

**JUDGMENT SHEET**

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

**C.R No. 443-M/2013**

**Mst. Bakht Sahiba and others.....(Petitioners)**

**vs**

**Malak Zada and others.....(Respondents)**

Present: Mr. Shah Rawan Khan, Advocate for the  
petitioners.

Mr. Rahman Ali Khan, Advocate for the  
respondents No. 1 to 10.

**Date of hearing: 26.02.2024**

**JUDGMENT**

**SHAHID KHAN, J.-** The petitioners have called in question the judgment & decree of the learned Additional District Judge, Matta, Swat, dated 19.06.2013, whereby, their appeal was dismissed, and consequently, the judgment & decree, dated 29.11.2012, of the learned Civil Judge-I, Matta, Swat, in respect of the subject property, detailed in the headnote of the plaint, was maintained.

**2.** In essence, the petitioners/plaintiffs approached the learned trial Court through a *lis* for declaration coupled with permanent injunction and possession to the effect that the subject property,

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detailed in the headnote of the plaint, is the legacy of their grand predecessor, Ayaz Khan, wherein, they, being the descendants of Ghulam Nabi, are entitled to their respective *shari* shares and that the respondents/defendants have no right whatsoever to deny it or enter it in their names in the revenue record. It was contested by the respondents/defendants through their written statements. After recording evidence, far & against followed by hearing of learned counsel for the parties, initially, the claim of petitioners/plaintiffs was allowed by the learned trial Court vide judgment & decree, dated 18.11.2011. However, after remand by the learned appellate Court through judgment/order, dated 19.06.2012, it was dismissed by the learned trial Court vide judgment & decree, dated 29.11.2012, followed by the judgment & decree of the learned appellate Court, dated 19.06.2013, hence, the subject Revision Petition.

3. Arguments of learned counsel for the parties have been heard and the record scanned through with their valuable assistance.

4. The record made available before this Court would divulge that the petitioners/plaintiffs are

claiming their due shares in the legacy of their grand predecessor, Ayaz Khan. Their contention is that at the time of settlement in the area, the respondents/defendants No. 1 & 2 with collusion of other defendants and to deprive the petitioners/plaintiffs from their due shares, have recorded less property in the name of their predecessor, Ghulam Nabi, in the revenue record. As such, they are claiming their due shares in the subject property through their predecessor, Ghulam Nabi. In support of their contentions, petitioner/plaintiff No. 2 himself appeared as PW-1, who was also special attorney for rest of the petitioners/plaintiffs. He produced five other witnesses as PWs-2 to 6. In his examination-in-chief, PW-1 reiterated the contentions as taken in the plaint, however, in his cross-examination, he stated that Ghulam Nabi, predecessor-in-title of the parties, and Israil were brothers *inter-se* and their due shares had already been transferred in their names, but same was not entered in the revenue record. At the same breath, he stated that less shares had been recorded in their names in the revenue record. He also stated that their predecessor-in-title, Ghulam Nabi, died in April, 2001. He made the following admissions:

