

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(APPELLATE JURISDICTION)

PRESENT:

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

Civil appeal No.66 of 2015
(PLA filed on 22.11.2014)

1. Muhammad Ajaib Khan,
2. Muhammad Akhlaq Khan,
3. Ishtiaq Ahmed Khan,
4. Muhammad Naeem Khan, sons of
Muhammad Rajjab Khan, caste Abbasi,
r/o Sahlian, Tehsil Dhreekot.

....APPELLANTS

VERSUS

1. Muhammad Gulfraz Khan,
2. Muhammad Gulnawaz Khan,
3. Muhammad Sarfraz Khan, sons of
Muhammad Iqbal Khan,
4. Mst. Gul Irshad Begum widow of
Muhammad Mukhtar Khan,
5. Muhammad Arshad Khan,
6. Muhammad Akram, sons of Muhammad
Moosa Khan,

7. Muhammad Moosa Khan (deceased),
represented by:-
 - i) Mr. Arshad Khan,
 - ii) Ikram-ul-Haq, sons
 - iii) Parveen Akhtar,
 - iv) Yasmeen Akhtar, d/o Muhammad Moosa Khan,
8. Mst. Saleema Begum w/o Aurangzeb Khan, d/o Muhammad Iqbal,
9. Mst. Tazeem Akhtar d/o Muhammad Iqbal,
10. Mst. Tazeem Akhtar d/o Muhammad Iqbal.
11. Muhammad Moosa Khan,
12. Muhammad Abbas Khan,
13. Abdul Ghaffar Khan,
14. Gul Afsar Khan, sons of Muhammad Yousaf Khan,
15. Altaf Jan d/o Muhammad Yousaf Khan,
16. Mst. Qulzam Begum widow of Yaqoob,
17. Mst. Sanoo Begum widow of Muhammad Iqbal Khan,
18. Muhammad Bashir Khan,
19. Shabir Khan sons of Muhammad Ismail Khan,
20. Qadeer Khan,

21. Kaloo Khan,
22. Safeer Khan,
23. Zaher Khan, sons of Abdul Khan,
24. Mst. Aalia d/o Abdul Khan,
25. Sharifa Begum w/o Muhammad Younas Khan,
26. Mst. Naseem Akhtar w/o Muhammad Ibrahim Khan, caste Abbasi, r/o village Sahlian Dhondan, Tehsil Dheerkot, District Bagh.
27. Mst. Hanifa Begum (deceased), represented by:-
 - i) Musarrat Abbasi,
 - ii) Shafqat Abbasi,
 - iii) Shaid, sons,
 - iv) Zahida,
 - v) Fareeda, d/o Mst. Hanifa Begum, r/o village Surang.
28. Muhammad Asif Khan,
29. Muhammad Abbas Khan (deceased), represented by:-
 - i) Farzan Begum, widow,
 - ii) Fiaz Khab, son,
 - iii) Sakeena Bibi,
 - iv) Sumera Bibi,
 - v) Asia Begum, d/o Muhammad

Abbas Khan,

30. Zahoor,
31. Mahmood Khan,
32. Abdul Razzaq Khan sons of Muhammad Hashim Khan,
33. Mst. Maroofa w/o Muhammad Khan, caste Abbasi, residents of village Chamiyati, Tehsil Dhirkot, District Bagh.
34. Muhammad Younas Khan s/o Dalil Khan, caste Abbasi, r/o Village Sahlian, Tehsil Dhirkot, District Bagh.

.... RESPONDENTS

(On appeal from the judgment and decree of the High Court dated 23.09.2014 in Civil Appeal No.19 of 2010)

FOR THE APPELLANTS: Syed Shafqat Hussain Gardezi, Advocate.

FOR THE RESPONDENTS: Sardar Atta Ellahi Abbasi, Advocate.

Date of hearing: 14.02.2017

JUDGMENT:

Raja Saeed Akram Khan, J.— This appeal by leave of the Court has been directed against the judgment of the High Court dated 23.09.2014, whereby the appeal filed by the appellants, herein, has been dismissed.

2. The facts necessary for disposal of the instant appeal are that Gulfraz Khan, plaintiff-respondent No.1, herein, brought a suit for possession against Muhammad Ishtiaq in respect of land comprising survey No.1398 (old), 1178 (new), measuring 1 *kanal*, 4 *marla* situate at village Sahlian on 07.02.2001. It was averred in the plaint that the suit land is in the ownership of the plaintiff and the defendant, Muhammad Ishtiaq Khan in presence of a local Jirga agreed upon to hand over the possession of the suit land to the plaintiff after measurement of the same by the concerned *patwari* but despite measurement

and marking of the suit land he later on refused to hand over the possession. Muhammad Ajaib Khan & others, appellants, herein, also filed a suit for declaration in respect of the suit land against Muhammad Gulfraz Khan and others on 12.08.2004. The learned trial Court after necessary proceedings, consolidated both the suits and vide judgment and decree dated 28.10.2008, decreed the suit for possession filed by Gulfraz Khan to the extent of his fractional share, whereas, to the extent of his remaining claim the suit was dismissed for want of proof. The other suit filed by the appellants, herein, was dismissed with costs for want of cause of action as well as proof. Feeling aggrieved from the said judgment and decree, Gulfraz Khan filed a partial appeal, whereas, Muhammad Ajaib Khan & others challenged the validity of above judgment and decree in toto before the

