

Judgment Sheet

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA),  
SWAT.

JUDICIAL DEPARTMENT

C.M.12 (2) No. 1-M/2015 in C.R.No.199/2005.

JUDGMENT

*Date of hearing...11/12/2017.....*

*Applicants (Syed Bareek Jan & others.) By Mr.Abdul Halim Khan, Advocate*

*Respondents No.1 to 7 By Mr.M.Ikram Khan, Advocate.....*

*Mr.Faridullah Khan, Advocate for L.Rs of respondent No.8.....*

**MUHAMMAD NASIR MAHFOOZ, J:-** This is an application under section 12 (2) Code of Civil Procedure against an order dated 26.05.2014 passed in C.R.No.199-M/2005 whereby the civil revision of respondents No.1 to 6 was dismissed against respondent No.8.

2. Brief facts of the case are that respondents No.1 to 7 filed suit for declaration, permanent injunction and possession regarding land known as "Toro Gato" situated in Laikoorr against Syed Mian Noor Pacha/predecessor-in-interest of respondents No.8/1 to 8/11. Alongwith the plaint plaintiffs also filed an application for temporary injunction. Written statement was filed by Syed Mian Noor Pacha/predecessor-in-interest of respondents No.8/1

*L.M.A*

to 8/11. On 07.05.2002 the learned trial court appointed Mr.Ikramullah Khan, Advocate as Local Commission who recorded the statement of both the parties and submitted his report. Plaintiffs filed objections to the said report thereafter the suit was dismissed by the learned trial court on 26.03.2003. The learned appellate court accepted the appeal and remanded the case to the learned trial court on 18.06.2003 with directions to record statements of both the parties and decide the matter afresh. Issues were framed by the learned trial court and the suit of the plaintiffs was decreed on 27.03.2004.

3. Feeling aggrieved, defendant Syed Mian Noor Pacha preferred an appeal before the learned appellate court, which was partially accepted vide judgment and decree dated 08.12.2004, the decree of the learned trial court was modified and suit of the plaintiffs was decreed to the extent of land owned and possessed by the applicants and respondents No.9 to 18. The plaintiffs/Saeed Jan and others filed C.R.No.199-P/2005 in this court which was dismissed on 26.05.2014, hence present application under section 12 (2) CPC has been filed.



Arguments of learned counsel for the parties heard and record perused.

4. Learned counsel for the applicants vehemently argued that respondents No.1 to 6 filed suit against respondent No.8 without impleading them as party and obtained a decision which is not operative on their rights having been passed on the basis of fraud practiced on the court and misrepresentation. He relied on **1995 NLR 1953, 2007 SCMR 1318, PLD 2013 SC 573, 2015 CLC 531, PLJ 2016 SC 523 and 2916 SCMR 862.**

5. On the other hand, learned counsel for the respondents supported the judgments and decrees passed by this court as well as by the learned courts below.

6. In order to appreciate the controversy raised in the instant application under section 12 (2) CPC it is necessary to refer to some part of the brief background of the case. A suit for declaration, permanent injunction and possession was filed by respondents No.1 to 6 against respondent No.8 regarding property known as *Toro Gato* having boundaries to the East land of Momin etc, to the West road, to the North land of Bahadur etc and to



the South lands owned by respondents/plaintiffs and sold to Said Zahir etc present applicants. It was alleged to be their ancestral property, the said suit was resisted by filing written statement and learned trial court appointed a local commission to visit the spot for ascertaining the name of suit property, correct boundaries of the suit property, other details including possession, to record evidence, prepare a site plan and then submit a detailed report in the light thereof. The said report was submitted on 4.6.2002. Aggrieved therefrom respondents/plaintiffs filed an appeal which was allowed by learned District Judge/Zilla Qazi Dir Lower, Camp Court Samar Bagh on 18.06.2003 and the case was remanded back to the learned trial court to decide the case afresh in accordance with law. Then the case proceeded and the parties produced their evidence. Finally on 27.03.2004 learned trial court passed a decree in favour of respondents/plaintiffs.



Respondent No.8 Syed Mian Noor Pacha challenged the same in appeal before learned District Judge but it was partially allowed and it was held that as per 2<sup>nd</sup> report of the local commission the property appearing towards the South of line AB in the site

plan known as *Toro Gato* was decreed in favour of respondents/plaintiffs. The latter filed C.R.No.199/2005 before this court which was dismissed through the impugned order on 26.05.2014.

7. It also requires to be mentioned that impugned judgments and decrees have been executed by learned executing court on 2.1.2015 after satisfaction of the decree. The instant application under section 12 (2) has been filed on 7.2.2015 on the ground that boundary shown as ownership of respondents/plaintiffs towards the South in the plaint having been sold to the present applicants so judgments and decrees require to be set aside by reopening the whole case and finally deciding the controversy.

8. Perusal of record reveals that property which was subject matter of the said suit falls within the boundaries as mentioned above and the property of present applicants/petitioners is only referred for the sake of description only which does not mean that the said suit property is the part of the property situated towards the South allegedly purchased by the applicants rather the Southern part of the description is the one that is stated to be sold to the



applicants and no other property which lies within the boundaries. So far as reliance on a deed dated 24.04.1977 is concerned, it relates to the same sale made in favour of applicants/petitioners by respondents/plaintiffs but has got no nexus with the decreed property, nor this deed has been subject matter of the said civil suit because respondents/plaintiffs were not disputing the ownership of applicants/petitioners.

9. The judgments relied upon by learned counsel for the applicants are distinguishable, as there is no cavil to the proposition that court can exercise the powers available under section 12 (2) CPC but only when the case requires determination and decision after any person is found to be adversely effected by any order or judgment. Impleadment of the present applicants as party was not necessary and, therefore, contentions of the petitioner could not be put to trial thereby initiating another process of litigation that has already culminated into final judgments and decrees.



10. The oral and documentary evidence available on record sufficiently proves that no occasion arises to attract the provision of section 12 (2) of the Code

of Civil Procedure, regarding concealment of facts, misrepresentation or any kind of fraud because the dispute was inter se respondents and has not infringed the right of applicants in any manner. The apprehension of applicants as raised in the instant application could be considered only after nullifying the well reasoned judgments and decrees of learned courts below duly upheld by this court in the light of the evidence and the conclusions arrived at which do not require to be interfered with. Hence, this application is dismissed with no order as to costs.

**Announced.**  
**Dt.11/12/2017.**

  
**JUDGE**

**HON'BLE MR.JUSTICE MUHAMMAD NASIR MAHFOOZ.**

(A-K-KHAN)

of 14/12/17/R