

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, BANNU
BENCH.

W.P.No. 151-B/2015.

Muhammad Rasool
Vs
Muhammad Rehman etc:

JUDGMENT

Date of hearing 20.6.2019.

Appellant-petitioner: **By A.man Ullah Khan Khattak,**

Advocate

Respondent: **By Abdul Nawaz Khan, Khattak,**

Advocate.

MUHAMMAD NASIR MAHFOOZ, J.---

The instant writ petition questions the judgments and decrees dated 11.12.2014 and 29.5.2012 passed by the learned District Judge, Karak and learned Civil Judge-II, Karak, whereby the suit of present petitioner filed U/S. 9 of the Specific Relief Act for restoration of possession was concurrently dismissed.

2. Petitioner alleges that respondents have dispossessed him from the suit property comprising Khasra No. 360/1 measuring two (02) Kanals and four (04) Marlas

on 02.8.2010 and thus filed the instant suit after three days on 05.8.2010.

3. Respondents contested the suit by filing the written statement and contradicting allegation that resulted in the impugned judgments and decree and hence, the instant revision petition.

4. I have heard the arguments of learned counsel for the parties and perused the record.

5. Legislature has enacted Section-9 of Specific Relief Act in order to provide immediate relief to the person who was in lawful possession of any property and has been dispossessed, otherwise than in due course of law, but it is restricted with the six months period of limitation for filing the suit. This section has got peculiar characteristic as the order passed by a Civil Judge has been specifically made non-appealable that confers finality to the judgment passed. Though the order is revisable before the learned revisional court, but admittedly revisional jurisdiction is confined within the parameters of Section-115 CPC and not beyond that to be

equated with the right of appeal, however, the question of material irregularity and illegality goes to the root of the matter and not purely discretionary. Judgments of Hon'ble superior Courts have further elaborated it by confining the parties to one and the only aspect of proof of dispossession with no relevance to the question of title or ownership. It implies that a dispossessed person may not be essentially an owner of the suit property.

6. In this backdrop the statement of PW-1 Patwari Halqa is worth perusal. In examination-in-chief, he stated that as per Khasra Girdawri from Khareef-1997 to Rabie-2010 Ex.PW-1/2, the petitioner and his father Shadapur is entered as an owner-in-possession in suit Khassra No. 360/1. Further elaborating the matter in cross-examination, he admitted that father of respondents is also entered as owner in the suit property. But for the purpose of determination U/S. 9 of Specific Relief Act, entries of ownership would not be considered and only the person recorded in possession is material, so in this respect PW-1 has denied the suggestion of respondents

that petitioner is not recorded in possession in the revenue record, but has again contradicted his own statement, so except for exhibiting the revenue record his oral statement could not be relied upon, as he is blowing hot and cold together in one breath by saying one thing at one time and denying the same at the other. Hence, principle of "*falsus in uno falsus in omni bus*", applies. *2017 SCMR 1645 is relied in this respect.*

7. PW-2, statement of petitioner, who has supported his plaint in examination-in-chief and in his cross-examination though he admitted that he had filed a criminal complaint U/S. 145 Cr.P.C against father of respondents alleging apprehension of dispossession. It requires to be mentioned that mere dismissal of complaint U/S. 145 Cr.P.C, would not construe or create a legal impediment for the grant of decree U/S. 9 of Specific Relief Act as it is only meant for avoiding breach of peace. The tenor of the questions asked from PW-2 in cross-examination has further elaborated the contention of petitioner that tends to explain the mode and manner in

which he has been dispossessed from the suit property, this amounts to admission on the part of respondents. The relevant part is reproduced below:-

بوقت وقوعہ میں اکیلا تھا۔ پشین ویلا اور دیگر ویلہ " کے درمیان کا وقت تھا۔ مدعا علیہم چار افراد تھے۔ محمد رحمان کے علاوہ دیگر تین مدعا علیہم کے ساتھ کلاشنکوف تھے۔ بوقت وقوعہ میں 60 /50 قدم مدعا علیہم سے دور تھا۔ - میں نے کہا کہ تم لوگ میرے قبضہ میں مداخلت مت کرو۔ مگر انہوں نے بازو اراضی مذکورہ پر قبضہ کر لیا۔ جسمیں ہل چلا کر باجرہ کاشت کیا۔ "

8. Further questions relating to non-filing of complaint under Illegal Dispossession Act before the learned Sessions court too would not preclude the petitioner from filing the suit for possession U/S. 9 of the Specific Relief Act.

9. On the other hand, respondents produced Assistant District Kanungo as DW-1, who also produced the revenue record of the mortgage of the suit property and respondent No.1 appeared as DW-2.

10. Khasra Girdawri is Ex.DW-1/1 for the period Khareef-2007 up to Khareef 19.10.2010. In Khareef-2007

suit Khasra No. 360/1 name of Shadapur father of petitioner is recorded in the column of possession, but subsequently in Khareef-2011 though the entry is made in the column of Rabie-2007, the entries have changed and the names of respondent are shown to have been entered. Similarly, from Khareef-1997 up to Rabie-2006 Ex.PW-1/1 and Ex.PW-1/2, Shadapur father of petitioner is shown recorded in column of possession. For the purpose of ascertaining possession in such like suits for restoration of possession U/S. 9 Specific Relief Act only the entries of Khasra Girdawri carries presumption of correctness, because question of title could not be taken into consideration that can be decided in a suit for declaration.

11. The peculiar characteristic of Section-9 of Specific Relief Act makes it mandatory upon the court to analyze the entries of Khasra Girdawris in its true letter and spirit. Learned courts below have amalgamated the question of ownership/title by giving it dominating effect as compared to the entries of Khasra Girdawris, which was not proper discourse according to the facts and

circumstances of the instant case. No record is produced by the respondents as to why the entries of Khasra Girdawris were changed despite continuing from the year 1997 till 2006 and thereafter and even no record of Roznamcha Waqiaty is produced by the patwari halqa, so it would be presumed that the petitioner was dispossessed by using force and the entries of the Khasra Giradwris were altered to his disadvantage.

12. In view of the above, I hold that the impugned judgments and decrees of the learned courts below are not based on proper appreciation of oral and documentary evidence on record that requires to be interfered with in the instant writ petition, hence, the instant writ petition is allowed, the impugned judgments and decrees are set-aside and the suit of the petitioner is partially decreed to the extent of relief of restoration of possession U/S. 9 of Specific Relief Act. As regards, recovery of damages to the tune of Rs.20,000/- no proof is present on record to entitle the petitioner for the grant of

decree, as such the judgments and decrees to that extent
does not warrant interference.

Announced.
20.6.2019.

JUDGE