

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.1530/2017.

Date of institution 19.09.2017.

Date of decision 12.04.2022.

1. Ghayoor Hussain Shah S/o Syed Mehboob Shah.
2. Zulfiqar Hussain Shah S/o Ismail Shah.
3. Waseem Shah S/o Aziz-ul-Hassan Shah.
4. Shoukat Shah S/o Meer Ahmed Shah, caste Syed, R/o Rawali Tehsil Hari Ghel District Bagh, Azad Kashmir.

(Petitioners)

VERSUS

1. District Judge Bagh, district Bagh, Azad Jammu & Kashmir.
2. Civil Judge Bagh, district Bagh Azad Jammu & Kashmir.
3. Syed Mehmood Hussain Shah.
4. Syed Zahid Hussain Shah.
5. Syed Ilyas Hussain Shah Sons of Syed Yaseen Shah.
6. Tabassum Majeed.
7. Mudassar Majeed Sons of Majeed Hussain Shah.
8. Jawad Haziq
9. Hamad Haziq
10. Ibaad Haziq Sons of Syed Haziq Hussain Shah, caste Syed R/o Rawali Tehsil Hari Ghel District Bagh, Azad Kashmir.
11. Collector District Bagh, having his office at District Headquarter Bagh.
12. Additional Collector Bagh, having his office at District Headquarter Bagh.
13. Tehsildar Sub Division Hari Ghel District Bagh.
14. Gardawar Circle Rawali, Tehsil Hari Ghel District Bagh.
15. Patwari Halqa Rawali, Tehsil Hari Ghel District Bagh.

(Real-Respondents)

16. Mashkoor Shah.
17. Bashir Shah.
18. Nazir Shah Sons of Abdul Hussain Shah.
19. Tehsin Shah.
20. Masroor Shah.
21. Azhar Shah Sons of Mehboob Shah.
22. Fiaz Shah.
23. Anayat Shah.
24. Ikhlal Shah.
25. Imtiaz Shah.
26. Ishfaq Shah Sons of Noor Ahmed Shah.
27. Sohail Shah.
28. Faisal Shah.
29. Shoaib Shah Sons of Farooq Shah.
30. Shabbir Shah S/o Suleman Shah.

31. Sakeena Begum D/o Mustafa Shah.
32. Sakeena Begum D/o Ibrahim Shah.
33. Asghar Shah S/o Rakhmat Ullah Shah.
34. Nadeem Shah.
35. Saleem Shah Sons of Aziz-ul-Hassan Shah.
36. Ashiq Ahmed Shah.
37. Ishfaq Ahmed Shah.
38. Shafique Shah Sons of Sana-Ullah Shah.
39. Ahsan Shah.
40. Mohsin Shah Sons of Ishtiaq Shah.
41. Sadiq Shah.
42. Sakhwat Shah.
43. Abid Shah sons of Mir Ahmed Shah, caste Syed R/o Rawali Tehsil Hari Ghel District Bagh, Azad Jammu & Kashmir.

(Proforma-Respondents)

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Syed Sayyad Hussain Gardezi, Advocate for the petitioners.

Syed Muhammad Abdul Basit Gillani, Advocate on behalf of respondents.

Judgment:

The petition in hand has been filed by the petitioners- Ghayoor Hussain Shah and others, under Article 44 of the Interim Constitution, 1974 with a specific prayer as follows:-

“ In view of above, it is most humbly requested on behalf of petitioners that by accepting the caption writ petition an appropriate writ may kindly be issued in favour of petitioners in the following manners:-

- (i) Declare the impugned order dated 14.07.2017 passed by Learned District Judge Bagh and order dated 03.08.2017 passed by Civil Judge Bagh against law, rules, against the Justice and against the Judgment of Apex Court as well as against the facts of the case and may kindly be quashed the order dated 14.07.2017 passed by learned District Judge Bagh and order dated 03.08.2017 of Civil Judge Bagh, resultantly the civil revision petition No.9 filed by real respondents before District Judge Bagh may

kindly be dismissed. It is further prayed respondent No.2 may kindly be directed to trial the suit of the petitioners.

