

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

W.P No.5878-P/2018

Rahmatullah and 6 others

Versus

Zamaidul and 4 others

JUDGMENT

Date of hearing 29.3.2021

Petitioners by M/s. Abdul Sattar Khan & Muhammad
Zahid Khan Hoti, Advocates

Respondents by Mr. Shakeel Zada Khan, Advocate

S M ATTIQUE SHAH, J: - Impugned herein is the judgment & decree dated 25.10.2018 of the worthy Member Board of Revenue-I, Khyber Pakhtunkhwa, Peshawar, Camp Court Mardan, whereby the revision petition of petitioners filed against the impugned judgment & decree dated 22.01.2018 of the learned ACC-I, Mardan, was dismissed.

2. Facts in brief are, that respondent No.1 instituted a suit for Ejectment in the Court of learned Additional Assistant Commissioner, Mardan, which was contested by the petitioners; however,

1/11/2021

subsequently, the same was decreed vide judgment & decree dated 22.01.2018.

3. Feeling aggrieved, the petitioners filed an appeal; which was dismissed on 02.7.2018 by the learned Additional Deputy Commissioner/Collector, Mardan, which findings were challenged in Revision Petition before the learned Additional Commissioner, Mardan Division, Mardan; but, the same was also dismissed vide impugned judgment & decree dated 10.09.2018; which order was also maintained by the MBR-I, Camp Court Mardan; vide impugned judgment & decree dated 25.10.2018; hence, instant petition.

4. Heard; record carefully gone through.

5. Record depicts that respondent No. 1 filed an application for partition of the property in question on 11.10.2006; which was finally culminated upon attestation of Partition Mutation No.459 on 24.02.2007. On 16.02.2008, the petitioners challenged the validity of ibid proceedings in a *declaratory suit No.624/1 titled "Rahatullah vs. Zamaidul"* which was contested by the respondent No. 1 and; finally, the

same was dismissed by the learned trial court on 21.7.2010 in the following manner: -

“Thus, as plaintiffs have failed to prove their ownership of suit land; therefore, they have got no cause of action to challenge the partition proceedings and further partition mutation No.459 dated 24.02.2007 of the revenue in favour of defendant No.1, on the grounds of fraud etc.”

6. Thereafter, the respondent No. 1 filed a complaint under S. 3/4 of the Illegal Dispossession Act, 2005; which was dismissed on 23.02.2012 by the learned Additional Sessions Judge-VIII, Mardan in the following manner.

“In the instant case, the predecessor of respondent No.1 Rehmatullah and his uncle Inzar Gul per revenue record are recorded tenants against the Khasra No.1101 in column of cultivation and respondent No.1 admits at the bar his possession as a tenant..... It is crystal clear from revenue record that respondent No.1 is in possession of disputed property as a tenant and he can only be ejected by due course of law and if the complainant wants to eject the respondent, may approach the proper forum according to law.”

7. Later on, respondent No. 1 filed a suit for possession and permanent injunction under S. 9 of the Specific Relief Act, 1877 before the learned trial Court

on 09.4.2012; which was also dismissed by the learned trial court vide judgment & decree dated 09.6.2015 on the ground that Civil Court has got no jurisdiction in the matter in question. Relevant portion of the judgment is reproduced as under: -

“It is evident from the record that defendants are tenants at will and therefore, in the circumstances, they should be ejected in due course of law; therefore, the plaintiff has got no cause of action nor he is entitled for the decree prayed for.”

8. Subsequently, respondent No. 1 filed instant suit for ejection of the petitioners; which was decreed and the said findings had been maintained till the forum of Member Board of Revenue.

9. Admittedly, the petitioners are recorded as tenants at will and; indeed, it is well settled that *“once a tenant is always a tenant”* and; in such like circumstances, petitioners could only be ejected through the courts so established under the provisions of Khyber Pakhtunkhwa Tenancy Act, 1950. So far as, the contention of learned counsel for the petitioners that they are owners in possession of the property in question; being recorded as such in

the column of "لگان" as "بلا لگان بہ تصور ملکیت خود" is concerned, the ibid contention has not impressed this Court, as the said issue had long been settled by the august Apex Court by holding that entry in the column ownership would prevail upon the entries in the column of cultivation and; entries in the column of cultivation would get preference over the entries in the column of lagan. Admittedly, the petitioners are recorded in the column of cultivation as "غیردخیلکاران" and; the said entry would certainly prevail upon the entry in the column of Lagan. *PLD 1990 SC 629 Tehmas and 16 others V. Dawar Khan, 1991 SCMR 829 Ali Akbar and others V. Malook and others, PLD 2002 SC 200 Hakeem Shah V. Sawab Khan and 17 others, PLD 2004 SC 59. Dilawar Shah and others V. Jannat Gul through LRs.* Moreover, suffice it to say that the ibid contention of the petitioners was earlier not considered by the Court of competent jurisdiction; while dismissing their declaratory suit vide its judgment & decree dated 21.7.2010; which findings had attained finality as the petitioners could not further challenge the validity of the same. Therefore, petitioners cannot take any advantage of the ibid entry

of "بلا لگان بہ تصور ملکیت خود" in the column of lagan. Apart from above, petitioners are estopped under the provisions of Article 115 of the Qanun-e-Shahadat Order, 1984 to deny the title of the respondents. There is also no substance in the arguments of the learned counsel of the petitioners that respondents should have approached the Civil Courts under Section 8 of the Specific Relief Act, 1877 for the redressal of their grievance, instead of approaching the Courts so established under Khyber Pakhtunkhwa Tenancy Act, 1950.

10. Moreover, learned counsel for the petitioners has failed to point out any illegality in the impugned judgments & decrees of the learned courts below warranting interference by this court in its extraordinary Constitutional Jurisdiction. Therefore, instant writ petition is, dismissed; being meritless and; accordingly, the findings of the Courts below are upheld; leaving the parties to bear their own costs.

Announced:

12.4.2021

(Signature)
JUDGE

* Nazir*

(SB)

Hon'ble Mr. Justice S M Attique Shah, J