HIGH COURT OF AZAD JAMMU & KASHMIR

CIVIL APPEAL (1)

Civil Appeal No.112/2019.
Date of institution 24.04.2019.
Date of decision 02.09.2022.

Syed Naseer Burhan s/o Syed Nazeer Hussain Shah r/o Domail Syedan District Muzaffarabad.

Appellant

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary, having his office at new Secretariat Muzaffarabad;
2. Secretary Animal Husbandry, Azad Govt. of the State of Jammu & Kashmir, having his office at new Secretariat Muzaffarabad;
3. Director Animal Husbandry, Azad Govt. of the State of Jammu & Kashmir, having his office at Domail Muzaffarabad;

Real Respondents

4. Syed Sabir Burhan;
5. Syed Toqeer Burhan sons of Kalsoom Bibi r/o Domail Syedan Tehsil & District Muzaffarabad;
6. Syed Tanveer Burhan;
7. Syed Babar Burhan;
8. Syed Amir Burhan sons;
9. Mst. Tahira Bibi;
10. Mst. Ayesha Bibi daughters of Kalsoom Bibi r/o Domail Syedan Tehsil & District Muzaffarabad;
11. Syed Shafaqat Hussain Shah son;
12. Mst. Asima Bibi;
13. Mst. Saba Bibi daughters of Mst. Nusrat Jabeen r/o Bhandar Dalwal Road Choa Syedan Shah District Chakwal (Pakistan);
14. Syed Awais-ul-Hassan;
15. Syed Mughees-ul-Hassan sons;
16. Mst. Alia;
17. Mst. Dania daughters of Syeda Asmat Zaffar;

18. Syed Zafar-ul-Hassan husband of Syeda Asmat Bukhari all residents of Domail Syedan Muzaffarabad.

Proforma Respondents

CIVIL APPEAL (2)

Civil Appeal No.125/2019.
Date of institution 22.05.2019.

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary, having his office at new Secretariat Muzaffarabad;
2. Secretary Animal Husbandry, Azad Govt. of the State of Jammu & Kashmir, having his office at new Secretariat Muzaffarabad;
3. Director Animal Husbandry, Azad Govt. of the State of Jammu & Kashmir, having his office at Domail Muzaffarabad.

Appellants

VERSUS

1. Syed Naseer Burhan;
2. Syed Tanveer Burhan;
3. Syed Babar Burhan;
4. Syed Amir Burhan;
5. Syed Sabir Burhan;
6. Syed Toqeer Burhan sons;
7. Mst. Tahira Bibi;
8. Mst. Ayesha Bibi daughters of Kalsoom Bibi r/o Domail Syedan Tehsil & District Muzaffarabad;

Respondents

Before:- Justice Syed Shahid Bahar, J.

PRESENT:
Mir Sharafat Hussain, advocate for the Appellant in Civil Appeal No.112/2019 and for Respondent No.1, in Civil Appeal No.125/2019.

Mr. Abdul Rasheed Abbasi, advocate for the Appellants in Civil Appeal No.125/2019 and for the Respondents in Civil Appeal No.112/2019.

JUDGMENT:

UBI JUS IBI REMEDIUM:-

Where there is a right there is a remedy. The aforesaid legal maxim postulates that where law has established a right there should be a corresponding remedy for its breach. The right to a remedy is one of the fundamental rights historically recognized in all legal systems. The principle that rights must have remedies is ancient and venerable [(1)]. Remedies, thus, are an institutional guarantee that an obligation will be observed and enforced. The primary function of "remedies" in any legal system is to redress the illegality and act as a credible threat against potential violators. The credibility of any legal system thus, depends on the efficacy of its remedial mechanisms through which rights and obligations are upheld.

2. In this connection the Civil Court in view of powers conferred under Section 9 of the Code of Civil Procedure, 1908 (CPC) is a Court of ultimate jurisdiction, thus, finding of 1st Appellate Court in this regard is not in accordance with law. Every civil dispute can be adjudicated by the Civil Court unless barred by any law, thus, this door cannot be closed

(1) Donald H. Zeigler, Rights, Rights of Action, and Remedies: An integrated Approach' (2001) 76 Washington Law Review 67 at 71.

and such like cases can only be discarded in light of the evidence so adduced. Despite declaration of title in favour of appellants, depriving them from fruits of the same is not in consonance with law.

