

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT

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

Civil Appeal No. 40 of 2015

(PLA filed on 19.05.2014)

1. Azad Government of the State of Jammu & Kashmir through its Chief Secretary, having his office at Civil Secretariat, Muzaffarabad.
2. DFO Forest Department, Bagh having his office at Bagh City.
3. DFO Forest Department nearby City Bagh.

.... APPELLANTS

VERSUS

1. Muhammad Din s/o Sultan Muhammad (died), represented by:
 - (i) Noor Din,
 - (ii) Noor Hassan, sons,
 - (iii) Hanifa Begum, widow,
 - (iv) Sanwar Jan,
 - (v) Akhtar Jan,
 - (vi) Shahnaz Akhtar,
 - (vii) Kousar Shaheen,
 - (viii) Musarrat Shaheen,
 - (ix) Sagheer Jan, daughters.
2. Jamal Din s/o Kamal Din,
3. Sarwar Jan, widow of Muhammad Aslam,
4. Muhammad Azeem,
5. Khalid Hussain,

whereby the second appeal filed by the appellants, herein, has been dismissed.

2. The summarized facts of the case are that the respondents, herein, filed a declaratory suit for correction of revenue record in respect of the land comprising survey No.776/1 measuring 14 *kanal* 17 *marla*, survey No.776/2 measuring 45 *kanal* 17 *marla* and survey No.695 measuring 43 *kanal* 19 *marla*, in the Court of Civil Judge, Kahuta, District Haveli on 21.11.2000. The learned trial Court after necessary proceedings, decreed the suit through judgment and decree dated 29.08.2008. Feeling aggrieved, the appellants filed an appeal in the Court of District Judge. The learned District Judge dismissed the appeal vide judgment and decree dated 31.03.2009. Second appeal filed before the High Court has also been dismissed through the impugned judgment, hence this appeal by leave of the Court.

3. Mr. Muhammad Hanif Khan Minhas, Advocate, the learned counsel for the appellants argued the case at some length. He discussed the merits of the case and seriously objected to the

judgments of the Courts below on the grounds of jurisdiction of the Civil Court, misreading of evidence and limitation. On the point of jurisdiction, he submitted that the matter relates to the correction of entries in the revenue record. The plaintiff-respondents approached the revenue authorities but failed to justify their claim. Their application filed before the revenue authorities was rejected, thus, their suit before the civil Court was not competent. He submitted that regarding the jurisdiction of Civil Court a specific objection was raised in the written statement filed before the trial Court. According to the statutory provisions of section 172 of the West Pakistan Land Revenue Act, 1967 in such like matters only the revenue authorities are competent and the jurisdiction of the civil Court is expressly barred. In this regard, he referred to the cases reported as *Kh. Muhammad Akbar and others vs. Kh. Fateh Muhammad & others* [2000 SCR 211] and *Sardar Khan vs. Ghulam Hussain & others* [2003 SCR 77]. He further argued that even on merits, the judgments of the trial Court and the appellate Courts are not

maintainable because the same have been passed while ignoring the documentary as well as oral evidence. The judgments and decrees passed by all the Courts below are against law, hence, the same are liable to be set-aside while accepting this appeal.

4. Conversely, Syed Nazir Hussain Shah Kazmi, Advocate, the learned counsel for the respondents seriously opposed the appeal and submitted that the appellants by their conduct are estopped to file the appeal as not only the plaintiff-respondents successfully proved their version through oral and documentary evidence but the appellants, herein, have also admitted their claim. He referred to the judgment of the trial Court and submitted that the counsel for the appellants has admitted the claim of the plaintiff-respondents in the terms that; if the prayed decree is issued, the defendant-appellants have no objection. Now, they cannot turn around and take a different stand. The appellants have intentionally concealed this material fact. The instant appeal filed by them is against the stance taken by them before the trial Court. Even they have not