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"مجھے علم ہے کہ ملک زادہ، بخت زادہ اور غلام نبی کے مابین اراضیات متدعوئیہ کے نسبت مقدمات زیر سماعت تھے۔ از خود کہا کہ پہلا مقدمہ ملک زادہ وغیرہ نے والد خود کے خلاف دائر کیا تھا۔ یہ درست ہے کہ ملک زادہ، بخت زادہ کے خلاف غلام نبی نے جائیداد متدعوئیہ کے نسبت مقدمات دائر کی تھیں جو کہ راضی نامہ کی بنیاد پر ختم ہو گئی۔ از خود کہا کہ بعد میں اپنے پسر ان کو غلام نبی نے عاق کیا تھا۔ پھر کہا کہ مذکورہ مقدمات راضی نامہ پر ختم نہ ہوئے تھے۔ والد ام نے موجودہ مدعا علیہم کے خلاف کوئی مقدمہ دائر نہ کیا تھا۔۔۔ یہ درست ہے کہ ہم نے مدعا علیہم ملک زادہ وغیرہ کے خلاف بذریعہ احمد مشتاق دعویٰ دائر کیا تھا جو کہ وہ مقدمہ سے پہلے تھا۔ از خود کہا کہ اس وقت مورث اعلیٰ غلام نبی زندہ تھا۔ یہ درست ہے کہ جائیداد متدعوئیہ غلام نبی نے اپنی زندگی میں مدعا علیہم ملک زادہ، بخت زادہ کے نام درج کی تھی اسلئے ہم موجودہ مقدمے سے پہلے ایک اور مقدمہ دائر کیا تھا۔ از خود کہا کہ یہی اراضیات ملک زادہ، بخت زادہ کے نام درج ہوئے تھے کہ 1995 میں مورث اعلیٰ غلام نبی اور ملک زادہ، بخت زادہ کے مابین اراضیات متدعوئیہ کے نسبت مقدمہ ہوا تھا۔ یہ درست ہے کہ ایک اور خسرہ نمبر واقع باماخیلہ کے نسبت بھی ملک زادہ اور بخت زادہ اور شاہ جہان کے مابین مقدمہ بازی ہوئی تھی جس میں غلام نبی بھی فریق مقدمہ تھا۔۔۔ یہ درست ہے کہ جو اراضیات غلام نبی کے نام تھے وہ غلام نبی کے حیات میں ملک زادہ، بخت زادہ کے نام درج مقدمات ان کے نام درج شدہ ہیں اور میں فی الحال کسی ایسی اراضی کی نشاندہی نہیں کر سکتا جو کہ غلام نبی کے فوت ہونے کے بعد ان کے نام درج ہوں البتہ ایسی کچھ اراضیات ہیں جو کہ غلام نبی کے نام درج نہ ہیں اور وہ ملکیت غلام نبی ہیں۔ میں اس نسبت کوئی دستاویز پیش نہیں کر سکتا جس سے ثابت ہو کہ غلام نبی کے نام کوئی اراضی ہو ورنہ ان سے رہ گئی ہو۔ از خود کہا کہ میں جس اراضیات کا ذکر کر رہا ہوں اور وہ جن لوگوں کے نام درج ہے وہ خود تسلیم کرتے ہیں۔"


تج

Patwari Halqa appeared as PW-5, who produced certain revenue record. In the very first line of his cross-examination on behalf of the respondents/defendants No. 1 to 8 & 10, he stated that at the time of death of predecessor-in-title of the parties, Ghulam

Nabi, he had left no legacy as per the revenue record.

He admitted that:

"یہ درست ہے کہ ریکارڈ مال کے مطابق غلام نبی کی جو اراضیات ان کی حیات میں انکی ملکیت تھی تو انہوں نے اپنی زندگی میں بذریعہ خاگی راضی نامہ جات وعدالتی فیصلہ جات ملک زادہ و بخت زادہ کو منتقل کر کے ان کی ملکیت تسلیم کی ہیں۔"

 5. From evidence of the petitioners/ plaintiffs, it is crystal clear that their predecessor-in-title, Ghulam Nabi, had transferred all his share in the legacy in favour of his two sons, Malak Zada and Bakht Zada (respondents/defendants No. 1 & 2) on the basis of certain suits, which ended through compromise effected between the parties. As such, he had left no legacy, which could be claimed by the petitioners/plaintiffs in the subject suit. Though, their contention is that certain properties had been entered in the name of their predecessor-in-title but the same were less than his due share. Whatever his share was, less or otherwise, he had to approach the civil Court for his due share in the legacy in his lifetime, but the petitioners/plaintiffs have no locus standi to claim that less share was recorded in his name and that too, after his death. Moreso, there is nothing on the face of record, which could show that predecessor-in-title of

the parties, Ghulam Nabi, had left any legacy. The fact that predecessor-in-title of the parties had left no legacy, has also been admitted by PW-5 in his cross-examination in a manner that though predecessor-in-title of the parties, in his lifetime, was in possession of his due share but he had transferred it in favour of the contesting respondents/defendants (Malak Zada & Bakht Zada) on the basis of certain compromise/civil suits and also admitted their ownership in respect thereof.

