

HIGH COURT OF AZAD JAMMU AND KASHMIR
MUZAFFARABAD

Civil Appeal No. 115/2018
Date of Institution 23.05.2018
Date of Decision 19.05.2022

1. Abdul Hameed,
2. Abdul Aziz,
3. Muhammad Bashir, sons of Ahmed Din,
4. Rehmat Bibi widow of Ahmed Din R/o Kot Jattan Tehsil & District Bhimber, Azad Kashmir;

Appellants

VERSUS

1. Muhammad Ashraf,
2. Muhammad Arif, sons of Muhammad Ismail R/o Dhandar Khurd Tehsil & District Bhimber,

Real Respondents

3. Rashida Bibi wife of Muhammad Boota,
4. Sughran Bibi W/o Akbar Ali, daughters of Ahmed Din,
5. Muhammad Ehsan S/o Boota,
6. Farzana Bibi W/o Nadir Hussain,
7. Naseem Bibi W/o Khadim Hussain daughters of Muhammad Boota,
8. Abdul Rehman, son of Alif Din,
9. Nazir Begum W/o Muhammad Zaman Daughter of Alif Din caste Jatt R/o Saddwal Tehsil Kharian District Gujrat No.3,5to 7 Chak No. 175/7R Mandi Forte Abbas Tehsil Forte Abbas District Bhawalnagar, No.8 & 9 Kot Jatta Tehsil & District Bhimber, Azad Kashmir.

Proforma respondents.

CIVIL APPEAL

Before: Justice Sardar Liaqat Hussain, J.

PRESENT:

Ch. Muhammad Aslam Raza, Advocate for the appellants.

Mr. Muhammad Pervaiz Mughal, Advocate, for the respondents.

JUDGMENT:

The above captioned 2nd appeal assails the judgment & decree passed by the learned District Judge, Bhimber, dated 10.03.2018, whereby, the appeal filed by the present appellants has been dismissed and judgment & decree passed by the learned Senior Civil Judge, Bhimber dated 04.10.2016 has been maintained.

2. The precise facts culminating into filing of the instant appeal are that Abdul Hameed & others, plaintiff/appellants, herein, brought a suit for possession, in respect of the suit land, against Muhammad Ashraf & others, defendant/respondents, herein, before the Court of Senior Civil Judge, Bhimber on 07.01.2014, on the facts and grounds listed, therein. The learned trial Court, having obtained written statement, framed

issues and directed the parties to lead evidence and after completion of usual proceedings, dismissed the suit for want of proof, vide judgment & decree dated 04.10.2016. Feeling aggrieved from the said judgment & decree, plaintiffs went in appeal before the Court of District Judge, Bhimber on 28.12.2016 and the learned 1st appellate, after hearing the parties, also concurred with the findings of the trial Court and dismissed the appeal vide judgment & decree dated 10.03.2018, which is the subject matter of the appeal in hand.

3. Ch. Muhammad Aslam Raza, Advocate, the learned counsel for the appellants, repeated the stance taken in appeal and submitted that the case of the appellants was amply proved before the trial Court but the trial Court failed to appreciate the controversy in its true perspective, hence, reached at an erroneous and arbitrary conclusion, which resulted in serious miscarriage of justice on one hand and huge loss to the appellants, on the other hand. The learned counsel stressed the point that during the pendency of the suit, the defendant/

respondents succeeded to make correction in the revenue record, which fact was brought into the notice of trial Court but the trial Court did not bother to consider this crucial development, therefore, the judgment & decree passed by the trial Court was unjust and against the principles of justice, however, the learned 1st appellate Court also failed to consider this aspect of the case and wrongly concurred with the findings of the trial Court. The learned counsel referred the following precedent case law and craved for reversal of both the judgment & decrees:-

1. PLD 2004 Lahore 448,
2. 1981 CLC 1717 Lahore,
3. 2017 MLD 600 Lahore,
4. 1990 CLC 670 TPA 1882
5. 2017 YLR 2173 (Lah)
6. 1976 SCMR 43
7. PLD 2002 SC 303
8. 2017 YLR 2229 Lahore,
9. 2016 CLC Note 111 Lahore and
10. 2016 CLC Note 57

4. Mr. Muhammad Perveiz Mughal, Advocate, the learned counsel for the respondents while controverting arguments of the learned counsel for appellants pressed into service the point that the findings returned by the trial Court also stood

concurrent and upheld by the first appellate Court, which do not warrant interference of this Court, at all. He defended and supported the impugned judgment & decree with full force and craved for dismissal of the appeal.

