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Judgment Sheet

IN THE LAHORE HIGH COURT, MULTAN BENCH MULTAN

JUDICIAL DEPARTMENT

Civil Revision No. 414-D of 2021

Riasat Ali etc. **Versus** Yaseen etc.

JUDGMENT

Petitioners by:	Mian Waseem Alam Ansari, Advocate.
Respondents by:	Ex-parte.
Date of Hearing:	02.02.2022

MUHAMMAD SHAN GUL, J.- Through this judgment, the titled Civil Revision is sought to be decided.

2. This Civil Revision lays a challenge to a judgment and decree dated 28.01.2020 passed by a Civil Judge, Multan and judgment and decree dated 24.03.2021 passed by an Additional District Judge, Multan upholding the judgment of the trial Court.

3. The petitioners before this Court i.e. plaintiffs before the trial court, filed a suit for possession alongwith permanent injunction claiming therein that they are exclusive owners in possession of suit property i.e. land measuring 8 marlas bearing Khewat No.58 Khatooni No. 58 situated at Basti Ali Wala Mouza Ambala Tehsil & District Multan on the basis of a mutation of inheritance No. 60 dated 31.08.2007 and that the respondents before this Court and defendants in the trial court, who are their neighbourers, had taken

the suit property from them temporarily for the purpose of animal grazing but who, upon being asked refused to vacate the property and hence the petitioners were left with no choice but to file a civil suit.

4. On the other hand, the respondents contended that they were owners in possession of suit property in the light of judgment dated 19.12.1995 passed by a Civil Judge, Multan and that the suit property was situated in Abadi Deh and therefore, the petitioners before this Court had no cause of action to file the suit in question.

5. *This plea of the respondents is irreconcilable. If the property is situated in Abadi Deh then there is no question of acquiring exclusive ownership thereof and reference is made to the law laid down in the case of* ***Mst. Imtiaz Bibi and 6 others vs. Malik Attiqur Rehman*** *(2005 YLR 167), in terms of which property situated in Abadi Deh belongs to the entire village and does not vest exclusively in one person.*

6. The learned trial court vide judgment and decree dated 28.01.2020 dismissed the suit of the petitioners on the ground that they had failed to prove illegal occupation by the respondents and had also failed in establishing their own case since there was no evidence before the court about where, how and why the possession had been handed over and in whose presence. The trial court also lamented that the documents produced by the petitioners before the trial court did not contain any description or locale of the suit property. **Very interestingly, the trial court also negated the stance of the defendants by ruling at paragraph 10 of its**

judgment that "*admittedly suit property is situated in Abadi Deh and no one can claim ownership over specific portion of the property situated in Abadi Deh.*"

7. The petitioners filed an appeal against the decision of the trial court and which appeal too met the same fate.

8. However, very interesting observations have been recorded in paragraph 16 of the judgment of the appellate court and which observations are being reproduced as under:-

> *"Respondents, from day one, while submitting their written statement contended that they are in possession of a piece of land in Abadi Deh and not the one owned and inherited by the appellants. Due to insufficient evidence of the appellants they failed to prove that respondents are in actual possession of the property inherited by them and not the one falling in Abadi Deh."*

9. The petitioners thereafter approached this Court by filing the Civil Revision under adjudication. Notices were issued to the respondents who failed to appear despite all methods of effectuating service having been employed and after the issuance and publication of proclamation in the *Daily Nawa-i-Waqt* dated 16.01.2022, by way of order dated 20.01.2022 passed by this Court, they were ordered to be proceeded against *ex parte*.

10. I have heard the learned counsel for the petitioners and have perused the available record.

11. It may straightaway be observed that the actual dispute between the competing parties pertains to demarcation of land which may have been or was to be carried out by the revenue authorities.

The petitioners claim that the property in issue is owned by them through a mutation of inheritance while on the other hand, the respondents claim that the property falls within Abadi Deh and is different from the property owned by the petitioners. This fact has been acknowledged by the appellate court in paragraph 16 of this judgment which has been reproduced in the earlier part of this judgment for facility of reference.

12. This factual controversy could only have been laid to rest by ordering for being placed on record a demarcation report finalized by the revenue authorities but which report was never brought on record either by the petitioners or by the respondents and was not even summoned either by the trial court or by the appellate court. Even though the onus to prove such an issue was on the petitioners and even though they failed to discharge the onus, the trial court as also the appellate court, instead of giving a short shrift to this matter should have summoned the revenue authorities for the purpose of procuring a demarcation report pertaining to the property in issue. The most important document that had a decisive bearing on the matter was the demarcation report of the suit property which ought to have been carried out and produced before the court so as for the Court to see whether the respondents were actually occupying the suit property being claimed by the petitioners or whether they were occupying some property situated in Abadi Deh which was different from the suit property in question!

