

HIGH COURT OF AZAD JAMMU AND KASHMIR

Civil Appeal No.110/2013.
Date of inst. 20.09.2013.
Date of decision. 18.02.2022.

1. Jeet Hussain S/o Bagh Hussain;
2. Muhammad Bashir;
3. Taleem alias Kala S/o Jeet Hussain, caste Sudhan R/o Nain Sukh Tehsil & District Kotli.

..... Appellants

VERSUS

1. Janat Begum, widow of Bostan Khan;
2. Aaftab;
3. Iftikhar;
4. Hameed;
5. Zulqarnain, sons;
6. Raftaj Begum;
7. Shahnaz;
8. Robina, daughters;
9. Rasheeda Begum, widow of Muhammad Ikhlas;
10. Moon;
11. Subhan S/o Muhammad Ikhlas;
12. Mst. Nisbat Jan, widow of Muzaffar Khan;
13. Aurangzeb;
14. Ghafoor;
15. Nasir;
16. Saqib;
17. Kashif;
18. Aaqib, sons;
19. Parveen Bi;
20. Saleem Bi;
21. Razaiban Bi;
22. Shaista Bi d/o Muzaffar Khan, caste Mangral R/o Nain Sukh Tehsil & District Kotli.

..... Respondents

CIVIL APPEAL

Before: Justice Chaudhary Khalid Rasheed, J.

PRESENT:

Mr. Rafiullah Sultani, Advocate, for the appellants.

Raja Javaid Akhtar, Advocate, for the respondents.

ORDER:

The captioned appeal has been filed against the judgment and decree recorded by the learned District Judge Kotli dated 22.07.2013, whereby, the judgment and decree passed by Civil Judge Court No.II Kotli dated 15.05.2012 was upheld.

Detailed facts of the case are that Muzaffar Khan now survived by Mst. Nisbat Jan and others filed a suit for possession against appellants herein in the Court of Civil Judge Court No.II Kotli on 25.06.2008. It was averred that land comprising khasra No.123 measuring 6 kanal 11 marla situated in village Nain Sukh Tehsil Kotli is in the ownership of plaintiff and proforma defendants. It was further averred that defendant No.1 is in possession of the same land through his sons defendants No.2 and 3 and have refused to admit the right of the plaintiff on the land. The suit was contested by the defendants by filing written statement, wherein, it was submitted that they are in the possession of the land being owners and have constructed 2 houses on the land in question. It was also stated that the plaintiff has no concern with the suit land. The learned trial Court framed issues in the light of

pleadings of the parties on 28.08.2008 by providing them opportunity to lead evidence in support of their claim and after hearing arguments pro and contra, decreed the suit to the extent of 5 kanal 3 marla land vide judgment and decree dated 15.05.2012. Feeling aggrieved, appellants herein, preferred an appeal before District Judge Kotli against the order dated 15.05.2012, which also met the same fate vide impugned judgment and decree dated 22.07.2013, hence, the captioned second appeal.

The learned Advocate appearing for the appellant vehemently argued that Article 142 of the Limitation Act was applicable in the matter in hand because the plaintiff/respondent admitted in his court statement that the possession was snatched in 1976, thus the suit was time barred but both the Courts below illegally observed that Article 144 of the Limitation Act is attracted in the present controversy. The learned Advocate further argued that as no detail and description of the suit land was given in the plaint which was mandatory requirement for decreeing the suit for possession, thus, the suit deserves dismissal on this sole ground. The learned counsel further contended that as per revenue record, the plaintiff was not the owner of the land, hence, had no right to file the suit. The learned Advocate contended that all the co

sharers have not been impleaded in line of defendants, hence, on this score too the suit entails to be send away. The learned Advocate lastly prayed that the impugned judgment and decrees be set at naught by dismissing the suit on the ground of limitation as well as for the reason that no description of land has been brought to light in the plaint. The learned Advocate in support of his submissions placed reliance on following precedents;

2017 SCR 733;
 2005 YLR 1096;
 2012 MLD 86 High Court (AJ&K);
 2012 YLR 818;
 PLJ 1987 AJK 45.

Conversely, the learned counsel for the respondents stated that the suit was filed on the basis of ownership, thus, the courts below rightly observed that Article 144 of the Limitation Act was applicable and Article 142 of the Limitation Act is not attracted. The learned Advocate further argued that the plaintiff/respondent was entitled to the decree on the basis of ownership, thus the Courts below rightly decreed the suit, hence solicited dismissal of appeal.