3. The captioned appeals have been directed against the judgment and decree passed by the learned Additional District Judge Muzaffarabad dated 25.02.2019, whereby, the appeal filed by the appellants Syed Naseer Burhan & others was partially accepted to the extent of land comprising survey numbers 33 and 33/2 (old) 128 and 129 (new) measuring 8 kanal 5 marla and dismissed to the extent of land measuring 4 kanal 11 marla bearing khasra numbers 107, 113, 117, 127 and 213.

PRECISE FACTS OF THE CIVIL APPEAL NUMBER 112/2019 AND 125/2019:

4. Plaintiffs/appellant, herein, filed a suit for declaration cum possession against the defendants Azad Govt. & others in the Court of learned Senior Civil Judge Muzaffarabad on the ground that the land comprising survey numbers 33 and 33/2 (old) 128 and 129 (new) measuring 8 kanal 5 marla situated at Mozia Domail Syedan was in the ownership of Haider Ali Shah, father of the plaintiffs and he transferred the same to one Mst. Sakhawat

Hussain, plaintiff's mother through mutation dated 13 Bhadoo, 1994 (Bik) and thereafter, the said land was transferred to the plaintiffs through gift deed dated 31.07.1958 and mutation number 80 in this regard was also attested. As per contents of suit, the land comprising survey numbers 8 & 9 measuring 9 kanal 11 marla is adjacent to the supra land and was under the ownership of one Haider Ali Shah, but the same was wrongly mentioned as "Crown Land" and as per stance of plaintiffs, they moved an application for correction of the record and the same was approved, however, the record of case was destroyed in the Earthquake but despite of approval regarding correction of record, new survey numbers 107, 113, 117, 127 and 213 measuring 4 kanal 11 marla are still shown as "Crown Land". It has further been propounded that Department of Animal Husbandry took possession of the land owned by the plaintiffs measuring 12 kanal 16 marla in year 1960 and residential quarters and offices have been constructed upon the said land without paying any compensation or rent to the plaintiffs and illegally got attested mutation No.368 during pendency of the suit.

ENSUING PROCEEDINGS:

5. After filing of the suit, the defendants were summoned by the trial Court and defendants Nos.1 to 3, appeared before the Court and filed written statement, whereby, the contents raised in the plaint were refuted in toto and it was stated that the suit has been filed on the basis of concocted, fake and fictitious documents/instruments which is against the law and facts as the Animal Husbandry Department acquired the land measuring 8 kanal 5 marla through award No.2147 dated 22.11.1991 from the plaintiffs @ Rs.3,000/- per kanal along-with 15% CAC and lastly they prayed for dismissal of the suit. The learned trial Court in the light of pleadings of the parties framed as many as 15 issues and one additional issue was also framed, thereafter, the parties were directed to lead their evidence which had duly been done by them. After completion of the trial, the learned Senior Civil Judge Muzaffarabad **dismissed** the suit being barred by time, for want of cause of action and for want of proof vide judgment and decree dated **20.11.2018.** Feeling dissatisfied from the aforesaid impugned judgment and decree, the plaintiffs filed an appeal before the learned Additional District Judge Muzaffarabad, which was *partially accepted* to the extent

of land measuring 8 kanal 5 marla and **dismissed** to the extent of land measuring 4 kanal 11 marla through judgment and decree dated **25.02.2019,** hence, the supra appeals.

