appellants No.1 to 5 filed a declaratory suit in respect of *Shamilat Deh* land falling in survey No. 340 to the effect that they are in possession of the same since long. They challenged the

entries made in the revenue record whereby they were entered as *Ghair Mauroos* being illegal against the record and law. They also challenged the sale-deed registered on 20th June, 1992 executed by Muhammad Shakoor and others in favour of Malick Muhammad Saleem. After necessary proceedings, the trial Court dismissed the suit on 19th August, 2000. The plaintiff filed an appeal in the Court of District Judge, Kotli. The learned District Judge, Kotli, through the judgment and decree dated 31st October, 2007, dismissed the appeal. The plaintiff filed second appeal in the High Court. A learned single Judge in the High Court dismissed the appeal through the impugned judgment and decree dated 22nd February, 2014, hence this appeal by leave of the Court.

3. Mr. Muhammad Reaz Alam, Advocate, the learned counsel for the appellants argued that the judgment of the High Court as well as the Courts below are against law and the record. The appellants are owners in the village, as

such, they are entitled for share in the *shamilat deh* land. He referred to the record of rights pertaining to year 1969-70, Exh. "PA". He submitted that the land is admittedly a *shamilat deh* land and every owner in the village is sharer in the *shamilat deh* land. The learned counsel submitted that the appellants are in possession of the land since long and an owner in the village cannot be entered as *Ghair Mauroos* in revenue record. He relied upon the cases reported as *Muhammad Bashir and 6 others vs. Azad Government of the State of Jammu & Kashmir and 27 others* (2013 SCR 185), *Raja Asmatullah Khan vs. Qudratullah and another* (2014 SCR 1535) and *Muhammad Rasheed and 7 others vs. Muhammad Mushtaq Khan and 5 others* (2016 SCR 505).

In the case reported as *Muhammad Bashir and 6 others vs. Azad Government of the State of Jammu & Kashmir and 27 others* (2013 SCR 185), this Court observed that under the law every inhabitant of the village is owner of

shamilat deh land according to proportionate share and on the basis of possession over the *shamilat deh* land. No decree of adverse possession can be passed. While relying on 2008 SCR 207, it was further observed that the Courts should avoid to grant a declaration in respect of possession of crown land and *shamilat deh* land without first determining the title of owners to transfer and the exclusive possession.

In the case reported as *Raja Asmatullah Khan vs. Qudratullah and another* (2014 SCR 1535), it was observed that a decree of ownership regarding *shamilat* land on the basis of agreement of a private person on cognovits cannot be granted.

In the case reported as *Muhammad Rasheed and 7 others vs. Muhammad Mushtaq Khan and 5 others* (2016 SCR 505), it was observed that it is well settled principal of law that declaration cannot be claimed on the basis of possession over the *shamilat deh* land until and unless the same is partitioned and specific

certificate by the Collector is granted. It was further held that no decree of ownership regarding *shamilat deh* land on the basis of any agreement by a private person on cognovits can be granted.

4. While controverting the arguments, Raja Imtiaz Ahmed Khan, Advocate, the learned counsel for respondent No.3, submitted that there are concurrent findings of facts and concurrent findings of facts recorded by the two Courts below and affirmed by the High Court cannot be disturbed by this Court. The learned counsel argued that the disputed land is admittedly a *shmilat deh* land. The appellants were occupancy tenants in the village, who have become owners after the enforcement of Land Reforms Act, 1960. In the record of rights, Exh. "PA", they are entered as owners. The document Exh. "PC" relied upon by the appellants is a record of rights of *shamilat deh* land, pertaining to year 1969-70, whereby Abdullah and others are shown as owners and the appellants are

entered as *Ghair Mauroos.* The learned counsel argued that sections 8, 9, 12, 14 and 16 of the land Reforms Act, 1960 have been declared un-Islamic by the Azad Jammu & Kashmir Shariat Court, in the case titled *Major Muhammad Ayub vs. Azad Government* (Shariat Petition No. 2/1989 decided on 12th January, 1991). The Azad Government challenged the said judgment by way of appeal and the Supreme Court in the case titled *Azad Government vs. Raja Waleed Khan and others* (1993 SCR 307), dismissed the appeal and declared the provisions of above referred sections against the injunctions of Islam. The learned counsel further relied upon the case reported as *Khushi Muhammad vs. Fateh Dad*, decided by the Azad Jammu & Kashmir High Court in Civil Appeal No. 20/1972 decided on 1.10.1972.