I have heard the learned counsel for the parties and gone through the record of the case with utmost care and caution.

As per my estimation the most important and pivotal point required to be determined in priority is whether the suit filed by the plaintiff/respondents is hit by the law of limitation or not? and then to deal other points raised by the learned counsel for the appellants in seriatim. A perusal of the record reveals that the plaintiff in para 1 of the plaint categorically mentioned that land comprising khasra No.123 measuring 6 kanal 11 marla is in the ownership of plaintiff and proforma defendants and defendants are in possession of the land as Ghair Moroosi, thus, it is aboveboard from the contents of the suit that the plaintiff has filed the suit on the basis of title on the suit land, so the contention raised by the learned counsel for the appellant that Article 142 of the Limitation Act is attracted in present episode, has no force of law. Article 142 of the Limitation Act is applicable where plaintiff being originally in possession of property is dispossessed or discontinued to be in possession, whereas, Article 144 of the Limitation Act is attracted when suit for possession is based on the essence of title and under Article 144 the time limit of twelve years are to be reckoned from the date when possession of defendant became adverse to plaintiff and even if something regarding his possession which has been stated by the plaintiff during cross-examination that is beyond his pleadings cannot be read or

relied upon. The Honorable Supreme Court of Pakistan in 2007 SCMR 1510 while resolving same like controversy held that where a suit is based on title of the land, Article 144 of the Limitation Act will come into operation and the period of 12 years would start from the date when the possession of defendant becomes adverse to the plaintiff. For proper appreciation relevant portion of the judgment recorded at page 1512 of the report is reproduced as under:

“It was suit based on title to which Article 144 of Limitation Act was applicable and the period of 12 years would start from the date when the possession of defendant becomes adverse to the plaintiff. This was explained by this Court in Moulvi Noor Muhammad v. Sheikh Abdul Qadeem 1995 SCMR 522. There has been consensus of judicial opinion that Article 142 of Limitation Act governs a suit based on possessory title while Article 144 of Limitation Act governs a suit based on proprietary title. It may also be observed that possession for any length of time would not be adverse unless it is open, hostile and notorious to the knowledge of the real owner.”

In the instant case the plaintiff in para 4 of his plaint stated that possession of the defendants became adverse to his rights just one month ago, so in view of settled principle of law the limitation shall start from the date when the possession of defendant became adverse to the plaintiff, so both the Courts below have accurately decided question of limitation in favour of the plaintiff.

The next contention of the learned counsel for the appellant that no description and detail of the suit land has been refereed and ascribed in the plaint has also got no wealth because a perusal of the plaint reveals that the plaintiff sufficiently and adequately mentioned the details of the land which was enough to pass a decree for possession of the land. Moreover, the said standing was not taken by the defendant/appellant in his written statement or even before the courts below during arguments, thus, in second appeal he is estopped to take such stance, so this contention of the appellant is overruled.

The argument advanced by the learned counsel for the appellant that all the co-sharers were not impleaded in the line of defendants thus, the suit was liable to be thrown out of Court for non-joinder of necessary party has also got no essence of law because firstly, in the aforementioned circumstance of the case and relief claimed by plaintiff, the co-sharers, if any, were neither necessary nor proper party for the reason that nothing was claimed from the co-sharers and the suit was filed to get possession from the defendants on the strength of title and secondly this version was also not the part of pleadings before the Courts below, thus, the same stance cannot be agitated before this Court.

So far issues No.3 to 5 with regard to ownership of the plaintiff and possession of the defendant as Ghair moroosi are concerned, issues No.3 and 4 were deleted by the trial Court, which was not resisted by the defendant/appellant, and both the Courts below resolved issue No.5 unanimously which being question of fact cannot be elevated or reopened in second appeal as neither the counsel for the appellant claimed any misreading or non reading of evidence nor any glaring violation of law has been found by this Court. The case laws supra relied upon by the learned counsel for the appellants have got divergent facts hence not applicable to the proposition in hand.

The sum and substance of the above discussion is that finding no essence and force in the appeal, it is hereby dismissed.

Circuit Kotli,
18.02.2022(M.N)

-Sd-
JUSTICE

Approved for reporting.

-Sd-
JUSTICE