6. Mir Sharafat Hussain, the learned counsel for appellant in Civil Appeal No.112/2019, while reiterating the grounds taken in the memo of appeal submitted that the land in dispute was legally transferred to the appellant through registered gift deed dated 31.07.1958 and mutation No.80 in this regard was also attested and the adjacent land comprising old survey numbers 8 and 9 measuring 9 kanal 11 marla was also in the ownership of Haider Shah, predecessor in interest of the appellant which was wrongly entered as “Khalsa Sarkar” in the revenue record during the Dogra Regime and at some point in the future, the same was corrected. He further argued that the land was taken over by the respondents in 1960 and they promised to the appellant that they shall pay a rent till awarding of the same but the respondents neither paid the rent nor acquired the same through proper course. The learned counsel further argued that the respondent Azad Govt. has annexed with the memo of appeal the Photostat copies of the documents and as per Article 87 of Qanoon-e-

Shahdat Order, 1984, photostat copy of public documents shall not be admissible unless it has been certified to be a true copy by the officer concerned who has the custody of the original document. The learned counsel while referring a judgment titled “Jalal-ud-Din Vs. Mst. Rozman & 31 others” reported as [2013 SCR 29] stated that there is no prescribed period of limitation for filing the suit for possession on the basis of title and in support of his version, the learned counsel referred to and relied upon the following authorities:-

2015 SCR 126, the case titled Mohammad Azam Vs. Khadim Hussain,
2013 SCR 29, the case titled “Jalal-ud-Din Vs. Mst. Rozman & 31 others,
1985 CLC (SCAJK) 1082, the case titled Anwar Khan Vs. Noor Alam,
PLD 1964 SC 302, the case titled Sultan Mehmood Vs. Govt. of West Pakistan,
2003 YLR 2103, the case titled Rehman Vs. Additional Collector,
2002 SCMR 2003, the case titled Mohammad Nawaz Khan Vs. Mohammad Khan,
2012 SCMR 983, the case titled Tabassam Shaheen Vs. Uzma Rahat,
PLD 2006 Karachi 278, the case titled Mohammad Mubeen Vs. Messers Long life builders.

7. Conversely, Mr. Abdul Rasheed Abbasi, the learned counsel for respondents/appellants, in cross appeal i.e. Civil Appeal No.125/2019, titled “Azad Govt. & others Vs. Syed Naseer Burhan & others” argued with full vehemence that the trial Court has passed the impugned

judgment and decree in a legal fashion while taking into consideration all the relevant aspects necessary for adjudication of the matter, whereas, the learned Additional District Judge Muzaffarabad has woefully passed over the documentary evidence regarding acquisition of the land. The learned counsel further argued that the documents produced by the appellants/respondents in evidence had never ever been questioned by the respondents at the time of their production and no exception was taken by them pertaining to the said documents as the said documents in the trial Court during evidence have been admitted by the respondents, so, discarding the same by the 1st appellate Court is against the law and justice. The learned counsel lastly prayed for countermanding the impugned judgment and decree of the learned Additional District Judge Muzaffarabad dated 25.02.2019 to the extent of declaration of the land measuring 8 kanal 5 marla in the ownership of the respondents, Syed Naseer Burhan & others and also prayed for restoration of the impugned judgment and decree of the learned trial Court dated 20.11.2018. The learned counsel referred to and relied upon the following case law:- i.e.

2016 SCR 921;
2014 SCR 1549;

2012 SCR 115;
2017 SCR 733;
2013 SCR 1102;
2010 SCR 259;
2008 SCR 540;
2021 SCR 435;
2018 SCR 572;
2016 SCR 1004;
2014 SCR 816;
2013 SCR 222;
2016 SCR 1004;
2001 CLC 1115;
PLD 1978 SC (AJ&K) 6;
2019 SCR 622;
2013 CLC 148;
PLJ 1999 SC (AJ&K) 35;

The learned counsel further stated that civil cases are to be decided on the basis of "preponderance of probability" and argued that if a portion of statement is not examined, the same is deemed to be admitted as correct. The learned counsel next argued that the public document could not be ignored merely because the same was not confronted and was not produced in the Court within seven days, when it was not proved that the copy of the public document was a spurious document nor it had been shown that the Government functionaries had any special interest to manipulate the same so as to deprive any person from his property and the party concerned had admitted its contents in cross-examination, so, there was no need for getting such documents confronted.

