

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**C.R No.117-P/2015**

**JUDGMENT**

Date of hearing.....14.05.2018.....

Petitioners (Fida Hussain & others): By Qazi Muhammad  
Aqil Khan, Advocate.

Respondents: (Mst. Bakht Jamala & others) By Syed Qalb-i-  
Abass, Advocate.

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**QALANDAR ALI KHAN, J.-** This civil revision petition by Fida Hussain and three others, petitioners, is directed against the judgment and decree of the learned Additional District Judge-III, Mardan, dated 07.02.2015, whereby, appeal of the petitioners against the judgment and decree dated 09.04.2014 of the learned Civil Judge-V, Mardan, was dismissed.

2. The facts leading to the instant revision petition, briefly stated, are that the respondents/plaintiffs, deceased Mst. Bakht Jamala and her husband, Sahib-ur-Rehman, lodged suit for restoration of possession under section 9 of the Specific Relief Act, 1877, as well as perpetual/mandatory injunction, which was resisted by the petitioners/defendants by filing their written statement, raising therein several legal and factual

issues. Another suit for possession through preemption was also subsequently brought by Sahib-ur-Rehman, respondent No.2, against the petitioners and two others with regard to the same property i.e. house, wherein, statements of Patwari Halqa and other PWs were recorded; but the said suit was adjourned *sine die* till the disposal of the suit under discussion vide order of the learned Civil Judge-V, Mardan, dated 15.02.2014. The instant suit was, however, dismissed for want of maintainability vide order of the learned Civil Judge-IX, Mardan, dated 05.04.2012, which was assailed through a revision petition by the respondents, and the learned Additional District Judge-II, Mardan, while accepting the revision petition and setting aside the impugned order of the learned trial Court, directed “the learned Lower Court to proceed with the case and decide it on merits after recording pro and contra evidence”, vide judgment/order dated 23.06.2012.

**3.** After receipt of the case on remand, the learned trial Court/Civil Judge, Mardan, recorded evidence of the parties; and, then, suit of the respondents/plaintiffs was decreed, as prayed for, vide judgment and decree of the learned Civil Judge-V, Mardan, dated 09.04.2014; which was challenged by the petitioners in appeal before the learned Appellant

Court, and the learned Appellate Court/Additional District Judge-III, Mardan, dismissed the appeal vide impugned judgment and decree dated 07.02.2015, which is impugned herein through the instant revision petition.

4. Arguments of learned counsel for the parties heard at great length; and record perused with their valuable assistance.

5. It may be observed, at the very outset, that the issue of maintainability of appeal or revision in the District Court as well as maintainability of the instant revision petition after dismissal of appeal of the petitioners by the learned Appellate Court/Additional District Judge-III, Mardan, vide impugned judgment and decree dated 07.02.2015 dominated arguments of both the learned counsel for the parties. It may, however, be pointed that in this respect both the parties were sailing in the same boat; as, in the first place, the respondents had moved revision petition in the District Court against the dismissal of their suit for restoration of possession under section 9 of the Specific Relief Act, 1877, on the ground of non maintainability vide order of the learned Civil Judge-IX, Mardan, dated 05.04.2012. It may also be added here that the petitioners, who were respondents in the said revision petition by the respondents did not raise objection to

the revisional jurisdiction of the District Court in a case of restoration of possession under section 9 of the Specific Relief Act, 1877 at that stage; and the revision petition was accepted and case was remanded to the learned Lower Court vide order of the learned Additional District Judge-II, Mardan, dated 23.06.2012, which was not challenged by the petitioners, therefore, the order in the revision petition by the learned Additional District Judge attained finality. Likewise, the respondents raised no objection to the jurisdiction of the Appellate Court in the matter in the appeal lodged by the petitioners against judgment and decree dated 09.04.2014 of the learned Civil Judge-V, Mardan, in favour of the respondents/plaintiffs. Although, both the parties would make no bones about the jurisdiction of the High Court to entertain and adjudicate upon revision petition in a case of recovery of possession under section 9 of the Specific Relief Act, 1877, notwithstanding the period of limitation, in the light of **2001 SCMR 345**; yet an exception was taken to the above stated general principle of law with regard to the revisional jurisdiction of the High Court on behalf of the respondents, after appellate jurisdiction of the District Court was ‘wrongly’ and ‘illegally’ invoked by the petitioners; as, in that case, according to learned

counsel for the respondents, only writ petition was the proper remedy.