bothered to bring on record any valid reason or objection regarding the admission made on their part before the trial Court. So far as the merits of the case are concerned, the plaintiff-respondents have proved their case through legally admissible evidence. The trial Court has passed the judgment and decree after proper appreciation of the material brought on record. The judgments of all the Courts below clearly speak that the same are based upon solid, legal reasons and proper appreciation of the evidence. The evidence produced by the plaintiff-respondents remained unrebutted. According to the celebrated principle of law, the civil Court has to decide the issues on the basis of evidence. The objection regarding jurisdiction is also misconceived because no such objection was ever raised before the trial Court. The objection raised in the written statement was regarding the territorial jurisdiction that the defendants are residing outside the territorial jurisdiction of the Court, whereas, the prayed remedy was regarding the land which was situated in the territorial jurisdiction of the Court, thus, the objection

was baseless. The argument that the matter falls in the jurisdiction of the revenue Court, also has no substance as neither the same has been raised before the trial Court nor applicable. The judgments referred to by the counsel for the appellants being distinguishable, have no nexus with the facts of this case, whereas, the statutory provisions of section 53 of the Land Revenue Act, 1967 clearly provides remedy to an aggrieved party to approach the civil Court against wrong entries made in the revenue record. He referred to the case reported as *Maqsood Kousar vs. Revenue Department & others* [2015 SCR 929] and submitted that this appeal has no substance.

5. We have paid our utmost attention to the respective arguments advanced by the counsel for the parties and also carefully examined the record made available. So far as the first objection of the counsel for the appellants regarding jurisdiction is concerned, it has not been raised in the written statement filed before the trial Court or appellate Courts, however, leaving aside whether objection has

been taken or not, the argument even otherwise has no substance. As mentioned in the impugned judgment of the trial Court the appellants categorically admitted the suit in the following terms:-

"سٹینڈنگ کونسل نے بحث میں موقف اختیار کیا ہے کہ ہمیں 776/1 اور 776/2 کی حد تک کوئی عذر نہ ہے۔ ان نمبرات خسره کی حد تک اگر مدعیان کے حق میں ڈگری صادر ہوتی ہے اور درستی ریکارڈ ہوتی ہے تو ہمیں کوئی اعتراض نہ ہے"

The admission made by the appellants in clear terms before the trial Court disentitles them from objecting to the impugned judgment of the trial Court. The counsel for the respondents has rightly submitted that in the memo of appeal before the High Court the appellants have failed to bring on record any explanation or justification that after clear admission made before the trial Court how their appeal is competent.

6. Although, the argument of the counsel for the respondents that unanimously recorded judgments do not call for interference, is weighty, however, we, for our own satisfaction in the light of argument of counsel for the appellants that the

impugned judgments suffer from misreading or non-reading of evidence, have laboured to go through the evidence produced by the parties. The plaintiff-respondents not only produced oral evidence but also the documentary evidence in support of their version, specially, Exh.PA, PB and PC, the documents prepared by the concerned revenue authorities, clearly prove the version of plaintiff-respondents. Same like, the oral evidence produced by the plaintiff-respondents also fully proves their version. The trial Court vide order dated 23.06.2004 directed the defendant-appellants to produce evidence but they succeeded to produce only one witness, Muhammad Shafi Kiani, who during the examination-in-chief made a vague statement that the suit land is *Khalsa* and is under the possession of Forest Department. In the cross-examination he deposed that he does not know that in the suit how much acreage of land is disputed. He further deposed as follows:

"مظہر کی شنید میں محکمہ مال والے اراضی متدعوئیہ کی نشاندہی کرنے نہ گئے ہیں۔ علم نہ ہے کہ بندوبست میں اس رقبہ کا کیا اندراج ہوا۔ حسن دین ولد راج محمد کو مظہر نہ جانتا ہے۔ یہ غلط ہے کہ رقبہ تنازعہ ڈیمارکیشن کی برجیات سے باہر ہے۔ یہ درست ہے کہ اس رقبہ میں مکان بھی تعمیر ہے۔"

Thus, the objection of the counsel for the appellants that the judgments of the trial Court as well as the appellate Courts are based upon misreading or non-reading of evidence, appears to be without any substance. The judgment passed by the trial Court is well reasoned and strictly consistent with the evidence produced by the parties which has been rightly upheld by the appellate Courts.

6. So far as the argument of the counsel for the appellants regarding the limitation for filing suit, is concerned, it has no substance. In this regard, issue No. 2 has been framed which has been positively decided in favour of plaintiff-respondents on the basis of statutory provisions of law and facts of the case. As the matter relates to the correction of the entries in the revenue record and according to settled principle of law, it is a continuous wrong and every repeated wrong entry in successive revenue

record furnishes a fresh cause of action, thus, the argument regarding limitation is without substance.

