

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No.17 of 2019  
(PLA filed on 28.01.2019)

Allah Lok s/o Mohammad Sharif, Caste Jatt,  
Resident of Village Tarolla, situated at Dahwara,  
Tehsil and District Bhimber.

.....APPELLANT

VERSUS

1. Anayat Khan s/o Ghulam Muhammad, Caste Jutt, Resident of Village Tarolla situated at Dahwara, Tehsil and District Bhimber.
2. District Collector, Bhimber.
3. Assistant Collector, Bhimber.
4. Extra Assistant Collector (Revenue Officer), Bhimber.
5. Tehsildar, Revenue Department, Bhimber.
6. Naib Tehsildar, Revenue Department, Bhimber.
7. Gardawar, Constituency Tarolla, Bhimber.
8. Patwari, Constituency Tarolla, Bhimber.

.....RESPONDENTS

9. Muhammad Aslam s/o Alam Din,
10. Bata s/o Dado,
11. Rehmat,
12. Muhammad Sadiq,
13. Muhammad Yousaf sons of Muhammad,
14. Rasheed s/o Lal Khan,
15. Godar,
16. Muhammad Bashir sons of Farzand Ali,
17. Shafi s/o Karam Dad,
18. Muhammad s/o Sardar Ali,

19. Mangta,
20. Gul Muhammad s/o Ghulam Din,
21. Sain,
22. Sharif s/o Hasim, Caste Jatt, resident of Constituency Tarolla, Bhimber.

.... PROFORMA RESPONDENTS

[On appeal from the judgment of the of the High Court dated 15.01.2019 in Civil Appeal No.145/2017]

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FOR THE APPELLANT: Mr. Muhammad Tahir Khan, Advocate.

FOR RESPONDENT NO.1: Mr. Muhammad Jamil Chaudhary, Advocate.

Date of hearing: 19.02.2020

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.**– The plaintiff-appellant filed a suit for declaration-cum-perpetual injunction in respect of the land comprising survey Nos.243 and 685 measuring 206 kanal situated at Tarolla, Village Dahwara, Tehsil and District Bhimber, before Senior Civil Judge, Bhimber. The learned trial Court vide judgment and decree dated 20.06.2017 rejected the plaint under

Order VII, Rule 11, CPC. Feeling aggrieved, the appellant filed an appeal before the District Judge, Bhimber which was dismissed vide judgment and decree dated 21.08.2017. Second appeal before the High Court also failed, hence, this appeal by leave of the Court.

2. Mr. Muhammad Tahir Khan, Advocate, the learned counsel for the appellant submitted that the Courts below have not applied judicial mind. The order of the trial Court which has been upheld by the appellate Courts on the face of it is not a judicial order. All the Courts have even not followed the principle of law laid down by this Court in a number of judgments. The impugned judgments are based upon misconception of law that the civil Court lacks the jurisdiction in respect of *Shamilat deh* land, whereas, under the statutory provisions of special law, there is no total lack of jurisdiction rather the jurisdiction of civil Courts is ousted in limited matters. The matter raised in the plaint clearly falls within the jurisdiction of the civil Court.

The appellant has approached the Court for protection of his legal right of possession of the *Shamilat* deh land, thus, in this state of affairs, the rejection of the plaint is unwarranted and against the law.

3. Conversely, Mr. Muhammad Jamil Chaudhary, Advocate, the learned counsel for respondent No.1 half-heartedly defended the impugned judgment and submitted that the matter is subjudice before the revenue Court having exclusive jurisdiction over the matter, hence, the plaint has been rightly rejected. However, when he was confronted whether the order passed by the trial Court is in accordance with law and amounts to be a judicial order, he was unable to defend the same.

4. We have heard the learned counsel for the parties and gone through the record. The order of the trial Court on the face of it is not a judicial order, thus, upholding of same by the appellate Courts is also unwarranted. The reasons advanced

by the High Court in the impugned judgment amount to pre-judge the matter. The opinion has been expressed in relation to some matters which require proof, specially, the factual aspect that which of the party is in possession of the suit property. Without recording of evidence such like observations cannot be made by the Court.

5. According to celebrated principle of law, for rejection of the plaint under Order VII, Rule 11, CPC the main consideration is the contents of the plaint and not the defence version. This Court has held in a number of cases that the landowner of the village is entitled to retain the possession of the *Shamilat deh* land subject to partition. *Prime facie*, in this case the appellant has approached the Court for protection of his claimed possession in the *Shamilat deh* land. Neither he has prayed for restraining the revenue Courts from conducting partition proceedings nor claimed decree of title. Whether in such state of affairs the plaint can be rejected; is an important proposition which has to

be judged in the light of statutory provisions of Order VII, Rule 11, CPC.

6. As stated hereinabove, the impugned judgments of the High Court as well as the Courts below are not consistent with the statutory provisions, hence, we are constrained to accept this appeal and set-aside the impugned judgments. Consequently, the case is remanded to the trial Court for disposal of the same in accordance with law through well-reasoned, speaking judgment, after providing an opportunity of hearing to the parties.

This appeal is accepted in the above terms with no order as to costs.

CHIEF JUSTICE

JUDGE

Mirpur,  
19.02.2020