8. The main pleaded stance of the plaintiffs/appellant is that the respondents (official quarters) are illegal possessors of their landed property. Neither any sort of acquisition process has been carried out nor due process of law has been adopted by way of award and compensation which creates no rights in favour of official respondents simply in garb of their possession while as per law the only recourse available to the respondents is to acquire the land in accordance with law by compensating the appellants (if property is required for any public purpose). In this connection, the appellants adduced oral as well as documentary evidence and successfully proved their stance to the extent of property regarding which their title is oozing from the record/evidence. While in juxtaposition, the respondents (appellants in cross appeal) have miserably failed to prove their version by adducing confidence inspiring and clear cut proof in shape of oral and documentary evidence, thus, evidentiary value and weightage of pro and contra evidences is to be judged and evaluated only in the gauge of doctrine of preponderance of probabilities.

9. Although the learned counsel for respondent Azad Govt. stated in the written reply that the documents

relating to the acquisition of the suit land in year 1961-62 are at pages 87 to 94 of the file of the trial Court but a perusal of the aforesaid documents shows that only the correspondence for acquisition of the land for construction of the Laboratory and for payment of the amount has been made and in this regard it has also been written that the amount has been transferred and paid but the proper procedure for acquisition of the land has completely been mentioned in the Land Acquisition Act, 1894, which has not been adopted in the case in hand. **For acquisition of any land by the Government, the proper procedure is publication of notification under section 4 of the Land Acquisition Act, survey, compensation, award and possession, but, no award for acquisition of the land has been produced by the Azad Govt. before the Courts below.** Mere photostat or attested copies of the correspondence or receipt for payment of the amount is not sufficient proof. The defendant, Azad Govt. has failed to produce a single authentic document in support of its version for issuance of award which is purely in the domain of the Collector, nor any entry in the revenue record about the award after demarcation of the land in year 1989 has been shown, so, in my opinion, the defendants, Azad Govt. & others have

failed to prove that the land comprising survey Nos. 33 and 33/2 (old) 128, and 129 (new) measuring 8 kanal 5 marla was acquired according to law i.e. as per procedure postulated in Land Acquisition Act, 1894. Issuance of award is the last and final step for acquisition of the land and after its issuance the compensation is ordered to be paid to the land owners accordingly.

10. The plaintiffs, Syed Naseer Burhan & others produced a gift deed dated 31.07.1958, annexure “PM” through which the land comprising survey Nos. 33 and 33/2 was transferred to Mst. Kalsoom Bibi and in this regard mutation No.80 Exh. “PD” was also attested on the basis of supra gift deed, Exh. “PB” and “PC” are the entries in the revenue record. “Misle-Haqiat” Exh. “PA” pertaining to year 1998-99 also shows the ownership of Mst. Kalsoom Bibi in the land comprising khasra Nos. 33 and 33/2 (old) 128 and 129 (new) measuring 8 kanal 5 marla. The defendants/respondents, Azad Govt. & others in their written reply stated that one of the plaintiff, Syed Naseer Burhan in his statement before the trial Court has admitted that the disputed land measuring 8 kanal 5 marla is under the possession of the department since 1961 and plaintiff and his mother remained in a deep slumber for 50 years but

in the plaint filed before the trial Court, the plaintiffs had categorically mentioned that they gave the land to the defendants on rent and the rent was being paid to them regularly, meaning thereby, that they were the owner of the land and had been receiving the rent from defendants/respondents. It is clear from the record that demarcation of the land was made on demand of Mst. Kalsoom Bibi in year 1989, meaning thereby, that plaintiffs remained in possession of the suit land till 1989 and when the defendants refused to pay the rent, then the plaintiffs filed suit for possession. The stance of the plaintiffs/appellant, herein, is that neither the requisite procedure has been adopted for acquisition of land culminating into award nor the plaintiffs/appellant party has been compensated by any way. The said pleaded stance has been proved and established by the appellant party while in juxtaposition, the respondents have miserably failed to substantiate their stance qua award of the land and payment of the compensation by way of bringing on record necessary documentary evidence (sine qua non for the purpose), that too the witnesses produced by the official respondents have also failed to establish stance of the official respondents. Thus, the only yardstick is to

decide the lis on the basis of preponderance of probabilities of evidence.

