

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

**Ch. Muhammad Ibrahim Zia, C. J.
Ghulam Mustafa Mughal, J.**

Civil Appeal No.238 of 2019

(Filed on 30.05.2019)

Rehman Yaqoob (Rehmod) s/o Muhammad Yaqoob,
caste Rajput r/o Ankar, Tehsil Dadyal, District Mirpur
through special Attorney Muhammad Rafique s/o
Muhammad Alam r/o Ratta Tehsil Dadyal District Mirpur
Azad Kashmir.

....APPELLANT

VERSUS

1. Zubaida Begum widow,
2. Sharak Khan,
3. Basharat Khan,
4. Rohail Aslam, Son.
5. Mst. Shamim Akhtar,
6. Firdos Akhtar.
7. Shehnaz Akhtar daughters of Muhammad Aslam
caste Rajput r/o Ankar, Tehsil Dadyal, District
Mirpur, Azad Kashmir.

.... REAL RESPONDENTS

8. Marton Yaqoob,
9. Zaib Yaqoob, sons.
10. Mukhtar Bi widow,
11. Jenfar d/o Muhammad Yaqoob caste Rajpoot r/o
Ankar, Tehsil Dadyal District Mirpur Azad Kashmir.

.... PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court dated
25.04.2019, in Revision Petition No. 134/18]

FOR THE APPELLANT: Ch. Mohammad Mehfooz,
Advocate.

FOR THE RESPONDENTS: Raja Ali Zaman, Advocate.

Date of hearing: 30.01.2020.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.— The captioned appeal by leave of the Court has been filed against the judgment/ order of the learned High Court dated 25.04.2019, whereby, the revision petition filed by the appellant, herein, has been dismissed.

2. The brief facts of the case are that the plaintiff-appellant, herein, filed a suit for perpetual injunction pertaining to the land measuring 01 kanal, total measuring 18 kanal, 08 marla falling in survey No.470 adjacent to survey Nos.413, 406, 470 and 407 situated at Mozia Ankar, Tehsil Dadyal, District Mirpur against the defendant-respondents, herein, in the Court of Civil Judge, Dadyal. It was contended that the land in dispute is in ownership and possession of the plaintiff-appellant

and proforma-respondents. Along with the suit an application for grant of interim injunction was also filed whereupon initially the interim injunction was issued by the trial Court. The objections were filed by the respondents, herein, on 05.04.2018. The learned trial Court after hearing the parties, vacated the interim injunction vide order dated 31.05.2018, against which, an appeal before the learned Additional District Judge Dadyal, was preferred which was also dismissed vide judgment/order dated 30.07.2018. The appellant, herein, filed a revision petition before the learned High Court against the order of Additional District Judge Dadyal which also met the same fate, hence, this petition for leave to appeal.

3. Ch. Muhammad Mehfooz, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that the Courts below neither applied the judicial mind nor appreciated the material facts. The Assistant Collector/Tehsildar has not clarified on spot position regarding the title and possession of the

disputed piece of the land. He further submitted that the plaintiff-appellant has clearly averred that he is owner in possession of the land bearing survey No. 470 (*Abadi-deh*) upon which he has constructed compound wall, house and garage. The defendant-respondents who are owner of land bearing survey No.407, have encroached upon the land illegally in absence of the plaintiff-appellant, who was abroad at that time. They have seriously injured his proprietary rights of the plaintiff-appellant, hence, the construction by the respondents will cause irreparable loss to the appellant and he will also suffer unnecessary agony of litigation. He further argued that expeditious disposal of the suit on merit will serve ends of justice.

4. Conversely, Raja Ali Zaman Advocate, the learned counsel for the respondents submitted that the construction work was started almost 2 years back and no one objected. The suit has been filed with mala-fide intention to cause damage to the defendant-respondents. The appellant has got no locus standi. The respondents

have constructed house on their own land. The construction work is near to completion and if at this stage the same is stopped it will cause irreparable loss to the respondents.

5. We have heard the arguments of the learned counsel for the parties and examined the record made available. Admittedly, the dispute relates to construction of the house on the land bearing survey No.470 (*Abadi-deh*). According to the revenue record this survey number measures 18 kanal, 8 marla and is occupied by the residents of the village. It is not mentioned that how much land is in possession of a specific person, thus, it has created an ambiguity and generated controversy. According to the admitted facts the house is being constructed on survey No. 407 which is in possession of the defendant-respondents but a portion of the house is being constructed on piece of land comprising survey No. 470 (*Abadi deh*) relating to which the plaintiff-appellant claimed that this construction is being carried out on the land in his possession including compound wall of his

house. The report submitted by the Revenue Officer is ambiguous as he has not determined that whether the disputed portion of under construction house on survey No. 470 (*Abadi deh*) is on piece of the land which plaintiff-appellant claims in his possession. As the serious rights of both the parties are involved in the case and without first determination of the basic controversy relating to the rights of the ownership and possession of disputed piece of land bearing survey No. 470 (*Abadi-deh*), allowing to continue the construction work will create hardships and further litigation for both the parties which may result into irreparable loss to both.

6. In this state of affairs, in our considered view the justice can be best served by expeditious disposal of the case by the trial Court. As the suit has been filed in February, 2018, almost 2 years earlier, thus, keeping in view the special circumstances and proposition involved in the case the trial Court is directed to conduct expeditious proceedings in the suit and ensure final disposal of the case on merit within 4 months' time from

the communication of this order. Till that the status quo shall be maintained by the parties.

The appeal is disposed of accordingly with no order as to costs.

CHIEF JUSTICE

JUDGE

Mirpur
30.01.2020.

Rehman Yaqoob
(Rehmond)

VS Zubaida Begum & others

PRESENT:

Ch. Muhammad Mehfooz, Advocate for the petitioner.
Raja Ali Zaman, Advocate for the respondents.

ORDER:

Arguments heard. Judgment reserved.

CHIEF JUSTICE

Mirpur,
17.12.2019

Rehman Yaqoob
(Rehmond)

VS Zubaida Begum & others

ORDER:

The judgment has been signed. It shall be announced by the Additional Registrar after notifying the learned counsel for the parties.

CHIEF JUSTICE

Muzaffarabad,
23.12.2019