

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

C.R No. 344-M/2021
With CMs No. 1022-M & 1127-M of 2021

Shahzada Colonel Sharif-ud-Din & others...(Petitioners).
v/s

***The Settlement Officer Districts Upper and Lower Chitral
& others.....(Respondents)***

Present: M/S Qazi Jawad Ehsan Ullah (via video link), Barrister Asad Ul Mulk and Mohib Ullah Tarichvi, Advocates.

M/S Sher Muhammad Khan, Zafar Hayat and Rahim Ullah Chitrali, Advocates.

Date of hearing: 28.06.2021

JUDGMENT

WIQAR AHMAD, J.- This order is directed to dispose of the petition filed by petitioners under section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "**Code**").

2. Plaintiffs (petitioners herein) had brought a suit for declaration, permanent injunction coupled with a prayer for recovery of possession against defendants (respondents herein), in respect of the property in dispute (fully described in headnote of the plaint). It was contended in the plaint that plaintiffs had been ancestral owners of the property in dispute being legal heirs of their predecessor-in-interest namely Shahzada Shuja-ud-Din, who was son of late Burhan-ud-Din. Along with the

plaint, they had also filed an application for the grant of temporary injunction. On being noticed, defendants/respondents appeared before learned civil Court and contested the suit by filing their separate written statements. The learned civil Court vide order dated 13.02.2021 allowed the application filed by petitioners restraining the respondents from all sorts of interference in the property in dispute for a period of six months. Feeling aggrieved there-from, respondents have filed an appeal before the learned District judge Chitral, who vide the impugned order dated 29.04.2021 accepted the appeal by setting aside order of the learned civil Court and defendants/respondents were allowed to raise construction on the property in dispute at their own risk and cost. Feeling aggrieved there-from, petitioners have filed the instant petition with the following prayer;

***“It is therefore most humbly prayed that upon acceptance of the instant Civil Revision, the impugned judgment and order dated 29th April 2021 of the learned District Judge Lower Chitral may graciously be set-aside and the injunctive order dated 13th February 2021 issued by the learned Senior Civil Judge Lower Chitral be graciously restored.*”**

Further or alternatively this august Court may grant such relief, on such terms and conditions in purview of all enabling provisions of law, as it deems just and officious to meet the ends of justice.”

3. Learned counsel for the petitioners submitted during the course of his arguments that the learned District Judge had not been having jurisdiction in

the matter but despite that appeal of the respondents was allowed through the impugned judgment. Regarding lack of jurisdiction, the learned counsel added that pecuniary limit of jurisdiction notified as per the last notification, issued under section 18 of the West Pakistan Civil Court Ordinance 1962 (hereinafter referred to as the "*Ordinance*") was to the extent of ten million and that same would remain applicable to the extent of appeal against orders. The learned counsel added that the changes brought by the Khyber Pakhtunkhwa Code of Civil Procedure (Amendments) Act, 2020 (hereinafter referred to as the "*Amending Act*") in section 106 of the Code shall not be applicable as non-obstante clause has not been added to the newly substituted section and that despite the fact that appeals against final judgment and decree would be laying before the District judge, appeals against interim order shall lie before this Court. Regarding merits of the petition the learned counsel submitted that the proposed construction would change nature of the suit property and to avoid such change of nature the learned appellate Court should not have allowed the respondents to raise construction even at their own risk and cost. He placed reliance upon the judgments reported as 1980 SCMR 89, 1988 SCMR 1691, 1989 SCMR 130, PLD 1990 SC 792, 2005 SCMR1388, PLD 2006 SC 328, 2011 SCMR 743, PLD