PREPONDERANCE OF EVIDENCE:-

The term "preponderance of evidence" has been defined in **American Jurisprudence, 2nd Edition, Volume 30** in a following manner:-

> "The weight, credit and value of the aggregate evidence on either side, and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence".

In **Black's Law Dictionary, Eleventh Edition,** "preponderance of the evidence" is defined as:-

> "The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force, superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other-also termed preponderance of proof; balance of probability; greater weight of the evidence."

The phrase "preponderance of probability" appears to have been taken from Charles R. Cooper V. F.W. Slade, (1857-59) 6 HLC 746. The observations made therein make it clear that what "preponderance of probability" means is more

probable and rational view of the case, not necessarily as certain as the pleadings should be.

In context of Pakistan and Azad Jammu & Kashmir, preponderance of probability is a derived concept from **clause (4) of Article 2 of the Qanun-e-Shahadat Order, 1984,** which reads as under:-

> "A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so **probable** that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists." (emphasis supplied).

When the evidence is of an overwhelming nature and is conclusive, there shall exist no dispute, nor shall there be any doubt and the Court can say that the fact does exist. Clause (4) of Article 2 supra by itself lays down that a fact is said to be established if it is proved by preponderance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. The Court applies this test for finding whether a fact-in-issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two

may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the Court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies [(2)].

What is "PREPONDERANCE"

Preponderance is the degree of cogency required to discharge a burden in a civil case. It is defined by Denning, J, in **Miller Vs. Minister of Pensions** [(3)] as:-

> "That degree is well-settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: "We thing it more probable than not" the burden is discharged but if the probabilities are equal, it is not."

In paragraph # 130 of **Rishi Kesh Singh and others Vs. The State** [(4)]**,** it has been held:-

> 130. "Preponderance literally interpreted, means nothing more than an outweighing in the process of balancing, however, slight may be the tilt of the balance or the preponderance."

PREPONDERANCE OF EVIDENCE & BEYOND A REASONABLE DOUBT~DISTINCTION:-

"Preponderance of evidence" is a lower standard of proof vis-à-vis 'beyond a reasonable doubt' as the preponderance of evidence only requires the plaintiff to 'tip the scales'

[(2)]. 1975 SCR (3) 967 "Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane"

[(3)]. (1947) 2 All ER 372 **[(4)]. AIR 1970 All 51**

towards demonstrating fault, whereas beyond a reasonable doubt requires the prosecution to provide sufficient proof such that no other plausible account or conclusion is possible except that the accused is guilty. In Syad Akbar Vs. State of Karnatka [(5)], it was held that there is a marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a normal certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt.

11. The Hon'ble Apex Court of Azad Jammu & Kashmir in a case of Mohammad Aziz Khan & others Vs. Mohammad Hanif and others [(6)] held that Courts of law in civil cases have to record findings in favour of the party in whose favour the material has been brought on record rather than other party, creates preponderance of probability and cumulative analysis. In this regard, aid can be sought from Ghulam Mohammad Vs. Mohammad Ashraf [(7)], Aksar Ali Vs. Fazal Karim [(8)], Haji Mohammad Idrees Vs.

---

(5). (1980) 1 SCC 30. (6) 2012 SCR 115. (7) PLD 1981 SC AJ&K 118.

(8) 1982 CLC 1309.

Ch. Mehmood Ahmed & others [(9)] and Haji Nazir Ahmed Vs. Raja Mohammad Saeed [(10)].

12. As per gift deed dated 31.07.1958, the land measuring 8 kanal and 6 marla comprising survey Nos. 33 and 33/2 was transferred to Mst. Kalsoom Bibi and in this regard mutation No.80 was also got attested. I have also gone through the revenue record, mutations, Jamabandies pertaining to year 1991-92 and Misle-Haqiat pertaining to year 1998-99, whereby, Kalsoom Bibi has been shown as the owner of the land measuring 8 kanal & 5 marla and after her death her legal heirs are the owners of the aforementioned land. However, to the extent of land measuring 4 kanal 11 marla comprising survey Nos. 107, 113, 117, 127 and 213, the plaintiffs/appellants had failed to prove their ownership, so, the learned Court below has rightly rejected their claim pertaining to the land measuring 4 kanal 11 marla.

