

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Appellate Jurisdiction)

**PRESENT:-**

Ch. Muhammad Ibrahim Zia, C.J.  
Raja Saeed Akram Khan, J.

Civil Appeal No. 372 of 2015  
(PLA filed on 13.03.2015)

Muhammad Bashir Khan s/o Bloch Khan, r/o  
Banjonsa, Tehsil Rawalakot, District Poonch.

.... APPELLANT

**VERSUS**

1. Muhammad Sarwar Khan, s/o Haseem Ullah Khan, r/o Banjonsa, Tehsil Rawalakot, District Poonch.
2. Nazir Jan, alias Jeera Begum, widow of Muhammad Shareef r/o Banjonsa, Tehsil Rawalakot, District Poonch.
3. Muhammad Younas s/o Muhammad Shareef r/o Banjonsa, Tehsil Rawalakot, District Poonch.
4. Anees Ahmed s/o Muhammad Shareef, r/o Banjonsa, Tehsil Rawalakot, District Poonch.
5. Salamat Jan, d/o Muhammad Shareef, r/o Banjonsa, Tehsil Rawalakot, District Poonch.

6. Karamat Jan, d/o Muhammad Shareef r/o Banjonsa, Tehsil Rawalakot, District Poonch.
7. Salma daughter of (No.2 to 7 legal heirs of) Muhammad Shareef, r/o Banjonsa Tehsil Rawalakot, District Poonch.
8. Muhammad Azam Khan s/o Fazal Din, r/o Banjoosa, Tehsil Rawaakot, District Poonch.
9. Additional District Judge Poonch Rawalakot.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 11.02.2015 in Writ Petition No.1332/2012)

FOR THE APPELLANT: Mr. Muhammad Yaqoob  
Khan Mughal, Advocate.

FOR THE RESPONDENTS: Barrister Humayun  
Nawaz Khan, Advocate.

Date of hearing: 14.03.2017

**JUDGMENT:**

Ch. Muhammad Ibrahim Zia, C.J.- This appeal by leave of the Court has been filed against the judgment of the High Court dated 11<sup>th</sup> February, 2015, whereby the writ petition filed by the appellant, herein, has been dismissed in limine.

2. The precise facts culminating into the filing of instant appeal are that the plaintiff-appellant, herein, filed a suit for declaration and cancellation of consent decree dated 31.08.1991, against respondents No.1, 8 and predecessor of respondents No.2 to 7, herein, pertaining to the land comprising survey Nos.284, 902, 990, 887, 888, 839 min, 839 min, 849 and 930 (old), new survey Nos. 601, 1511, 1418, 1419, 1534, 1535,1772, 1773, 1540, 1541 and 1804, measuring 8 *kanal*, 12 *marla*, situate in village Banjonsa, before the Civil Judge Rawalakot Court No.II, on 18.10.2004. The suit was resisted on behalf of the respondents by filing written statement. After necessary proceedings, the trial Court dismissed the suit on the ground that in the light of provisions contained under Section 12(2), CPC, the same was not maintainable. The aforesaid order was upheld by the first and second appellate Courts, however, on appeal the judgments and orders passed by the aforesaid

Courts were set aside and the case was remanded to the trial Court by this Court vide judgment dated 8<sup>th</sup> February, 2011, for decision after recording evidence of the parties. After remand of the case the respondents moved an application for seeking an amendment in the written statement, which after seeking objections and hearing was rejected by the trial Court vide order dated 5<sup>th</sup> March, 2012. The respondents filed an appeal before the Additional District Judge which was converted into revision petition and by accepting the same solicited amendment was allowed through the order dated 11.06.2012. Against the said judgment, the appellant, herein, filed a writ petition in the High Court which was dismissed through the impugned judgment dated 11<sup>th</sup> February, 2015, hence this appeal by leave of the Court.

3. Mr. Muhammad Yaqoob Khan Mughal, Advocate, counsel for the appellant, after narration of necessary facts, submitted that the impugned judgment of the High Court as well as the Additional District Judge is against law and the facts. The respondents with *mala-fide* intention filed the application for amendment in the written statement at a belated stage just to prolong the litigation, which was rightly rejected by the trial Court but the Additional District Judge illegally accepted the revision petition and set aside the order of the trial Court. The order of the trial Court was a legal one, therefore, the question of exercising the revisional jurisdiction did not arise. The High Court also failed to properly appreciate the proposition. Thus, the impugned judgment of the High Court is not sustainable, therefore, while accepting the appeal the application for amendment in the written statement filed by the respondents may

be dismissed. Lastly, the learned counsel argued that this Court has already finally decided the fate of the suit property bearing survey No.839, vide judgment dated 08.02.2011. He requested for acceptance of appeal.

4.           Conversely, Barrister Humayun Nawaz Khan, Advocate, counsel for the respondents, seriously opposed the appeal on the ground that the reasons advanced by the counsel for the appellant regarding the extraordinary writ jurisdiction, are misconceived. The writ petition is only competent when there is any violation of law or lack of jurisdiction as under the provisions of CPC, the Courts regarding the amendment of the pleadings are vested with vast powers and such powers can liberally be exercised by such Courts for conclusive decision of the real controversy between the parties for avoiding the multiplicity of the litigation. The

trial Court order of rejection of the amendment application was totally against law and facts. He further submitted that the application was rejected solely on the ground of inordinate delay while wrongly interpreting the principal of law enunciated by this Court in the previous judgment which has been rightly set at naught by the revisional Court. As there was no violation of law and lack of jurisdiction thus the question of exercising the extraordinary jurisdiction does not arise. The judgment of the High Court is perfectly legal. This appeal has no substance therefore, liable to be dismissed.

5. We have heard the learned counsel for the parties and perused the record made available. The basic order of the trial Court reveals that the main reason advanced for rejection of the amendment application is the inordinate delay. The previous history of the

case appears to be misconception of facts as the appellant himself relied upon the judgment of this Court dated 10.2.2011, whereby while setting aside the order of the High Court the case was remanded back to the trial Court for decision on merit for recording of evidence. Thus, in this context, the proceedings before the trial Court commenced after the judgment of this Court. The record reveals that the application for amendment in the written statement was filed on 21.12.2011. In this context it does not appear that there was any inordinate delay or the proceedings in the suit were at such belated stage, on the basis of which it may be hold that the application for amendment in the written statement was filed after an inordinate delay. Same like, in the trial Court's order the reference of the judgment of this Court has no nexus with the amendment of the pleadings, thus, the order passed by the trial Court appears to be not

consistent with the principle of law and the trial Court failed to exercise the jurisdiction vested in it. In this background the Additional District Judge has rightly exercised the revisional jurisdiction. The order passed by the Additional District Judge in revision petition, neither suffers from lack of jurisdiction, nor is violative of any statutory provision of law. In this state of affairs the counsel for the respondents has rightly argued that extraordinary writ jurisdiction cannot be exercised.

6. So far the argument of the counsel for the appellant that this Court has finally decided the matter regarding the land survey No.839, also appears to be misconceived and premature. If at all, it is, so as claimed by the appellant then he has ample opportunity to raise this question before the trial Court by filing replication and

the trial Court is the ultimate Court for resolution of all these propositions.

In view of the above stated reasons, the impugned judgment of the High Court does not suffer from any illegality or infirmity, hence finding no force in this appeal, it is hereby dismissed with no order as to costs.

**CHIEF JUSTICE**  
Muzaffarabad.  
--.03.2017.

**JUDGE**

**Date of announcement: 21.03.2017**