

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

Cri. Original No. 20 of 2020

(Filed on 21.9.2020)

1. Muhammad Javaid Khan, s/o Khan Muhammad Khan, caste Sudhan r/o Rawalakot, District Poonch, Azad Kashmir.
2. Muhammad Zohra Khan, s/o Khan Muhammad Khan, caste Sudhan r/o Rawalakot, District Poonch, Azad Kashmir.
3. Mst. Makhan Jan, d/o Khan Muhammad Khan, caste Sudhan r/o Rawalakot, District Poonch, Azad Kashmir.

.... APPELLANTS

**VERSUS**

1. Muhammad Nasar Khan s/o Muhammad Hussain Khan, caste Sudhan r/o Rawalakot, District Poonch Azad Kashmir.
2. Sajjad Hussain s/o Muhammad Hussain Khan, caste Sudhan r/o Rawalakot, District Poonch, Azad Kashmir.
3. Muhamad Ejaz Khan s/o Muhammad Husain Kahn, caste Sudhan r/o Rawalakot, District Poonch, Azad Kashmir.
4. Muhammad Imtiaz Khan s/o Muhammad Hussain Khan, caste Sudhan r/o Rawalakot, District Poonch, Azad Kashmir.
5. Imran Khan s/o Muhammad Hussain Khan, caste Sudhan r/o Rawalakot, District Poonch, Azad Kashmir.
6. Kamran Khan s/o Muhammad Husain Khan, caste Sudhan r/o Rawalakot, District Poonch, Azad Kashmir.

7. Raja Arif Mehmood, Additional Collector,  
District Poonch, Rawalakot, Azad Kashmir.  
..... RESPONDENTS

(Application for Initiation of Contempt of Court  
Proceeding)

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APPEARANCES:

FOR THE APPLICANTS: Barrister Humayun Nawaz  
Khan, Advocate.

FOR THE RESPONDENTS: Syed Nazir Hussain Shah  
Kazmi, Advocate.

*Date of hearing:* 6.9.2021

**ORDER:**

**Raza Ali Khan, J.—** The titled application for initiation of contempt of Court proceedings has been filed in the circumstances that two even dated decrees were passed in favour of the predecessor-in-interest of the parties on the basis of right of prior purchase on 6.8.1956. the legal heirs of Khan Muhammad, one of the decree holder, (applicants, herein,) filed an application for partition of survey No. 628, renumbered as 1604 before the Extra Assistant Commissioner (Revenue Assistant) Rawalakot on 22.10.2014. The application was contested by the respondents,

herein, by filing objections. After hearing the parties, the learned Extra Assistant Commissioner vide judgment dated 9.7.2015 accepted the application. The order dated 9.7.2015 was challenged by way of an appeal by the respondents before the Collector, Poonch, which was dismissed vide judgment dated 26.1.2016. The judgment dated 26.1.2016 was further assailed by the respondents through a revision petition before the Commissioner, Poonch Division, who vide judgment dated 3.8.2016 remanded the case to the Collector Poonch for proceedings in accordance with the Land Revenue Act. This order was assailed before the Board of Revenue on 1.9.2016 through revision petition. The Member Board of Revenue while accepting the revision petition on 22.3.2017 cancelled the order dated 3.8.2016 and restored the order of Collector dated 26.1.2016 and sent file to the Revenue Assistant, Realakot for partition of the remaining land comprising of Khewat No. 348, 352 and 353. The order dated 22.3.2017 was challenged through a writ petition before the learned High Court, which was dismissed vide judgment dated 8.11.2018. The judgment dated 8.11.2018 passed

by the learned High Court was assailed before this Court by way an appeal, which was accepted in the manner listed therein. Now the present application for initiation of contempt of Court proceedings has been filed on the ground that respondent No.1 to 6, herein, in blatant violation of judgment of this Court date 17.10.2019 filed a declaratory suit No. 105/2020 before the Court of Senior Civil Judge Rawakaot, in respect of the matter which has already been finally adjudicated by this Court.

