

**HIGH COURT OF AZAD JAMMU & KASHMIR**

Civil Appeal No.181/2015.  
Date of institution 15.12.2015.  
Date of decision 07.03.2022.

1. Mohammad Nazir;
2. Mohammad Shabir;
3. Mohammad Ameen sons of Suleman;
4. Mohammad Yaqoob;
5. Kaloo sons of Dost Mohammad alias Doosa;
6. Mohammad Bashir;
7. Abdul Hameed sons;
8. Mst. Maroofa Begum;
9. Mst. Sakeena Begum;
10. Fatima Begum;
11. Mst. Robeena daughters of Fazal Deen r/o Mozia Jabar Battang Tehsil Chakkar District Hattian Bala.

Appellants

**VERSUS**

1. Alim Deen;
2. Rakham Deen sons of Mangi;
3. Jani Begum alias Jany widow;
4. Saghir;
5. Raheel;
6. Safeer alias Sachoo sons of Qasim Deen;
7. Mohammad Rasheed son;
8. Sabeena Bibi;
9. Saleema Bibi;
10. Shamim Akhter daughters of Saddar-ud-Deen Caste Tezyl r/o Mozia Jabbar Battang Tehsil Chakkar District Hattian Bala.

Respondents

**Before:- Justice Syed Shahid Bahar, J.**

**PRESENT:**

Abdul Jabbar, advocate for the Appellants.

Zahid Akram Khan, Advocate for the Respondents.

**JUDGMENT:**

The captioned appeal has been directed against the judgment and decree passed by the learned District Judge Hattian Bala dated 19.09.2015, whereby, while maintaining the judgment and decree passed by the learned Civil Judge Hattian Bala dated 30.09.2014, the appeals filed by the appellants, herein, were dismissed with costs.

2. Precise facts culminating into the present appeal are that respondent No.1, herein, filed a suit for declaration cum perpetual injunction against the appellants, herein, in the Court of Civil Judge Hattian Bala stating therein that the land comprising khewat No.30, survey No.105 old, new survey No.737, measuring 2 kanal 13 marla situated at Mozia Jabbar Battang Tehsil Chakkar District Hattian Bala has been entered in the name of Mst. Iqbali as per revenue record and the suit land was purchased by the plaintiffs and proforma defendants therein, from real defendants/appellants, herein, through orally and simple inscription/writing. It has been stated that the suit land was in the sole share of defendant whereupon the plaintiffs/defendants are in possession for the last  $\frac{3}{4}$  decades and the inscription has been misplaced due to earthquake. It has further been averred that the plaintiff

therein has made improvements in the suit land by spending millions of rupees but during the settlement the officials of revenue department has entered the plaintiff and his brothers as 'Ghairmoroosi' therefore, the said entry may be cancelled. It has further been craved that the there was a brother of plaintiff and proforma defendants who has died and there is no any legal heirs and finally requested for issuance of declaratory decree in favour of plaintiff.

3. On filing of the suit defendants were summoned by the trial Court and on 12.01.2011 defendant No.1, Mohammad Rasheed filed a cognovits and ex-parte proceeding was ordered against defendant No.2, however, the rest of defendants filed written statement on 16.04.2011, stating therein that the plaintiff has no cause of action and the plaint is liable to be dismissed under Order 7 Rule 11 of CPC. It has further been alleged that the suit land through private partition came into the ownership of defendants Nos. 4 to 7 which is in the ownership of defendants Nos. 3 to 7, the defendant No.1 has no nexus with the suit land and he has the land excess to his fractional shares and the suit filed by the plaintiff is barred by time, therefore, the same may be dismissed.

4. The appellants herein, also filed a counter suit pertaining to the same land, wherein, it has been stated

that the plaintiffs and proforma defendants are the owners of the suit land from their forefathers. It has further been alleged that the suit land was gifted by the father to plaintiffs Nos. 1 to 3 and in this regard mutation No.21 has been attested and entered in the record and the defendants with the connivance of the revenue officials entered their names, whereas, as per revenue record the defendants have been entered as "Ghairmoroosi" in the cultivation column. As per contents of suit filed by the appellants, herein, a fake and baseless suit has been filed by the defendants/respondents, herein, and in that suit plaintiffs and proforma defendants have not been arrayed as party and finally prayed for decree for possession on the basis of ownership.

5. After filing of the counter suit, defendants were also summoned by the trial Court who filed written statement/objections stating therein that the plaintiffs have no cause of action and the same has been filed after prescribed period of limitation, therefore, the suit is not maintainable as the suit land through private partition has been given to Saddar-ud-Deen who orally and through simple inscription/writing sold the land to the defendants as he was the sole and real owner of the suit land and in this regard while admitting the right of defendant No.1, therein,

also filed cognovits, so, the suit is liable to be dismissed under Order 7 Rule 11 of CPC.