- (ii) Any other relief with this Hon'ble Court deems fit may also be granted to meet the ends of justice."

I. FACTS IN BREVITY:-

The petitioners are 1st Class State Subject of the Azad Govt. of the State of Jammu & Kashmir and hail from district Bagh. It is averred that petitioners filed suit for declaration before Civil Judge Bagh alongwith correction of revenue record, cancellation of gift deeds and mutations No.1901, 2096 as well as for possession regarding suit land bearing survey Nos. 1547, 1554, 1501, 1490, 1504, 1449, 1457, 1468, 1573 total measuring land 51 kanals 10 marlas and old survey Nos. 1443, 1420, 1421, 1426, 1458, 1419 six parts measuring 44 kanals 6 marlas total land measuring 73 kanal 13 marlas situated in village Rawali Tehsil Hari-Ghel district Bagh Azad Kashmir on the basis of inheritance, against the defendants/respondents. After filing of the aforesaid suit, the defendants were summoned, who appeared before the court and filed an application for rejection of the suit as the same is time barred. The learned Civil Judge Bagh (trial Court) after hearing both parties dismissed the application of the defendants vide order dated 17.01.2017. Feeling aggrieved from the aforesaid order, the non-petitioners filed a revision petition before learned District Judge Bagh on 17.02.2017. The learned District Judge Bagh, after hearing arguments of the parties, cancelled the order of the trial

Court dated 17.01.2017 and by accepting the application of the non-petitioners filed under Order 7 Rule 11 of C.P.C rejected the suit of the plaintiff/petitioners vide impugned order dated 14.07.2017, hence, this constitutional petition.

II. **PETITIONERS' SUBMISSIONS:-**

Syed Sayyad Hussain Gardezi, the learned counsel for the petitioners submitted written arguments wherein he reiterated the facts of the case and further contended that the learned court below without considering the record and facts of the case rejected the suit of the plaintiff/petitioners vide impugned order, which is not maintainable. He further contended that petitioners clearly mentioned fraud and forgery on the part of respondents, but the same had not been taken into consideration by the learned district Judge and arrived at wrong conclusion. He maintained that without sanction of mutation, without any mode of transfer by maneuvering with the officials of revenue department, the land in question was entered in the name of grandfathers of respondents fraudulently. He staunchly contended that the learned District Judge Bagh by ignoring averments made in the plaint of petitioners and documents annexed with the plaint, passed the impugned order dated 14.02.2017 by accepting the revision petition filed by real respondents and rejected the suit of petitioners under Order VII Rule 11 (d) of C.P.C without applying judicial mind, without understanding the law, in telegraphic manner which is liable to be set-aside by maintaining the order dated 17.01.2017. The learned

counsel zealously contended that under Section 53 of the West Pakistan Land Revenue Act, 1967, any person who considers himself aggrieved by an entry in the revenue record, he is entitled to institute a suit for declaration of his rights under Chapter VI of the Specific Relief Act, 1877, hence, the same was not barred by law. He strongly mentioned that the petitioners (plaintiffs) had claimed multiple remedies in their prayer clause if any one of the prayer could not be granted, that would not mean the same would be treated barred for all other claimed remedies. He further mentioned that under Order VII Rule 11 of C.P.C, plaint could only be rejected, if all the reliefs claimed, were barred by law. In this regard, the learned counsel relied upon the case law titled “Muhammad Younis Arvi Versus Muhammad Aslam and 16 others” reported as [2012 SCR 135] and Raja Gul Nawaz Versus Kamran and 7 others reported as [2016 SCR 338]. Finally, the learned counsel prayed that by accepting the writ petition, the impugned order dated 14.07.2017 passed by District Judge Bagh, may be set-aside and order passed by Civil Judge Bagh dated 17.01.2017 may be maintained.