13. It is useful to discuss and indicate the important cases. In the case of Jalal-ud-Din Vs. Mst. Rozman [(11)], the Hon'ble Supreme Court of Azad Jammu & Kashmir dealt with the matter along-with other similar proposition and held as under:-

---

(9). 2000 SCR 166. **(10). 2010 SCR 231**

(11). 2013 SCR 29.

> "The suit for possession can competently be filed under Section 8 of Specific Relief Act on the basis of title. In the present case, the suit was filed on 28.08.1998 when there was no prescribed limitation on the Statute for filing a suit for possession on the basis of title as Section 28 and Article 144 of the Limitation Act had already been deleted through amendment brought in the Limitation Act on 7.12.1996, vide Ordinance No.LIV of 1996 after deletion of Article 144 of the Limitation Act, the owner can file a suit at any time. We are fortified in our view by the judgment of this Court delivered in the case titled "Feroz Din Khan Vs. Mohammad Latif Khan reported as PLJ 2012 SC (AJ&K) 46, wherein it was observed that after deletion of Article 144, a suit for possession on the basis of titled may be filed at any time. Crux of the findings and ratio decidendi supra in brevity is:-
>
> "ملکیت ۔۔۔ ردعویٰ دخلیابی کسی بھی ۔۔۔ رہوسکتا ہے۔قیود معیاد سدراہ نہ ہیں۔"

An another important case law referred by the learned counsel for appellant is "Mohammad Azam Vs. Khadim Hussain [(12)], while dealing with the matter quo consideration of an evidentiary value of photostat copy, the Hon'ble Supreme Court held that:-

> "Under Article 87 of the Qanoon-e-Shahdat Order 1984, photostat copy of public documents shall not be admissible unless it has been certified to be true copy, by the Officer concerned who has the custody of the original document."

14. After juxtapose analysis and apple to apple comparison of both the judgments and decrees of the Courts below, it is abundantly clear that the defendants (official quarters) could not prove that the land in question

---

(12). 2015 SCR 126.

was acquired according to law. Mutation No.368 was attested in the year 2011, during pendency of the suit, thus, veracity of the same is nothing in the eye of law keeping in view the scheme of Section 52 of the Transfer of Property Act, 1882, is void upon the rights of the present appellant (in appeal No.112/HC). Possession of the respondents (Azad Govt. & others) upon the landed property of the appellants measuring 8 Kanal 5 marlas bearing khasra No.33, 33/2 (old), 128, 129 (present) is not in legal attire, the appellants (Syed Naseer Burhan) is real and genuine owner of the said land (8 kanal 5 marla). The finding of the Court below regarding declaring the claim of appellant seeking possession of the same time barred is not in consonance with law.

15. As right of property is recognized by the Interim Constitution as a fundamental guaranteed rights i.e. rights No.13 and 14, and no one can be deprived from his property and these rights could not be snatched by anyway, barrier of limitation is not *stricto-sensu* applicable in the matter, possession of the respondent/department over the landed property (without paying compensation) is a continuous cloud upon title of the appellants. Issue pertaining to bar of limitation in view of Section 3 of the Limitation Act has not

been attended to and resolved by the Courts below in a legal parlance and misconstrued the law. Rational of the law of Limitation is to discourage the pursuit of claims which have become stale by efflux of time, but in case of continuous wrong ascertaining the starting point of limitation is not possible, hence, there is no scope of Section 3 of the Limitation Act in this connection. The Hon'ble Supreme Court of Pakistan in the case titled Haji Mohammad Yunis (deceased) through legal heirs & another Vs. Mst. Farukh Sultan and others **(13)**, dealt with the same proposition and held as under:-

> "In cases seeking declaration of proprietary rights in immovable property, it has held that every new entry in the revenue record, being a mere apprehended or threatened denial relating to proprietary rights of a person in possession (actual or construction) of the land regarding which the wrong entry is made gives to such person a fresh cause of action to institute the suit for declaration."