6. The learned trial Court consolidated both the suits and in the light of pleadings of the parties framed as many as 8 issues and directed the parties to lead their evidence. After completion of the trial, the learned Civil Judge issued a decree for perpetual injunction in favour of plaintiff Alim Deen and dismissed the cross suit filed by Mohammad Nazir & others for want of proof. Feeling aggrieved from the judgment and decree passed by the learned Civil Judge Hattian Bala, the plaintiffs/appellants, herein, filed two appeals before the learned District Judge Hattian Bala. Plaintiff, Alim Deen also filed partial appeal before the learned District Judge Hattian Bala. The learned Court below dismissed all the appeals with costs vide judgment and decree dated 19.09.2015, hence, the supra titled appeal filed by plaintiffs/appellants, Mohammad Nazir & others for setting aside the impugned judgments and decrees of both the Courts below.

7. Mr. Abdul Jabbar advocate, 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 have misread and non-read the evidence of the parties. The learned counsel maintained that appellants have amply proved their case before the Courts below through cogent and convincing evidence documentary and oral evidence but the trial Court as well as 1<sup>st</sup> appellate Courts have not taken into consideration this aspect. Finally, prayed for setting aside the impugned judgments and decrees of the Courts below.

8.           Conversely, Mr. Zahid Akram Khan advocate, the learned counsel for respondents submitted that learned counsel for appellants have 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 exemplary costs.

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

10. Interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not warranted in second appeal against the concurrent findings of fact.

11. For the safe administration of justice evidence adduced from both sides have been perused by making apple to apple comparison of the same, plaintiff in suit No. provided documentary evidence in shape of copy of record of rights, copy of Khasragirdawari and oral evidence by producing PWs, Abdul Qayyum, Karam Din, Feroz Din, Mohammad Akram, Feroz Awan along-with Patwari Halqa that too the plaintiff Alam Din also entered in the witness box in support of his stated claim. Whereas, the defendants in suit No.1 (plaintiff in suit No.4) brought on record oral evidence by way of producing DWs, M. Sharif, Abdul Aziz and Mohammad Bashir and one of the plaintiff in suit No.4 also got recorded his statement as a witness in support of his claim but no documentary evidence has produced/exhibited by the plaintiffs in plaint No.4. material issues framed by the trial Court have properly being answered by the trial Court in light of Doctrine of Preponderance of Evidence, law and available record. No misreading or non-reading of evidence has been found. It is

settled law that if different conclusions or inference from evidence is possible even then concurrent findings of fact recorded by two courts is sacrosanct and immune from interference the second appeal. Reliance in this regard is placed at the following vertical precedent:-

1997 SCR 226 in case titled Fazal Karim Vs. Abdul Manaf, wherein, it has been laid down as under:-

“Concurrent findings of fact recorded by the trial Court and the first appellate Court cannot be disturbed by the High Court, howsoever erroneous that may be.”

From Pakistan jurisdiction ready reference is 2022

SCMR 284, relevant dicta is reproduced as follow:-

“...S. 100...Second Appeal before the High Court...Scope...Right to file Second Appeal provided under S.100 of C.P.C, could be set into motion only when the decision impugned was contrary to law; or there was failure to determine some material issue of law, or there was a substantial error or defect in the procedure provided by the Code or law...In case of inconsistency between the Trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.”

12. Apart from the fact even than after having a juxtapose analyses of both the judgments and decrees of the Courts below, it transpires that no misreading or non-reading of evidence is found at all. It is celebrated principle

of justice that civil cases are always to be decided on yardstick of the preponderance of probabilities of evidence meaning thereby that the party in whose favour evidence is titling much more shall succeed. Trial Court has rightly appreciated the evidence available on record and the inference therefrom has also stood approved from the First Appellate fora. Issue-wise finding is direct outcome of the evidence adduced by both the parties. No material irregularity regarding infringement of law or for that matter any sort of mis-reading or non-reading has been indicated/pointed out by the appellant in order to provide any room to embark upon or indulge in concurrent finding recorded by both the Courts below. Plethora of precedents vertical as well as horizontal on the subject are suffice to endorse the view taken by this Court.

In the light of what has been stated above, finding no force in the instant appeal, the same is hereby dismissed. Parties are left to bear their own cost.

Muzaffarabad.  
07.03.2022 (Saleem)

-Sd-  
JUDGE

**(Note).** Judgment is written and duly signed. The office is directed to announce the judgment in presence of the parties or their counsel.

-Sd-  
JUDGE