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6. It is also on the face of record that prior to institution of the subject suit, the petitioners/plaintiffs had also filed a suit in the year 1999 against their predecessor-in-title and the respondents/defendants No. 1 & 2, which they could not pursue and thus, it was dismissed for non-prosecution. Copy of the aforesaid plaint is available on file, which speaks loud & clear that the property, disputed therein, is part & parcel of the subject matter, however, in that suit, they only claim their due shares from their predecessor-in-title and the respondents/defendants No. 1 & 2 but in the subject suit, they included all the legacy of their grand predecessor, Ayaz Khan, and claimed their due

shares through their predecessor-in-title, Ghulam Nabi. As such, they are precluded from filing the subject suit and that too, after the death of their predecessor-in-title, thus, the issue in this regard has rightly been appreciated by both the Courts below.

7. To conclude, it is observed that the learned trial Court coupled with the learned appellate Court, in view of proper appraisal of the facts & circumstances and the evidence so recorded, have arrived at the just conclusion of the matter in issue, as such, the impugned concurrent findings of the learned Courts below do not need any interference. Reliance is placed on the case of Nasir Ali v. Muhammad Asghar reported as 2022 SCMR 1054, wherein the Hon'ble Apex Court has held:

"Section 115, C.P.C empowers and mete out the High Court to satisfy and reassure itself that the order of the subordinate Court is within its jurisdiction; the case is one in which the Court ought to exercise jurisdiction and in exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. If the High Court is satisfied that aforesaid principles have not been unheeded or disregarded by the Courts below, it has no power to interfere in the conclusion of the subordinate Court upon questions of fact or law. The scope of

revisional jurisdiction is limited to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or if the conclusion drawn therein is perverse or conflicting to the law. Furthermore, the High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under section 115, C.P.C."

Similarly, in the case of Salamat Ali and others v. Muhammad Din and others reported as PLD 2022 Supreme Court 353, it was observed:

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"A revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below."

In para-6 of the judgment rendered in the case of Muhammad Sarwar and others v. Hashmal Khan and others reported as PLD 2022 Supreme Court 13, it was also held that:

"It is well settled exposition of law, deducible from plethora of dictums laid down by superior Courts that section 115, C.P.C. empowers and meted out the High Court to satisfy and reassure itself that the order of the subordinate court is within its jurisdiction; the case is one in which the Court ought to exercise



jurisdiction and in exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. If the High Court is satisfied that aforesaid principles have not been unheeded or disregarded by the Courts below, it has no power to interfere in the conclusion of the subordinate Court upon questions of fact or law."

In Khudadad v. Syed Ghazanfar Ali

Shah alias S. Inaam Hussain and others reported as

2002 SCMR 933, the Hon'ble Apex Court has held

that the High Court has a narrow and limited

jurisdiction to interfere in the concurrent rulings

arrived at by the Courts below while exercising

power under section 115, C.P.C. Relevant findings of

the august Court are reproduced as under:

"The High Court has a narrow and limited jurisdiction to interfere in the concurrent rulings arrived at by the Courts below while exercising power under section 115, C.P.C. These powers have been entrusted and consigned to the High Court in order to secure effective exercise of its superintendence and visitorial powers of correction unhindered by technicalities which cannot be invoked against conclusion of law or fact which do not in any way affect the jurisdiction of the court but confined to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or the conclusion drawn therein is perverse or contrary to

the law, but interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction, therefore, the scope of the appellate and revisional jurisdiction must not be mixed up or bewildered."

8. For the reasons stated hereinabove, the subject Revision Petition is devoid of any merit, as such, it is hereby dismissed.

Announced  
Dt: 26.02.2024

  
JUDGE

Office  
15/03/2024  
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