

HIGH COURT OF AZAD JAMMU & KASHMIR

Civil Appeal No.05/2020.
Date of institution 06.01.2020.
Date of decision 24.09.2024.

1. Khurshida Begum widow;
2. Mohammad Tanveer Khan;
3. Mohammad Amjid Khan sons differently abled through its real mother Khurshida Begum;
4. Zaida Fareed;
5. Shazia Fareed;
6. Alia Fareed;
7. Shaida Fareed;
8. Nazia Fareed;
9. Saba Fareed daughters of Raja Mohammad Fareed Khan (late) all r/o Village Tandali Tehsil & District Muzaffarabad, Azad Jammu & Kashmir.

Appellants

VERSUS

1. Raja Liaquat Ali Khan;
2. Rahasat Khan;
3. Abrar Khan s/o Sardar Khan (late);
4. Razia Bibi;
5. Shazadi;
6. Sheeda Bibi;
7. Nasreen Bibi d/o Sardar Khan (late);
8. Zaria Bibi widow;
9. Parvez Bibi widow;
10. Hajirha Bibi;
11. Amina Bibi daughters of Raja Ismail, all r/o Village Khilla Tehsil & District Muzaffarabad, Azad Jammu & Kashmir;
12. Azmat Jan;
13. Jameel Akhtar;
14. Anayat Khan;
15. Shafat Khan;
16. Kafayat Khan s/o Ismail ;
17. Sobia d/o of Ismail Jan (late) d/o Raja Yaqoob Khan (late);
18. Faiza Bibi;

19. Majida Bibi d/o Yaqoob Khan (late);
20. Raja Amir Khan s/o Rehmat Jan (late) Raja Yaqoob Khan (late) r/o Khilla Tehsil & District Muzaffarabad, Azad Jammu & Kashmir.

Respondents

CIVIL APPEAL

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Ikhtlaq Hussain Mughal, Advocate for the Appellants.
Syed Shujahat Ali Gillani, Advocate for Respondents.

JUDGMENT:

Through this appeal filed under Section 100 CPC, the appellants have challenged the judgments and decrees of learned District Judge Muzaffarabad as well as learned Civil Judge Court No.I Muzaffarabad dated 28.11.2019 and 29.04.2017 respectively, whereby, the suit as well as appeal of the appellants, herein, were dismissed.

2. Precise facts forming background of the captioned appeal are that predecessor in interest appellants, herein, filed a suit for declaration cum perpetual injunction against predecessor in interest defendants/respondents before trial Court (Civil Judge Court No.I Muzaffarabad) stating therein that the land comprising khewat No.51 survey Numbers old 472 new 636, 642 measuring 1 kanal 2 marlas situated at Mozia Khilla Tehsil & District Muzaffarabad has been entered in the

ownership of the plaintiff as per revenue record and as per stance of the plaintiff, in the land measuring survey Nos.109,110,106 and 112/472 the plaintiff is a co-sharer upon which the defendants are in wrongful possession and the defendants by practicing fraud and forgery got issued a fake and fictitious decree on 11.03.1959 in their favour and on the basis of said decree, the defendants also got attested mutation No.175 on 24.02.1972 which are liable to be cancelled. On filing of the suit, defendants filed written statement in the manner that the plaintiff has no cause of action, hence, the suit may be dismissed under Order VII Rule 11 CPC. The learned trial Court in light of pleadings of the parties framed six issues and directed the parties to lead their evidence. After completion of the trial, the learned trial Court dismissed the suit for want of proof and being barred by time vide the impugned judgment and decree dated 29.04.2017. Feeling dissatisfied from the said judgment and decree plaintiff/appellant, preferred first appeal before the learned District Judge Muzaffarabad which also met the same fate, vide the impugned judgment and decree dated 28.11.2019, hence, this 2nd appeal for setting aside the impugned judgments and decrees of the Courts below.

3. The learned counsel for appellants vehemently argued that while accepting the appeal the impugned judgments and decrees passed by the Courts below may be set aside. The learned counsel virtually reiterated the averments raised in the memo of appeal and submitted that while passing the impugned judgments and decrees the Courts below misread and non-read the evidence of the parties. Finally, he prayed for setting aside the judgments and decrees of the Courts below.

4. Conversely, the learned counsel for respondents submitted that learned counsel for appellants has miserably failed to point out that which evidence or part of evidence, documentary or oral, was misread or non-read by the Courts below, as such, concurrent finding of facts could not be reversed merely on the assumption of appellants without pointing out specifically which evidence was misread or non-read. The learned counsel defended the impugned judgments and decrees on all counts and prayed for dismissal of the appeal with costs.