13. Both courts below proceeded on the incorrect assumption as if there was no revenue record available with respect to the property situated in Abadi Deh and both Courts below failed to take into account the law laid down in the case of **Kamal Din vs. Manzoor Ahmad** (1989 CLC 2148), in which case the court was faced with a dispute relating to ownership of a house situated in Abadi Deh. It was held that Abadi Deh commonly known as area falling in *Laal Lakeer* was recognized in the revenue record and that there exists revenue record bearing names 'Shajra Abadi' and 'Khasra Abadi' which was carefully prepared during the course of settlement operations with regard to areas lying within the Abadis of villages in the Province of Punjab. That Khasra Abadi contained accurate account of all units in Abadis detailing their different shapes alongwith complete measurement of each unit whereas Shajra Abadis contained full particulars of owners and occupants of various units as also information about the nature of construction existing thereon.

14. What also escaped the attention of both courts below is another reported judgment of this Court i.e. **Mst. Imtiaz Bibi (supra**) (2005 YLR 167) wherein very important observations have been recorded with regard to the ownership status of property falling in Abadi Deh and which judgment also compromises the stance of the respondents before the Courts below. It has been held in this judgment that "the argument of learned counsel for the petitioners that the land situated within Abadi Deh will be brought under the

ownership of the person in possession is misconceived because this property vests in proprietors of the village who own agricultural land situated therein. It is settled law that proprietors of the village who own agricultural land situated within it hold shares in Abadi Deh in proportion to their ownership of agricultural land in the estate in question."

15. Hence it was also imperative for the respondents to have brought on record the mode of having acquired the right in the property admitted by them as falling in Abadi Deh. The civil suit filed by the respondents which finds a mention in the order of the trial court was filed for the limited purpose of seeking an injunction and does not therefore help the case of the respondents.

16. **The above resume of facts has set this Court thinking about the future course of action. Of course, the easy way out is to simply dismiss the revision petition on the nearly unarguable premise that the petitioners who had to build their own case had failed to set up their case, had failed to produce relevant evidence and hence this Court was not required to fish for evidence or fill lacunas on behalf of delinquent petitioners who had gone wrong themselves. While this may be the simple way out, it is definitely not the correct way!**

17. **When a Court becomes ceased of a matter, it is the bounden duty of the court to decide the actual dispute in question and do so by means of all permissible procedures and**

methods. In the present matter, the correct way for the trial court or even the appellate court was to have summoned the revenue authorities and ordered for the production of a demarcation report or for that matter order for the production of Shajra Abadi and Khasra Abadi records but both courts below failed to do so and which omission has caused a serious miscarriage of justice in the considered opinion of this Court.

18. Drawing strength from an illuminating judgment of the Hon'ble Supreme Court of Pakistan in the case of **Muhammad Aslam vs. Muhammad Nazir Khan** (2008 SCMR 1075) where the question before the Court was whether the defendants were in possession of house No. 2502 or 2501 and where it was held as under:-

> *"To resolve the controversy it would have been more appropriate by the Civil Judge to have undertaken an exercise of examining the old Revenue Record, in the interest of justice, with a view to identify the exact location of both the houses i.e. Nos.2501 and 2502. As valuable rights of the parties are involved in the case, therefore, the revision filed by the petitioner may have not been dismissed solely on the ground that findings of fact of one of the Courts below exist in favour of respondent/plaintiff.*
>
> *Thus, in view of above discussion, instant petition is converted into appeal and allowed as a result whereof judgments dated 12th November, 1987, 25th April, 1992 and 8th July, 2004 passed by trial Court, Appellate Court and High Court, respectively are set side and case is remanded to the learned civil Judge Khushab with direction to him to summon the old Revenue Record, pertaining to underneath land of the houses including "Shajra Khistwar", "Massavi", "Register Haqdaran Zamin" to ascertain the exact location of both the houses and thereafter appoint a Revenue Officer as a Local Commissioner with direction to him to visit the site in presence of parties or their representative and identify/demarcate both the houses in view of above noted documents and submit report, and then to dispose of the matter within a period of three months positively, without fail."*

the way forward is to remand this matter to the trial court so as for the trial court to do as the Hon'ble Supreme Court of Pakistan has ordered in the afore referred precedent case.