7. The other most stressed argument regarding jurisdiction has also been elaborately attended by the trial Court. Both the sections i.e. 53 and 172 of the West Pakistan Land Revenue Act, 1967 have been considered in the light of principle of law laid down by the superior Courts and it has been rightly resolved that according to the nature of the controversy and prayed relief the civil Court is vested with the jurisdiction under the provisions of section 53 of the Land Revenue Act, 1967. In this regard, the latest judgment on the subject has been rightly referred to by the counsel for the respondents i.e. the case reported as *Maqsood Kousar vs. Revenue Department & others* [2015 SCR 929], wherein in paragraph 7 it has been held as follows:-

“7. A perusal of section leaves no doubt that if any person is aggrieved by an entry in the revenue record, which is adverse to his rights, he may file declaratory suit under Chapter VI of the Specific Relief Act, 1877. Under

Section 172 of the West Pakistan Land Revenue Act, 1967, the jurisdiction of Civil Court is barred in certain matters which are specifically enumerated therein. The filing of civil suit is specifically covered by Section 53 of the West Pakistan Land Revenue Act, 1967. A combined reading of Section 53 and Section 172 of the West Pakistan Land Revenue Act, 1967, shows that the suits for declaration in respect of adverse entries in the revenue record can competently be filed by an aggrieved person in a Court of competent civil jurisdiction. This point came under consideration of this Court in the case titled *Kh. Muhammad Akbar & 5 others v. Kh. Fateh Muhammad & 16 others* reported as 2000 SCR 211. It was observed by this Court as under:-

'... The basic controversy between the parties is regarding the extent of the shares of the parties in the suit land. The declaration regarding the shares of the plaintiffs is not barred Under Section 172(2)(vi) of the Land Revenue Act. Section 53 of the Revenue Act gives right to a person considering himself an aggrieved by any entry in the record of rights or any periodical

record, to institute a civil suit for the redressal of his grievance under the provisions of Section 42 of the Specific Relief Act; the joint reading of Section 53 and Section 172(2)(vi) of the Revenue Act makes it amply clear that the suit filed by the plaintiff-respondents is triable by the civil Court, except to issue direction to the revenue authorities to correct the entries in the revenue record. If one of the reliefs sought by the respondents cannot be given to them due to lack of jurisdiction, it cannot be said that jurisdiction of the civil Court is also barred so far as other reliefs are concerned. Only the relief regarding the correction of entries in the revenue record is barred Under Section 172(2)(vi) of the Revenue act and not the other reliefs indicated above. For the sake of convenience, section 53 of the Revenue Act is reproduced below.

' 53. Suit for the declaratory decrees by persons aggrieved by an entry in a record.--- If any person considers himself aggrieved by an entry in a record-of rights or in a periodical record as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877).'

Similarly in the case reported as *Ghulam Rasul vs.Hidayat Ullah* [1987

MLD 35], it was observed that if the name of an owner does not appear in the subsequent revenue record, such a person can establish his right by filing a declaratory suit in view of the provisions contained Under Section 53 of the Land Revenue Act.

In *Mir Rehman Khan vs. Sardar Asdullah Khan* [PLD 1983 Quetta 52], it was held that Section 172 of the Land Revenue Act only excludes the jurisdiction of the civil Courts to hear the matters which exclusively fall within the jurisdiction of the revenue authorities; if the dispute relates to the title of the immovable property, a civil Court has got the jurisdiction to try the suit.'

Keeping in view the facts of this case, the principle of law enunciated in this judgment is also fully attracted. Therefore, we are constrained to accept this appeal, set-aside the judgments and decrees of the Courts below and remand the case to the trial Court for conducting the proceedings according to law and deciding the same on merits."

The principle of law laid down in the above referred case is fully attracted. The appellants have failed to make out any valid ground for interference in the impugned judgments.

For the above stated reasons finding no force this appeal stands dismissed. No order as to costs.

Muzaffarabad,
.04.2017 CHIEF JUSTICE

JUDGE
(J-I)

DATE OF ANNOUNCEMENT: 12-04-2017