3. Barrister Humayun Nawaz Khan, the learned Advocate appearing for the applicants argued that this Court while deciding appeal No. 10 of 2019 vide judgment dated 17.10.2019 issued direction for partition proceedings relating to all the survey numbers, the subject matter of the decree dated 6.8.1956 following the procedure and guidelines provided under the statutory provisions and in pursuance of the direction of this Court, the partition proceedings were started but the respondents in disregard of the Court's direction filed a suit before the Senior Civil Judge in relation to the same

dispute as has already been finally resolved by this Court, which is not only a clear contempt of this Court but also an attempt to frustrate the judgment of this Court. The learned Advocate further argued that respondents have willfully and deliberately violated the judgment of this Court, which has practically been suspended by Additional Collector, Poonch/Respondent No. 6 while keeping the partition proceedings in abeyance till decision of the matter by civil Court upon the appeal filed by the respondents vide order dated 27.10.2020 in sheer violation of the judgment of this Court, therefore, for this contemptuous attitude contempt proceeding may be initiated against the respondents.

4. Conversely, Syed Nazir Husain Shah Kazmi, the learned Advocate appearing for the respondents seriously opposed the arguments advanced on behalf of the applicants and stated that the respondents have not committed any violation of the judgment of this Court. He argued that the suit filed by the respondents

before the Civil Judge has no concern with the partition proceedings as the same has been filed in respect of survey No. 628 renumbered as 1604 and this survey number has already been transferred in favour of the respondents vide gift deed dated 19.3.2013 as per revenue record as annexure "RA" and this gift-deed never been challenged by the applicants before any forum. He argued that the applicants in the garb of the direction of this Court illegally interfered the possession of the respondents in the said survey number, so the respondents were constrained to file the suit before the Civil Judge against the applicants not to interfere in the possession of the respondents. The learned Advocate further argued that decree dated 6.8.1956 was issued in favour of the father of the respondents as well as father of the applicants in respect of survey Nos. 336, 470, 948, 628 and 381 in equal shares and in pursuance of the said decree, mutation No. 86 was also attested. The applicants are in possession of land comprising survey No. 336

and 948, whereas the respondents are in possession of the land comprising survey Nos. 628 (old) 948 (new) and the said land has been transferred by the father of the respondents in favour of respondents No. 1 to 6 vide gift-deed dated 19.3.2013. The learned Advocate further argued that the partition proceedings were not conducted according to relevant law as well as the direction of this Court as the Extra Assistant Commissioner illegally accepted the partition application without having objections, evidence and hearing the respondents. The gift-deed dated 19.3.2013 was also not taken into account by the Extra Assistant Commissioner while accepting the application. He submitted that the Extra Assistant Commissioner also not adhered to the suit filed by the respondents and the construction raised in the said survey number, which is an expressed violation of Section 135 to Section 141 of the Land Revenue Act. He submitted that the learned Additional Collector passed the order dated 27.7.2020 while

following the procedure and guidelines under statutory law. The learned Advocate argued that the respondents cannot even think about the violation of the judgment of this Court and have a great honour of this Apex Court. Therefore, the contempt application filed by the applicants may be dismissed being baseless and contrary to the facts. In support of his contention the learned Advocate has placed reliance on the cases reported as 2005 SCR 418 and 2006 SCR 1193.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case along with the judgment of this Court dated 17.10.2019, whereby the direction for partition proceedings were given to the revenue authorities. It would be advantageous to reproduce the relevant para of the said judgment:-

“7. In the stated circumstances, while accepting this appeal and recalling the judgment of the revenue authorities as well as the impugned judgment, it is directed that the concerned revenue authority/Court shall conduct the partition proceedings relating to all the survey numbers, the

subject-matter of the decree dated 6.8.1956 and while conducting the proceedings they shall strictly follow the procedure and guidelines provided under the statutory provisions to save the interest of the parties in shape of construction or other accrued rights according to their family settlement”.

The applicants have filed the application for initiation of contempt proceedings against the respondents, herein, mainly on the ground that contrary to the direction of this Court, the respondents have filed suit No. 105/2020 just to frustrate the judgment of this Court, as such they have committed contempt of the Court, hence, contempt proceedings may be initiated against them. The applicants have annexed with the application the copy of suit No. 105/2020. For proper appreciation the prayer clause of the said suit is deemed useful to be reproduced.

