

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

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**Civil Appeal No. 47/2017**

**Date of institution: 02.03.2017**

**Date of Decision: 20.12.2023**

Zameer Ahmed son of Abdul Maalik, Jatt by caste  
resident of Abdullah Pur Thothal Tehsil & District  
Mirpur.

Appellant

**VERSUS**

1. Asif Mehmood,
2. Saqib Mehmood,
3. Atif Mehmood, sons,
4. Tazeem Begum,
5. Sidra Chaudhary,
6. Sundas Chaudhary,
7. Sadia Chaudhary,
8. Maria Chaudhary, daughters,
9. Muneer Begum,
10. Khalida Perveen, widows of Manga Khan  
residents of Sector B/4, Mirpur,
11. Banaras Ali son of Abdul Karim, Jatt by  
caste resident of Dheri Nasrullah Tehsil &  
District Mirpur.
12. Sakina Bibi, widow,
13. Jaleel Akhtar,
14. Masood Akhtar,
15. Tahir Jameel,
16. Shakeel Ahmed, sons,
17. Nasreen Akhtar,
18. Jamila Akhtar,
19. Zeenat,
20. Mehmoona, daughters of Muhammad  
Zaman residents of Sector B/4, Mirpur.
21. Sakina Bi, widow,
22. Basharat Ali,
23. Najabat Ali,
24. Muhammad Arif,
25. Farooq Ali, sons,
26. Jamila Bi, daughter of Abdul Karim, Jatt by  
caste, residents of Dheri Nasrullah, Tehsil &  
District Mirpur.

27. Revenue Department through Collector, District Mirpur,
  28. Collector District Mirpur,
  29. Revenue Officer, empowered as Extra Assistant Commissioner, Mirpur,
  30. Tehsildar, Revenue Mirpur,
  31. Commissioner, Revenue department, Mirpur Division Mirpur,
  32. Member, Board of Revenue, Azad Jammu & Kashmir.
  33. Azad Govt. through Chief Secretary, Muzaffarabad,
- Real respondents

34. Shafaat Begum, widow,
35. Mazhar Iqbal,
36. Mazhar Abbas,
37. Zaheer Abbas,
38. Nadeem Abbas, minor sons,
39. Sughran Bibi,
40. Zahida Bibi,
41. Rubina Bibi,
42. Samina Bibi,
43. Zafrina Bibi, daughters of Mangti Khan,
44. Irshad Bibi daughter of Feroz Din,
45. Fatima Bibi, widow,
46. Muhammad Maalik,
47. Abdul Khaliq,
48. Muhammad Rasib,
49. Muhammad Qurban sons of Fazilat Begum,
50. Maqsood Bibi, daughter of Muhammad Yousaf,
51. Baroo Khan, son,
52. Reshman Bibi daughter of Saida,
53. Begum Jan, widow,
54. Allah Ditta,
55. Muhammad Bashir,
56. Muhammad Nazir,
57. Muhammad Siddique, sons,
58. Nasreen Bibi,
59. Khalida Bibi, daughters,
60. Atta Muhammad,
61. Baz alias, Sherbaz,
62. Raja Muhammad, sons of Gaman alias Ghulam Muhammad, legal heirs of Boota

son of Fattoo, (late) Jatt by caste residents of  
Dheri Nasrullah, Tehsil & District Mirpur.

Proforma Respondents

**APPEAL AGAINST THE JUDGMENT & DECREE OF ADDITIONAL  
DISTRICT JUDGE, MIRPUR DATED 30.01.2017.**

**Before :- Justice Mian Arif Hussain, J.**

**PRESENT:**

1. Chaudhary Muhammad Afzal, Advocate for the appellant.
2. Chaudhary Tehseen Ahmed, Advocate for the respondents.

**JUDGMENT:**

Through the captioned appeal, propriety of judgment and decree of Additional District Judge, Mirpur dated 30.01.2017, has been called in question, whereby, the learned additional District Judge, while dealing with the appeal filed by the respondents, herein, allowed the same and consequently, by setting aside the judgment & decree of Senior Civil Judge, Mirpur dated 29.06.2007, the suit of appellant, herein, was ordered to be dismissed.

2. Succinctly, the facts necessary for disposal of the appeal in hand are that Zameer Ahmed Plaintiff/ appellant , herein, filed a suit of declaration cum recovery of possession along-with a relief of perpetual

and mandatory injunction, in the Court of Senior Civil Judge, Mirpur, with the assertion that he purchased a piece of land, measuring 01 kanal 02 marlas, comprising old survey No.202 and present 47, falling in khewat No.19/27, situated at village Dhairi Nasrullah, from defendants No. 15 to 43, through a sale-deed dated 29.09.1998 in consideration of an amount of rupees four lac, (400,000/-). It is claimed that defendant No.1 to 7 have no nexus with the disputed khewat except having a share in shamilat-e-deh land and being annoyed with the said sale, defendant No.1, Manga Khan moved an application to official defendants No.8 to 11 on 07.10.1998 for the purpose of correction in settlement record of year, 1991-1992 and the official respondents, without issuing notice to the plaintiff, allowed the said application in a hasty manner. It is claimed that adjustment of the different survey numbers, without determining their location was made in the light of defective "Aks Latha", merely, on the basis of surmises and conjectures, and during the pendency of appeal before Commissioner, defendant No.1 constructed a boundary wall over a certain piece of land, which is

liable to be demolished. It is claimed that all the proceedings regarding correction in revenue record by the officers of Revenue hierarchy, being without issuing notice to the petitioner, perverse and against the factual position are void and in-effective, against the rights of the plaintiff, hence, a decree be issued as prayed for.