5. We have heard the learned counsel for the parties and perused the record. The land in dispute is admittedly a *shamilat deh* land. In the record of rights pertaining to year 1969-70 (Exh.

"PC"), which has been challenged by the plaintiffs, Abdullah and others, are shown as owners while the appellants are entered as *Ghair Mauroos.* The plaintiffs claimed that in the record of rights pertaining to year 1969-70, Exh. "PA", they are owners in the village, as such, they have a right of share in the *shamilat deh* land. They claimed their possession on the *shamilat deh* land since long. For proving their possession, they produced record of rights Exh. "PE" pertaining to year 2003-2004 *Bik*, record of rights pertaining to year 1961-62, Exh. "PF" and also produced *Khasra Girdawari.* In the record of rights, Exh. "PE" and "PF" pertaining to year 2003-2004*Bik* and 1961-62, Abdullah and others are shown as owners and appellants are shown in illegal possession (*Ghair Mauroos).* The defendants in the written statement have taken a specific plea that the defendants-respondents and proforma respondents are owners in the village. The plaintiffs/appellants, herein, were occupancy tenants, (*Mauroos),* who have become

owners in village after the enforcement of Land Reforms Act, 1960. New owners have no right in the *shamilat deh* land. The trial Court framed following issues:-

"۱۔ کیامدعیان اراضی شاملات دہہ موضع پناکھ میں بطور مالکان دہہ حسب رسد کھیوٹ حصہ داران ہیں (بذمہ مدعیان)

۲۔ بصورت اثبات تنقیح نمبر۔۱ کیامدعیان اراضی متدعویہ پر قابض ومتصرف ہیں اور عمل گرداوری صورت موقع کے خلاف ہے۔اگر ہاں تو کب سے اور کہاں تک (بذمہ مدعیان)

۳۔ کیا ہبہ نامہ عنوانی شکورو غیرہ بنام سلیم خلاف قانون اور ایکٹ شاملات دہہ کے منافی ہے۔ (بذمہ مدعیان)

۴۔ کیاعدالت ہذا کو اختیار سماعت مقدمہ ہذا نہ ہے۔ (بذمہ مدعا علیہم)

۵۔ کیامقدمہ میں جملہ اہالیان دہہ کو فریق نہ بنایا گیا ہے اگ ہاں تو اس کا دعوی پر کیا اثر ہے۔"

The suit was dismissed. The first and the second appeals also met the same fate.

6. It is admitted between the parties that the appellants were occupancy tenants (*Mauroos)* in the village and respondents were owners in the village. After the enforcement of Land Reforms Act, 1960, the appellants have become owners in the village. The land in dispute is *shamilat deh* of village in the record of rights pertaining to year 2003-2004 *Bik*, Exh. "PE" and in the record of rights pertaining to

year 1960-61 Exh., “PF” the respondents are shown in illegal possession (*Ghair Mauroos).* It is a cardinal principal of law that every owner in the village is sharer in the *shamilat deh* land and if he is in possession of *shamilat deh* land, his entry shall be made as owner and not as *Ghair Mauroos*, but the position in the case in hand is quite different. The claim of the plaintiffs-appellants is that they are in possession of the land since the time of their forefathers and they have relied upon the documents i.e. record of rights pertaining to year 2003-2004 *Bik* and record of rights pertaining to year 1960-61, Exh. “PE” and “PF” respectively. In both the record of rights, Abdullah Khan and others are entered as owners while the plaintiffs-appellants are entered as *Ghair Mauroos.* They claimed that after the enforcement of Land Reforms Act, 1960, they have become owners and they have a right to be treated as owners of the land and sought declaration to that effect and correction of the entry as *Ghair Mauroos*.