6. Be that as it may, once it is established that appeal does not lie against a judgment and decree in a suit for restoration of possession under section 9 of the Specific Relief Act, 1877, and only revision lie to the High Court, it becomes immaterial and not of much significance that the revision petition has been filed after decision on the appeal by the learned Appellate Court/Additional District Judge, as his order in such a case would be *coram non iudice* which ought to be ignored, for a just and proper decision on the revision petition while avoiding technicalities and deciding the case on merits for substantial justice in the lingering dispute between the parties.

7. Having said that, one ought to advert to merit of the case on the basis of evidence available on the record. The respondents/plaintiffs lodged suit for restoration of possession under section 9 of the Specific Relief Act, 1877, against the respondents, on the basis of unregistered agreement to sell dated 13.09.1995 in respect of a house on land measuring 05 marla out of 10 marla, with specific boundaries such as property of Awal Dad on the northern side, that of Ihsanullah on the southern side, property belonging to Sahib-ur-Rehman on the eastern side and

thoroughfare on the western side of the house; but boundaries of the house mentioned in the suit of the respondents/plaintiffs were altogether different as on the northern side house of Habib-ur-Rehman was shown, while on the southern side house of Ashraf-ud-Din, on the eastern side house of Fazal Rehman and on the western side house of Shamsheer were mentioned. It is, however, important to note that the boundaries mentioned in the suit under section 9 of the Specific Relief Act, 1877, by the respondents/plaintiffs are almost the same, with the exception of southern side of the house, where house of Mst. Parveen wife of Rasheed was shown, as were specified in the suit for possession through preemption, lodged by respondent No.2, Sahib-ur-Rehman, against the petitioners and two others. The suit for possession through preemption, lodged subsequently on 02.01.2012, has since been adjourned *sine die* till the disposal of the suit for restoration of possession under section 9 of the Specific Relief Act, 1877, filed earlier by the respondents/plaintiffs on 20.12.2011, vide order of learned Civil Judge-V, Mardan, dated 15.02.2014. It needs be stressed that two suits, one under section 9 of the Specific Relief Act, 1877, by both the respondents/plaintiffs, and the other for possession through preemption by respondent No.2, in respect of

the same house, appear to be based on conflicting and mutually contradictory pleas by the same plaintiff(s).

8. Apart from the fact that no title could be claimed on the basis of an unregistered sale deed with respect to the property worth Rs:80,000/-, and question of title was irrelevant in a case under section 9 of the Specific Relief Act, 1877, the respondents/plaintiffs alleged in their suit that they alongwith their family were residing in Peshawar and their house on an area of 10 marla was given by them to Gulzar Ali Khan etc, who were keeping their cattle and looking after the house, and that the petitioners/defendants had dispossessed the said Gulzar Ali from the house at 10:00 AM on 01.10.2011 by breaking open locks of the house. Although, in his statement before the Court, the respondent alleged dispossession on 09.10.2011 and thereby contradicted his stance of dispossession on 01.10.2011 in the suit, yet the fact remained that the person actually dispossessed from the premises was, admittedly, the said Gulzar Ali and only he could legitimately sue the petitioners/defendants for restoration of possession under section 9 of the Specific Relief Act, 1877, regardless of his title or title of the respondents/plaintiffs to the suit house. **(PLD 1950 Peshawar 35 (b)).**

9. In the light of the foregoing discussion, the suit of the respondents/plaintiffs was not maintainable; and, as such, the impugned judgment and decree in their favour by the learned Civil Judge-V, Mardan, dated 09.04.2014 was also not sustainable; hence set aside on the acceptance of the revision petition. Resultantly, suit of the respondents/plaintiffs under section 9 of the Specific Relief act, 1877, also stands dismissed, with costs throughout.

**Announced**  
**14.05.2018**

**J U D G E**

*(S.B) Hon'ble Mr. Justice Qalandar Ali Khan.*

*\*M.Iqbal\**