19. In the same vein, guidance may also be sought from what has been held by the Hon'ble Supreme Court of Pakistan in the case of **Nooruddin and 11 others vs. Abdul Wahid** (2000 SCMR 91)

> **"*None of the above, can be construed to be an impediment invocable against the impugned judgment. The only thing amiss in the original and the appellate judgments lies in the possibility that complete justice, in accordance with law, may not have been done. Thus, while it was for the plaintiffs to have' established the dimensions of their property and while the plaintiffs could succeed only on the strength of their own case, as distinguished from any weakness in the defence, the material on the record suggests that there may have been a piece and parcel of land, catering to an easement, either belonging to one or the other party or both of them. A case, therefore, seemed to have emerged where, travelling beyond the parameters of burden of proof, the original or the appellate Bench, or both of them, should have embarked upon an inquiry of their own to determine the actual extent of the plaintiffs' land and the easementry attachments, if any, belonging to either or both of the parties. This, therefore, was a fit case for appointment of a licensed architect or engineer to visit the site and demarcate the plaintiffs' property, together with appurtenances, if any, with the necessary aid and assistance of the city survey staff but, initially, at the expense of the plaintiffs, because it is they who had approached the Court for relief."***

20. In the case of **Aziz Mukhtar Ahmed and others Vs. Madrissa Fayyaz-Ul-Haq through Nazim and others** (2007 YLR 295), where the dispute pertained to the identity and location of the property in dispute, it was held as under:-

> *"Dispute between the parties cannot be put to rest on the basis of their respective sale-deeds, revenue record produced by them or site plans already on the file. In the given circumstances of this case, the only course open for a just/fair decision between the parties, demarcation of both the plots purchased by the parties at the site was inevitable, which was correctly directed to be adopted by the Appellate Court, who committed no illegality/irregularity amendable to revisional jurisdiction of this Court".*

21. In the case of **Shana Vs. Punjab Province through Collector and another** (2006 YLR 2874), where both competing parties had produced oral evidence in support of their respective claims and where documentary evidence revealed that there were two different khasra numbers, one of Abadi Deh and the other of *Ghair Mumkin Chapar*, it was held as follows:-

> *"The controversy cannot be resolved on the basis of oral as well as documentary evidence available on record. Both the Courts below have adopted a relaxed attitude in resolution of the real controversy between parties. In the circumstances, it was required by the learned Courts below to have appointed a local commission to conduct investigation and demarcation at the spot to ascertain the existing construction and its location. The respondent C.I.A. was also required to substantiate their claim of ownership of the property in dispute by producing documentary evidence indicating its evacuee nature and allotment in their favour.*
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> *The matter is remitted back to the learned trial Court, who shall afford an opportunity to the parties to produce their respective evidence. The learned trial Court shall also appoint a local commission, who shall visit the spot and ascertain the location of the suit property. On receipt of report from the local commissioner the learned trial Court shall grant an opportunity to the parties to raise objections to the same."*

22. In the case of **Ubedul Haq and 4 others Vs. Muhammad Tufail and another** (2003 YLR 1219), it was held as under:-

> "*The controversy thus spelt out from the pleadings of the parties, was indeed as to the correct and real identification and demarcation. The petitioners/plaintiffs had relied upon a demarcation report dated 22-2-1983 which was ruled out from consideration by the trial Court that the same had not been exhibited in accordance with law and was of no value, whereas in appeal, the Appellate Court initially remanded the matter to the trial Court where against revision petitions filed by the respondents/defendants (C.R. No.3312 of 1994) to C.R. No.3315 of 1994) were disposed of on 19-3-1995 on the basis of consensus between the parties, that the demarcation report will be exhibited and read as part of evidence. The matter was entrusted to the Appellate Court with the direction to decide the appeals*

afresh. However, while deciding the appeals, the Appellate Court did not give any weight to the demarcation dated 22-2-1983 taking the view that the same was not carried out in accordance with rule 67-A of the Rules framed under Land Revenue Act, 1967 and that such a report could not be relied upon by the petitioners/plaintiffs. ***It is, thus, evident that the real controversy as to whether the defendants/respondents had encroached upon the property owned by the petitioners/ plaintiffs, has remained unresolved and is still shrouded by mystery. There is a specific procedure laid down in the High Court Rules and Orders (Volume 1) to be followed in such-like cases.*** *From the pleadings of the parties salient portions whereof have been reproduced above, it is not difficult to infer that rules 1, 2 and 3 of Chapter 1-M of the High Court Rules and Orders (Volume 1) was attracted to such a situation which reads as under:--*