III. **SUBMISSIONS OFFERED BY RESPONDENTS:-**

Syed Muhammad Abdul Basit Gillani, learned counsel for respondents No.3 to 10 while controverting the arguments of the learned counsel for the petitioner also submitted written arguments, wherein it is contended that in light of gift deeds dated 20.12.1962 and 23.05.1976, the mutation was executed in favour of non-

petitioners. He further contended that 30 years old document has got presumption of truth; in this regard, he also referred a verdict of the Hon'ble Supreme Court titled "Khadim Hussain Khan and 9 others v/s Mst. Sarwan Jan and 27 others" reported as 1998 SCR 364, wherein it has been laid down that "*If a thirty years old document is acted upon and is supported by possession the presumption can rightly be drawn in favour of genuineness of document.*" The learned counsel further submitted that the petitioners have annexed an irrelevant record with the writ petition, hence, instant petition is liable to be dismissed. The learned counsel zealously contended that petitioners have failed to point out any illegality, irregularity or any violation of law in the impugned order of the learned District Judge, hence, instant writ petition may kindly be dismissed by maintaining the order of the learned Court below (District Judge Bagh). The learned counsel defended the impugned order passed by the learned District Judge Bagh, on all four corners and prayed for dismissal of the writ petition.

IV. **DETERMINATION BY THE COURT:-**

I have considered the written arguments submitted on behalf of the learned counsel for the parties and have comparatively and minutely perused the record appended with the writ petition.

The main plank of the arguments of the petitioners is that as the matter pertains to the inherited property thus suit of the petitioner could not be thrown out on hyper technical reasons under Order 7 Rule 11 of CPC.

It is unequivocally reflecting from the record that the petitioners herein have attributed fraud to respondents in their plaint and categorically pleaded lack of knowledge regarding entries in revenue record alongwith other multiple triable bundle of facts requiring evidence in order to adjudicate the same.

It is a celebrated principle of law that fraud vitiates all solemn proceedings, therefore, such like stance where fabrication and manipulation of documents is claimed, as per principle of civil dispensation of justice lis was liable to be adjudicated on the basis of preponderance of probability of evidence (produced by the parties) and technical knockout was not warranted.

Rules framed in the Code of Civil Procedure are for the advancement of Justice and should not so far as possible be allowed to operate so as to defeat the ends of justice.

While considering application under Order VII Rule 11 of CPC, contents of plaint are to be treated as true on its face value and plaint can only be rejected if from any statement in the plaint the same is found to be barred by any law. What can be looked into is averments made in the plaint that too where multiple prayers have been made and even one prayer is maintainable plaint cannot be rejected, particularly in case where rights pertaining to inheritance are involved.

At this juncture it is pertinent to mention here that where encroachment and infringement of determination of share in inherited property are being claimed it should not be taken lightly as

such like right also take breath from constitutionally guaranteed fundamental rights as well, hence, no presumption could be taken in vacuum without having recourse to face trial of the lis on merits.

So far as the point of limitation is concerned, it is a mixed question of fact and law in the instant matter, thus plaint could not be rejected on this count as well.

It is also a settled principle of law that in case where one of the co-sharers claims share in the ancestral property, plaint cannot be rejected on the question of limitation without proper evidence after framing issues, ordinary limitation does not apply amongst co-sharers though one of them be even out of possession. Ready reference in this regard is 1982 CLC 653.

Suit of the plaintiffs is equipped with multiple prayers which is reproduced as under:-