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5 4 1604 628

19.3.2013

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In the reproduced prayer clause of the suit stated to be filed by the respondents before the

Civil Judge, the land comprising old Khasra No. 628 renumbered as 1604 measuring 4 kanal 5 marla is claimed to be in ownership and possession of the respondents under the gift-deed executed on 19.3.2013. The gift-deed dated 19.3.2013 is also annexed by the respondents with their para-wise comments. A perusal of the same reveals that Muhammad Hussain Khan, father of the respondents, herein, gifted the land measuring 4 kanal 5 marla along with residential quarters to his sons, respondents, herein, from Khasra No. 1604 and according to the contents of said gift-deed the possession was also handed over to the respondents after family partition and this gift-deed does not appear to have been challenged before any forum. As per statutory provisions, if at the time of partition/division of any property the question of title arises, the property cannot be partitioned until the same is resolved first. The question of title means a dispute as to ownership of the property and once a plea of title is taken up by

any of the parties to a partition proceedings, the issue has to be determined by a competent Court and it no longer remains in the jurisdiction of a Revenue Officer to say that this is a false or frivolous plea. There must be finding of a competent Court on the issue of title. This Court in the judgment dated 17.10.2019 directed the concerned authority to strictly follow the procedure and guidelines while conducting partition proceedings. The statutory provisions dealing with the partition of property proceedings is section 141 of the Land Revenue Act. For proper appreciation the said section is reproduced herein below:-

“141. Disposal of questions as to title in the property to be divided.—(1) When there is a question as to title in any property of which partition is sought, the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as though he were such a Court.  
 (2) Where the Revenue Officer does not himself proceed to determine the question of title as a Civil Court, he may for reasons to be recorded by him in this behalf require a party specified by him to file a suit in a civil Court, within such period not exceeding ninety days from the date of his

order as he may fix, for obtaining a decision regarding the question.

(3) On the filing of a civil suit by the party required so to do within the specified period, the Revenue Officer shall suspend further action on the application for partition till the said civil suit is decided by the Court and a copy of the Court’s order is produced before him.

(4) .....

(5) .....

In our considered view the disputed point of fact as to whether alleged claim of ownership of the said property by the respondents is correct or not, needs detailed probe and without detailed probe it cannot be held that the respondents have willfully disobeyed the order of the Court because to constitute a punishable contempt a case of willful disobedience has to be made. We are fortified in our view from the case reported as *Muhammad Mehrban and another vs. Muhammad Siddique and 2 others* (2005 SCR 418) wherein, this Court held as under:-

“...The petitioners filed an appeal before the High Court which was also dismissed. After due consideration, I am of the view that the disputed point of fact is as to whether the alleged construction made on suit land has been effected before or after issuance of stay order by the District Judge. It

is settled by now that in such like cases contempt proceedings are not initiated. Similarly, without a detailed probe it cannot be held that the petitioners have willfully disobeyed the order of the Court because to constitute a punishable contempt a case of willful disobedience has to be made...”

Thus, in light of the above it can safely be said that the respondents, herein, while filing the suit before the Civil Judge have not committed any contempt because question of title in the said property was raised by the respondents, herein, claiming their ownership & possession in light of gift-deed dated 19.3.2013 and before the resolution of this question of title, partition of property cannot be carried out as per statutory law. This Court in its judgment also issued direction for partition of the property strictly in accordance with the statutory provisions. In view of the above the applicants failed to make out any case for initiation of contempt of Court proceedings against the respondents.

The result of the above discussion is that finding no force in this application, the same is hereby dismissed.

JUDGE

Muzaffarabad.  
10.9.2021.

JUDGE.

M. Javaid & another **vs.** M. Nasar Khan & other.

**ORDER:**

Judgment has been signed. It shall be announced by the Registrar after notice to the learned counsel for the parties.

JUDGE

Muzaffarabad.  
10.9.2021

JUDGE