"I. Local inquiry.---In ' Hadd-Shikni' suits and other suits of boundary disputes of land, falling within the jurisdiction of a Civil Court, it is generally desirable that enquiry be made on the spot. This can usually be done in the following ways:--

(a) by suggesting that one party or the other should apply to the Revenue Officer to fix the limits under section 117(1) of the Punjab Land Revenue Act, 1967 (XVII of 1967). Time for such purpose should be granted under Order XVII, rule 3 of the Code of Civil Procedure;

(b) by appointing a local commissioner, and

(c) by the Court itself making a local enquiry.

2. Enquiry by Revenue Officer.---An order of the Revenue Officer made under section 101 of the Land Revenue Act is not conclusive; but when his proceedings have been held in the presence of, or after notice, to the parties of the suit, and contain details of enquiry and of the method adopted in arriving at the result it would be a valuable piece of evidence. It may be noted that an Assistant Collector of the second grade can deal with cases in regard to boundaries which do not coincide with the limits of an estate.

3. Appointment of Commissioner.-- Similarly the report of the Local Commissioner should contain full details so that the Court may satisfactorily deal with the objections made against it.

No person other than a Revenue Officer (or retired Revenue Officer) not below the rank of a Field Kanungo should usually be appointed a Local Commissioner. "

Rule 4 lays down the instructions for the guidance of the Local Commissioner. This procedure was not adhered to or followed by the trial Court. It appears that such a course was not suggested to the Court by either of the parties yet the Court was obliged to apply/follow the correct procedure. In Nooruddin and 11 others v. Abdul Wahid (2000 SCMR 91) it was observed that "A case, therefore, seemed to have emerged where, traveling beyond the parameters of burden of proof, the original or the Appellate Bench, or both of them, should have embarked upon an inquiry of their own to determine the actual extent of the plaintiffs land and the easementry attachments, if any, belonging to either or both of the parties. This therefore, was a fit case for appointment of a

> *licensed architect or engineer to visit the site and demarcate the plaintiffs' property, together with appurtenances, if any, with the necessary aid and assistance of the city survey staff ". Similar approach had been adopted by this Court in Anwar Club and another v. Muhammad Sarwar (PLD 1992 Lahore 63).*
> *Therefore, for the determination of the extent of the property and claim of the petitioners/plaintiffs, the procedure laid down in the High Court Rules and Orders had to be adhered to by the Court. That would have enabled the Court to resolve the controversy between the parties. Non-compliance and non-adherence of such a course and procedure has resulted in illegality and material irregularity by the Courts below. The concurrent judgments rendered by the Courts below thus, do not stand in the way of this Court for curing such illegality by setting aside their judgments."*

23. While Revisional jurisdiction of the High Court is always discretionary and equitable in nature and no party is entitled to it as of right and while no hard and fast rule can be laid down to tie down the hands of a Superior Court, Superior judiciary always acts in aid of justice subject to the law and the Constitution. The aim of revisional jurisdiction is to see whether the subordinate court has acted with material irregularity resulting into a miscarriage of justice. In the case before this Court it is evident that both courts below acted with material irregularity in sidelining and consigning to the backburner the actual issue involved between the parties. A decision on such an issue being integral to the *lis* before them, the courts below ought not to have shied away from performing their duty.

24. In view of what has been discussed above and in view of precedent cases quoted above, this Court will be failing its duty

if it were not to remand the matter to the trial court so as to resolve the actual dispute between the parties.

25. In this view of the matter, both judgments, one dated 28.01.2020 passed by a Civil Judge and the other dated 24.05.2021 passed by an Addl: Distri2ct Judge, Multan are hereby set aside and are declared to be no legal effect. The suit filed by the petitioners shall be deemed to be pending before the trial court and the trial court shall, after seeking guidance from the precedents quoted in this judgment proceed with the matter in accordance therewith and resolve the actual controversy existing between the parties. Both parties are directed to appear before the Senior Civil Judge, Multan on 15.02.2022, who shall assign the suit in question to a Civil Judge who shall decide the same in accordance what has been noted above within a period of four months.

26. **Allowed in the above terms with no order as to costs**.

(Muhammad Shan Gul)
Judge

Approved for reporting.

Judge

Riaz