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

6. The plaintiff by instituting the suit challenged the decree dated 11.03.1959 and mutation No.175 attested on the basis of the said decree. In order to strengthen his claim, the plaintiff tendered a copy of Mislehaqiat Exh. PA pertaining to years 1998/99 which has been declared as fake and fictitious by the defendants in their written statement. In support of his version raised in the plaint, the plaintiff also produced three witnesses and as per statements of all the witnesses, the land in dispute has been transferred to plaintiff from his legacy whereas, as per statement of the defendants, the land in dispute is stated to have been purchased by their predecessor in interest (Sardar Khan & Yaqoob Khan) and in support of this version, they also produced a decree dated 11.03.1959 and mutation No.175. One of the plaintiff's witness Raja Maroof Khan who is the brother of plaintiff stated the share of his mother in the suit land. In the cross-examination, the plaintiff also deposed that it is true that the father of plaintiff alienated the land equally to all his sons in 1970 and the land which came to plaintiff's share is the suit land, hence, there are two contradictory statements of plaintiff and his witnesses as at one hand the suit land is claimed to be in the share of mother of the plaintiff whereas, as per

statement of plaintiff, the land in dispute is requested to be in the share of his father. Similarly, the plaintiff in his statement asked for private partition while in the plaint no such plea has been taken, moreover, the witnesses produced by the plaintiff deposed nothing about the private partition. It also reflects from record that mutation No. 175 regarding the impugned decree dated 11.03.1959 is still intact and in rebuttal to set-aside the aforesaid decree, no sufficient, solid and concrete evidence has been brought on record by the plaintiff and the plaintiff alongwith their witnesses are suspicious and distrustful that whether the land under dispute belongs to father or mother of the plaintiff or has been purchased by Sardar Khan or Yaqoob Khan sons of Qamar Ali Khan. It was enjoined upon the plaintiff to produce cogent and concrete documentary evidence to challenge the decree or instrument and mere mentioning of the same in the plaint is not sufficient to declare the decree or any instrument fake and fictitious. The plaintiff has failed to produce any sort of evidence in support of his claim raised in the plaint, furthermore, regarding the impugned decree, the plaintiff witnesses have failed to uttered a single word which may show that the decree impugned is fake, fictitious and has been

obtained by practicing fraud and forgery, so in such like situation, when no documentary or verbal proof has been produced to declare the decree false and bogus then it can safely be said that the plaintiff started the litigation just to suffer the other party and to waste the precious time of the Court. Trial Court after dilating upon each issue passed the impugned judgment and decree which was rightly upheld by the first appellate Court while concurring the judgment and decree passed by the trial under law.

7. After scrutinizing the record, I am of the view that no misreading and non-reading of evidence has been committed by the Courts below while passing the impugned judgments and decrees. However, the learned counsel for appellants has miserably failed to point out any misreading and non-reading of evidence committed by the Court below while passing the impugned judgments and decrees, as such, same need not to be interfered with by this Court. It is well settled principle of law that concurrent findings of fact could not be disturbed unless and until it is specifically pointed out by the appellants, litigant party that which part of evidence oral or documentary or which evidence as a whole was misread and non-read.

8. So far as the typographical errors indicated by the learned counsel for the appellants are concerned (as they categorically alleged in para No.10 of the appeal), it is worth mentioning that a judgment/decreed rendered by a competent Court of law on the basis of evidences (oral or documentary) cannot be reversed on the basis of entering wrong dates or for that matter inadvertently inserting any wrong name of place or party in the judgment impugned, **such arithmetical and typographical mistakes are repairable under Section 151, 152 and 153 CPC. Only those errors which require judicious application of mind cannot be corrected under Section 152 CPC and such error in the order or judgment can only be corrected by resorting to review or appeal**¹.

9. So far as the scope of second appeal under Section 100 CPC is concerned, statutory command of the above Section itself bracketed the area of indulgence in 2nd appeal in three eventualities;

- (a) The decision being contrary to law or usage having the force of law;
- (b) The decision having failed to determine some material issue of law or usage having the force of law;
- (c) A substantial error or defect in the procedure provided by the Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits.

10. Appellants have failed to make out a case qua indulgence in 2nd appeal by bringing their case under the

¹. 2014 CLC 600.

compass of above three ingredients of Section 100 CPC. No misreading or non-reading established, neither any legal flaw has been pointed out nor any deviation from mandatory procedure proved. **Second appeal under Section 100 CPC is only competent if three ingredients/components give way for indulgence, no ground of attack raised in the memo of appeal is matching with the above components of Section 100 CPC, ultimately appeal has to fail.** Plethora of judgments on this subject is available that concurrent findings of fact recorded by the two Courts cannot be disturbed at random ².

The crux of above discussion is that, finding no force in this appeal, it is hereby dismissed with no order as to the costs. The file shall be kept in archive.

Muzaffarabad.

24.09.2024 (Saleem)

JUDGE

Note:- Judgment is written and duly signed. The office is directed to intimate the parties or their counsel accordingly.

JUDGE

(Approved for Reporting)

JUDGE

². 2015 YLR 1602+2008 YLR 69+2016 CLC 243.