7. The Land Reforms Act, was promulgated in April, 1960. The proposition came under consideration of the Azad Jammu &Kashmir High Court in a case titled *Khushi Muhammad vs. Fateh Dad and others (*Civil Appeal No. 20/1972 decided on 1st October, 1972) in the circumstances that one Fateh Dad sold *shamilat deh* land to one Raheem Dad on 12th September, 1966. Khushi Muhammad challenged the said sale-deed on the ground that he is an owner in the village, as such, he is sharer in the *shamilat deh* land. In the written statement, the defendants took the plea that he was occupancy tenant and has become owner in the result of Land Reforms Act, 1960. He is a new owner. He is not entitled for share in the *shamilat deh* land. The arguments were heard on preliminary issue. The suit was dismissed. The appeal filed by the plaintiff was also dismissed. Second appeal was also dismissed by the High Court and it was observed as under:-

> "…As the courts below have found, the appellant-cum-plaintiff was merely an

> occupancy tenant in the village prior to the promulgation of the land Reforms Act in April, 1960. There is on the file a copy of the 'Wajib-ul-Arz' of this village for the year 1961-1962 (Bikrami), which provides that the shamilat is the joint property of the owners in accordance with their ratio in khewat. It means that the occupancy tenants are not entitled to any share in the shamilat and this is in conformity with the practice universally obtaining in this district. This fact could not be denied by the appellant. His contention, however, has been that he had become an owner in the village under the land Reforms Act. That is no doubt true; but all the same it makes no improvement in his status because under the Land Reforms Act he becomes owner only of that land of which he was the occupancy tenant. Shamilat continues to remain in the exclusive ownership of that body of proprietors who were entered as such, prior to the coming into force of the land Reforms Act. Under these circumstances, the appellant has no locus standi."

The provisions of Land Reforms Act, 1960 were challenged by way of Shariat Petition in the High Court in the case titled *Maj. (Rtd) Muhammad Ayub Khan vs. Azad Government and others* (Shariat Petition No.2/1989 decided on 12th January, 1991), wherein, in para 8, it was observed as under:-

> "8. It is undenied that according to the law occupying the filed prior to introduction of the Land Reforms Act and the questioned provisions of law, Shamilat land (common land) was granted to the proprietary class of the village for use and occupation in the manner described in "Wajib-ul-Arz" prepared at the time of settlement. It is also undenied that such proprietor in the village was entitled to a proportionate share in Shamilat land relevant to his actual holding. Thus, the Revenue Authorities introduced the form "Hasab RAsad Kheewat" proportionate share to the holding in the record of Rights. Thus, an owner in the village was entitled to a share in Shamilat land in proportion to the holding owned by him. In presence of the aforesaid admitted state of facts, the proprietary class of the village alone was title-holder in Shamilat land. The class of tenants-at-will and occupancy tenants enjoyed a limited right in the tenancy. They were not invested with any right, whatsoever, in Shamilat land. In such situation, no, tenant-at-will or occupancy tenant could claim any title to uses and occupation of Shamilat land in his own independent right."

8. We respectively agree with the view expressed by the learned Judge in the High Court in the referred judgment. From the record produced by the plaintiffs-appellants, herein,

pertaining to year 2003-2004 *Bik* and 1960-61, prior to promulgation of the Land Reforms Act, 1960, the defendants-respondents are shown as owners of the land while plaintiffs-appellants are shown in illegal possession (*Ghair Mauroos*) in *shamilat deh* land, which is the subject matter of the case in hand. The illegal possession confers no right in a party. The Land Reforms Act, 1960, confers no right in *shamilat deh* land to a person who was in illegal possession of the land prior to the enforcement of Land Reforms Act, 1960. Had the plaintiffs been occupancy tenants in the *shamilat deh* land, then they would have been entitled for proprietary rights of the same in the light of the provisions contained in the Land Reforms Act, 1960. The plaintiffs were not occupancy tenants in the *shamilat deh* land. They were in illegal possession of the same, therefore, they have no right to claim share in the *shamilat deh* land. Only those persons, who were owners in the village prior to promulgation of the Land Reforms Act, 1960 are entitled to be

sharer in the *shamilat deh* land. A tenant, who is in illegal possession of the land cannot be granted the title of an owner. The trial Court and the first appellant Court recorded concurrent findings of fact that the land is in the ownership of the defendants and the appellants are in illegal possession (*Ghair Mauroos*) of the land. The High Court has affirmed the said findings. The concurrent findings recorded by the two Courts below and affirmed by the High Court cannot be interfered with if the same are based on record. There appears no misreading or non-reading of record. The appeal merits dismissal.

There appears no illegality in the judgment of the High Court and that of the Courts below. The appeal is hereby dismissed with no order as to costs.

CHIEF JUSTICE JUDGE

Muzaffarabad
.1.2017.