Additional District Judge, Dhirkot. The 1st appellate Court after necessary proceedings, accepted the appeal filed by Gulfraz Khan, whereas, the appeal filed by Ajaib Khan and others stood dismissed for having no substance vide its judgment and decree dated 15.12.2009. Feeling dissatisfied, the appellants, herein, filed second appeal before the High Court which met the same fate vide impugned judgment and decree dated 23.09.2010, hence, this appeal by leave of the Court.

3. Syed Shafqat Hussain Gardezi, Advocate, the learned counsel for the appellants, argued that the judgment passed by the High Court is based on misreading and non-reading of evidence which is not sustainable in the eye of law. He added that the learned High Court failed to understand the real controversy involved in the matter

and appeared to be influenced by concurrent findings recorded by the Courts below. He further added that the learned High Court fell in error while not taking into consideration that the trial Court failed to appreciate the oral as well as documentary evidence brought on record by the appellants. He further added that the document, exhibit 'PB' i.e. site map, has not been considered by the Courts below which clearly postulates that the suit land is part of survey No.1395 instead of survey No. 1398. He further added that all the three Courts below committed grave illegality while ignoring the fact that with the connivance of the revenue authorities, the suit land has wrongly been shown as part of survey No.1398.

4. On the other hand, Sardar Atta Ellahi Abbasi, Advocate, the learned counsel for the respondents, strongly controverted the

arguments addressed by the learned counsel for the appellants. He submitted that there are concurrent findings recorded by the Courts below which are not open for interference by this Court as the appellants failed to substantiate any misreading or non-reading of evidence. He added that the conclusion drawn by the trial Court which was concurred by the both appellate Courts below is based on correct interpretation of law as the appellants failed to prove their case by producing un-rebutted evidence. He has relied upon the cases reported as *Rasab Khan and another vs. Abdul Ghani and 4 others* [PLD 1985 SC AJK 69] and *Mahmood Sultan and others vs. Mst. Hanifa Begum and others* [1992 SCR 87].

5. We have heard the learned counsel for the parties and gone through the record made available along with the impugned judgment. The case of the appellants is that

the suit land which is the part of survey No.1395 has wrongly been incorporated in the revenue record as part of survey No.1398. In this regard, the appellants have heavily relied upon a hand drawn site-map; exhibit 'PB' which was part of file of the case titled *Ishtiaq Ahmed vs. Sufi Muhammad Rafique*. To appreciate the version of the appellants in support of appeal, we have examined the relevant document in the light of the contention made by the learned counsel for the appellants. After examining the said document i.e. site-map, exhibit 'PB', we are of the view that the learned High Court after taking into consideration this document has rightly observed that the same has no nexus with the case in hand rather the same is part of the record of another case. The learned High Court also rightly held that the matter of correction of entries in the revenue record is

involved in the matter which falls in the jurisdiction of the revenue authorities and the Civil Court has no jurisdiction in this regard.

6. During the course of arguments, the learned counsel for the appellants stated at bar that in the light of the findings recorded by the learned High Court, the appellants approached the concerned revenue authorities for correction of the record which was accordingly corrected by the authorities while declaring that suit land is part of survey No.1395 instead of survey No.1398 as was claimed before the High Court. When this position was confronted to the learned counsel for the respondents, he submitted that the entries have been got corrected by way of fraud and during the pendency of this appeal for which they are liable to be proceeded against for contempt of Court. We do not agree with the learned counsel for the

respondents as no such restraining order was ever passed by this Court regarding the correction of the entries in the revenue record. The document through which the entries made in the revenue record have been corrected, has not categorically been denied by the other party. Even otherwise, at this stage of the case, we do not intend to examine the correctness of the document through which the entries of the revenue record have been made by the revenue authorities; as the appeal is continuation of the suit, therefore, the trial Court after hearing the parties shall examine whether during pendency of suit/appeal the correction in the revenue record has rightly been made or not. The suit filed by the appellants, herein, was dismissed by the trial Court, whereas, the cross suit filed by the respondents, herein, was decreed. After the correction of the revenue record, new

situation has emerged; therefore, for the ends of justice and to save the parties from further litigation it would be appropriate to remand the case to the trial Court while setting aside the judgments and decrees of the Courts below to decide the suits filed by the parties afresh after taking into consideration the impact of the correction made in the revenue record.

This appeal stands disposed of in the terms indicated above.

Muzaffarabad
_____.04.2017

JUDGE

CHIEF JUSTICE

Date of announcement: 13.04.2017