”لہذا بعد تحقیقات ڈگری استقرار حق تصحیح درستی اندراج ریکارڈ مال از 1999 کبری تا حال ترکہ فقیر شاہ ولد جعفر شاہ بمنسوخی ہیہ نامہ مصدقہ 20-12-1962، 16-05-1976 و انتقالات نمبر 1901، 2096 نسبت اراضی نمبرات خسره سابق 1547، 1554، 1501، 1490، 1504، 1457، 1468، 1449 تعدادی 44 کنال 1 مرلہ سالم و 1443، 1420، 1421، 1426، 1458، 1419 تعدادی 44 کنال 6 مرلے کا نصف تعدادی 22 کنال 3 مرلے کل تعدادی 66 کنال 9 مرلے موضع راو لی تحصیل ہاڑی گہل ضلع باغ معتر چہ مقدمہ بحق مدعیان بخلاف مدعا علیہم 1 تا 8 بدیں صراحت صا در فرمائی جاوے کہ اندراج جمعہ بدی 1999 کبری ترکہ فقیر شاہ ولد جعفر شاہ فرضی اور جعلی ہونے کی بناء پر جمعہ بدی 1964 کبری کے مغاثر ہونے کی وجہ سے حقوق مدعیان پر غیر موثر و کا عدم ہے۔ قابل منسوخی ہے۔ بالجد فرضی اندراج کی رو سے تا حال مرتب شدہ ریکارڈ مال نسبت اراضی متدعو یہ ترکہ فقیر شاہ ولد جعفر شاہ قابل تصحیح اور درستی ہے۔ تصحیح درستی اندراج ریکارڈ مال کا حکم بخشا جا کر اشرف شاہ ولد پیر شاہ دادا مدعا علیہم 1 تا 3 کا نام در خانہ ملکیت حذف فرما کر فضل شاہ موروٹ مدعیان کا اندراج بحیثیت یکجہی فقیر شاہ ولد جعفر شاہ فرمایا جا کر تصحیح ریکارڈ فرمائے جانے کا حکم بخشا جا کر فرضی اندراج کی رو سے رجسٹری شدہ ہیہ نامہ جات 20-12-1962 و 23-05-1976 و انتقالات نمبر 1901، 2096 منسوخ فرمائے جانے مدعیان کو بحیثیت یکجہی یاں اراضی متدعو یہ ترکہ فقیر شاہ کا دخل ازاں مدعا علیہم نمبر 1 تا 8 دلایا جاوے یا دیگر داد ری قرین قیاس عدالت ہو بخشی جاوے۔“

The petitioners (plaintiffs) have categorically alleged in para No.8 of the above plaint that entries in revenue record had been made by way of playing fraud and forgery; abstract of the same is as follows:-

”یہ کہ اشرف شاہ ولد میر شاہ نے دھوکہ دہی اور جعل سازی کے تحت جعلی اندراج کروا کر سالم ترکہ فقیر شاہ موضع راوی کا اپنے پوتوں کے نام منتقل کر دیا۔ اشرف شاہ موضع کیائی کلاں تحصیل راوا کوٹ ضلع پونچھ کا سکوتی تھا۔ کیائی کلاں حدود راوا کوٹ میں ہے۔ بہہ نامہ مصدقہ 20-12-1962 میں جعلی طور پر کیائی کلاں تحصیل راوا کوٹ کا رقبہ بھی فرضی اور جعلی طور پر منتقل کیا گیا“

In order to determine cause of action the fate of the case is to be looked into through the lens of averments made in the plaint and same would be accepted as correct, that too where fraud is alleged and attributed the factum can be resolved only after recording of evidence. Ready reference in this regard is **2014 MLD 481**.

Whether the ibid entries and revenue record are based on fraud or otherwise is a question which can be answered only when some evidence is recorded to the above effect. Reliance is placed on the following case law:-

1. Mst. Noor Bibi v/s. Mst. Mukarma Bibi [2014 YLR 1494].
2. Muhammad Rahim v/s Malik Daud Khan [2011 CLC 490].
3. Mst. Bano v/s Begum Dilshan [2001 CLC 88].

Thus no cavil with the proposition that the suit filed by the petitioner is triable by the trial Court in view of section 9 of CPC and section 53 of the West Pakistan Land Revenue Act. Order passed by the trial Court dated 17.01.2017 is completely in consonance with law while the revisional order passed by the learned District Judge Bagh dated 14.07.2017 is not sustainable and liable to be set at naught.

The epitome of above discussion is that the instant writ petition is accepted and impugned order dated 14.07.2017 passed by learned District Judge Bagh; as well as the order dated 03.08.2017 passed by Civil Judge Bagh are hereby set-aside by restoring the order dated 17.01.2017. Case is remanded back to the trial Court to proceed from the stage whereof it was discontinued on rejection of the plaint but strictly in accordance with law.

Muzaffarabad,
12.04.2022.

-Sd-
JUDGE

Approved for reporting

-Sd-
JUDGE