The matter quo limitation has resolved by the Hon'ble Apex Court in the case titled "Feroz Khan Vs. Mohammad Latif Khan [PLJ 2012 SC (AJK) 46, wherein, it has been categorically laid down as under:-

"In the instant case, after the deletion of Article 144 of the Limitation Act, omitted vide Act No. IV of 1997 dated 25th April, 1997, a new situation has emerged that what is the

(13). 2022 SCMR 1282.

effect of deletion/omission of said Article? For proper appreciation, it will be useful to reproduce Article 142 and 144 of the Limitation Act which are as under:-

Article	Description of suit	Period of Limitation	Time from which period begins to run
142	For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession of discontinuance.
143	Xx	Xx	Xx
144	For possession of immovable property or any interest therein not hereby otherwise specially provided for.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

> The above Articles have been perused and considered by the Courts and the rule of law, laid down in the above referred authorities, is that Article 142 of the Limitation Act is applicable only if a suit for possession of immovable property is filed on the ground that the party was in possession of land and has been dispossessed or its possession is discontinued, but when a suit for possession of immovable property is filed on the basis of title, then Article 142 is not applicable and Article 144 governs the period of limitation. After the deletion/omission of Article 144, no other Article of the Limitation Act governs the limitation for filing a suit on the basis of title or interest in the property. This brings us to the conclusion that there is no period of limitation for filing a suit for possession of immovable property anytime on the basis of title."

16. It was enjoined upon the defendant, Azad Govt. to prove that the land was acquired after adopting due course of law. They have failed to produce a copy of award pertaining to the acquisition of the aforesaid land, however, instead of proving their case through cogent and reliable

documentary evidence they only mentioned in the memo of appeal that the land was acquired and the proceedings for issuance of award was in process. Award is issued by the Collector, whereby, it is clearly mentioned that the land is being acquired for that particular purpose and determination of the compensation is also mentioned in it but no such proceedings for issuance of award have been shown in the case in hand regarding the acquisition of the disputed land. So, in my opinion, the defendants/Azad Govt. & others have failed to prove their case and the learned Court below has rightly declared the appellants, Syed Naseer Burhan & others as owners of the land measuring 8 kanal 5 marla, however, to the extent of remaining land measuring 4 kanal 11 marla comprising survey Nos. 107, 113, 117, 127 and 213, their claim was rightly discarded by the learned Additional District Judge Muzaffarabad.

ANALYSIS:-

The appellants in Civil Appeal No. 112/2019 have proved their stance to the extent of landed property measuring 8 kanal 5 marla comprising khasra Nos. 33, 33/2 (old) 128, 129 (present), whereas, the appellants in Civil Appeal No.125/2019 titled “Azad Govt. Vs. Syed Burhan

Shah" could prove their stance as per law, thus, after evaluating the respective staled stance of both the parties in the compass and yardstick of preponderance of probabilities of evidence on record leans/tilts in favour of the plaintiffs/appellant Syed Burhan (owner of the property) and they entitled to receive/retain the benefits of the said land (subject to their fractional shares).

The bottom line of the above discussion is that by accepting the appeal No.112/2019, filed by the appellant Syed Naseer Burhan, the impugned judgment and decree is partially countermanded and modified in a way by declaring that the appellants/plaintiffs are the owners of the land measuring 8 kanal 5 marla comprising khasra Nos. 33, 33/2 (old) 128, 129 (present) and are entitled to get possession of the same or as an alternate relief i.e. to get the compensation of the same as per present criteria. Resultantly, the appeal No. 125/2019 filed by the Azad Govt. & others is dismissed for want of proof.

Muzaffarabad. -Sd-
02.09.2022 (Saleem) JUDGE

Note:- Judgment is written and duly signed. The office is directed to announce the judgment in presence of the parties or their counsel accordingly

-Sd-
JUDGE