5. After hearing the learned counsel for parties, I have perused the contents of appeal and examined the record.

6. It is admitted by the learned trial Court in concluding paragraph on issue No.2 that during the pendency of the suit, correction has been made in the revenue record. For proper appreciation, the relevant portion of the judgment of the trial Court is reproduced, which reads as under:-

EX.PC, Ex.PE, Ex.PB, Ex.PA "----- ملاحظہ نقولات
 سے عیاں ہے کہ مدعیان کا اندراج بطور مالک موجود ہے۔ جبکہ اراضی متدعوئیہ مقبوضہ مدعا علیہم ہے اور مدعا علیہم کا اندراج مطابق مذکورہ دستاویزات غیر موروثی ہے۔ تاہم ملاحظہ ریکارڈ سے پایا جاتا ہے کہ فریقین کے مابین مجاز فورم پر درستگی ریکارڈ کی کارروائی بھی زیر کار تھی اور دوران سماعت مقدمہ ہذا درستگی ریکارڈ بحق مدعا علیہم ہو چکی ہے۔ اور اراضی متدعوئیہ میں مدعا علیہم کا اندراج بطور حصہ دار مالک ہو چکا ہے۔"

7. The point has been discussed and resolved by the Superior Courts of Azad Jammu & Kashmir

and Pakistan in numerous cases and it has been held that the development made during the pendency of lis, must be considered by the Court. In the case reported as 1993 CLC 2337 (Lahore), at page 2340 of the report, it has been observed as under:-

“6. Learned counsel for the petitioners still insisted that since the appeal was in continuation of the suit, therefore, even if tenancy rights were created during the pendency of the appeal in the pre-emption suit, the petitioners would be protected. I am afraid, this arguments is also based on misconception of law because if the suit to be treated as pending in appeal any right acquired the pendency of the same would also be hit by rule of lis pendens and no independent right could have been deemed to have been created in favor of such person acquiring rights from the judgment-debtor.”

8. As stated above, in the instant case, during pendency of the suit, the correction of record has been effected, therefore, it was enjoined upon the trial Court to frame issue to that effect, that whether during the pendency of suit, correction of the revenue record could have been made and if so, what was effect of such development on the fate of

the suit but the trial Court failed to consider the newly made development, therefore, the judgment was not sustainable under law and thus, the concurrence of the learned 1st appellate Court is also not justified.

9. As far the question of the concurrent findings is concerned. In this regard, it may be observed that if there is some glare violation of any law is apparent on record, the concurrent findings are not immune from interference, however, the same is not made in routine. The proposition has been resolved by the Hon'ble Supreme Court of Azad Jammu & Kashmir in case titled Aurangzeb & 4 others v. Muhammad Ayub & another, reported as 2017 SCR 464, wherein, at page 472 of the report, it has been observed as under:-

“7. After going through the material facts available on record, we are of the view that the respondent has proved his ownership through reliable evidence and the judgment of the trial Court/first appellate Court are based on misreading and non-reading of evidence. Thus, the learned High Court has not committed any illegality while interfering with the concurrent

findings recorded by the Courts below as it is now well settled that the concurrent findings of facts recorded by the Courts below are open to attack and can be recalled if the same are based on misreading or non-reading of evidence.”

10. In view of above, accepting this appeal, setting aside the impugned judgment & decrees of both the Courts below, the case is hereby remanded to the trial Court with the direction to decide the same after framing following issue and recording evidence upon the same, within a period of 3 months positively.

”تنقیح

کیا دعویٰ مدعیان کے دوران درستگی ریکارڈ کا جو عمل کیا گیا۔ وہ درست ہے۔ اگر ہاں تو اس کا دعویٰ ہذا پر کیا اثر ہوگا۔
بذمہ مدعیان / تردید مدعا علیہم

Appeal accepted.

Muzaffarabad;
19.05.2022

-Sd-
JUDGE

Note:-

Judgment has been written and duly signed. The office shall announce the same with due notice to the parties.

--Sd-
JUDGE

Approved for reporting.

-Sd-
Judge