3. The defendants resisted the suit through filing written statement, wherein, they refuted the claim of the plaintiff in toto with the assertion that plaintiff, in respect of correction proceedings went to the apex Court of Revenue hierarchy but failed to establish his stance, hence, his suit, before this Court on factual and legal scores, as well is liable to be dismissed.

4. The learned Senior Civil Judge, in the light of divergent pleadings of the parties, framed as many as seven issues, and after recorded evidence of parties and hearing the learned counsel for the parties, ultimately, decreed the suit of plaintiff as claimed for, vide judgment & decree dated 29.06.2007.

5. Feeling dissatisfied and aggrieved from the afore said judgment & decree, Manga Khan and others, filed

an appeal before the District Judge, Mirpur, from where, the lis was entrusted to Additional District Judge, Mirpur, who after hearing the parties, allowed the appeal and while setting the judgment & decree of Senior Civil Judge, Mirpur, dismissed the suit of plaintiff-appellant, herein, vide judgment & decree dated 30.01.2017, hence, the instant appeal.

6. Arguments heard.

7. The learned counsel representing the appellant, herein, submitted that a Civil Court, under Section 53 of Land Revenue Act, is vested with the powers to rectify the entries of revenue record, so, the learned Senior Civil Judge, while exercising the Jurisdiction vested under the said provision of Land Revenue Act, has rightly decreed the suit of appellant, herein, but the learned Additional District Judge, without dilating upon the nature of the lis, has non-suited the plaintiff, therefore, the judgment of first appellate Court is not sustainable in the eye of law.

8. Conversely, the learned counsel representing the respondents, herein, submitted that under law, the matter of correction in revenue record is purely a

subject of revenue hierarchy and if the proceedings of revenue officers were not correct, the same could be challenged through a writ Jurisdiction but the plaintiff failed to do so, hence, the learned Additional District Judge has rightly dismissed the suit of appellant, herein, so, the appeal in hand is solicited to be dismissed with costs.

9. Having heard the learned counsel for the parties, I have also gone through the record, made available at file.

10. A contemplate perusal of record reveals that plaintiff/appellant, herein, while claiming ownership of a piece of land measuring 01 kanal 02 marlas, falling in survey No.47, challenged the sanctity of the orders of the revenue hierarchy, regarding correction in the revenue record. It was claimed that he has purchased the disputed piece of land through a sale-deed in consideration of an amount of Rs.4,00,000/- but the proceedings of revenue officers regarding correction in revenue record have affected his rights, hence, the said proceedings, being contrary to the record are ineffective against the rights of the plaintiff.

11. The perusal of record indicates that the plaintiff-appellant, herein, in order to assail the rectification proceedings exhausted all tiers of revenue hierarchy but he failed to achieve the desired goal, meaning thereby, that the plaintiff, admittedly, participated in the foresaid proceedings and on failure, he has approached the civil Court for redressal of his grievance.

12. The learned Senior Civil Judge, while recording his issue wise findings regarding issue NO.3, pertaining to the rectification proceedings is of the view that **“defendant has admitted this factum that “Aks Latha” is defective document, hence, the matter of correction in revenue record has no sanctity in the eye of law,** but ultimately, while decreeing the suit, the proceedings conducted on behalf of Revenue Officials have not been declared ineffective or abrogated simply it is declared that the suit land, in the light of sale-deed is owned by plaintiff and boundary wall constructed in a disputed piece of land, being against the law is liable to be demolished.



13. Disagreeing with the findings of learned trial Court, the learned Additional District Judge is of the view that on the one hand, the suit land was not in the sole possession of vendors and in such a situation, the remedy falls in terms of partition of the disputed khewat and on the other hand, Civil Court was not competent to adjudicate upon the matter regarding correction in revenue record.

14. In view of the afore-narrated situation, to my mind, the sole question, which needs consideration is, **as to whether, after entering into rectification proceedings, before revenue hierarchy, the plaintiff was entitled to file the fresh suit before the Civil Court and as to whether, he has succeeded to prove his stance or not?**

15. There is no cavil with the proposition that in the matter of correction of entries in revenue record pertaining to record of rights or in periodical record or a register of mutations, the Courts of "Revenue Hierarchy" have exclusive competence and Jurisdiction of Civil Courts under Section 172 of Land Revenue Act, 1967 is barred.

16. In the matter in hand, the private respondents herein, while challenging the entries regarding adjustment of disputed piece of land during settlement in year, 1991-1992, moved an application for rectification, which was allowed by the concerned revenue officer and it is an admitted position that plaintiff-appellant, herein, in order to assail the said matter of correction went up-to Board of Revenue but could not succeed, meaning thereby, that the proper fora vested with Jurisdiction has been exhausted by the plaintiff-appellant, herein,

17. Now, the question is, that after exhausting the said fora, up to its top hierarchy, plaintiff was entitled to file the fresh suit before the civil Court or not? To my mind, Civil Court is a Court of ultimate Jurisdiction and it shall continue to assume Jurisdiction with regard to civil matters, unless the same have been expressly barred and ouster of civil court's Jurisdiction cannot be straight way inferred or congregated in a routine, save as the conditions laid down are not fulfilled, meaning thereby, that presumption of lack of Jurisdiction may not be

gathered until, the specific law debars civil Court from exercising its Jurisdiction with specific remedy within the hierarchy, which may attain finality of order or the controversy involved.

18. Admittedly, section 172 of the Land Revenue Act, 1967 bars the Jurisdiction of Civil Court regarding matters of correction of entries of revenue record but section 53 of the said Act speaks that if, any person considers himself aggrieved by an entry in the record of rights, he has to institute a suit for declaration. In this regard, case law reported as “Hakim Khan v. Nazir Ahmed Luqmani, reported as 1992 SCMR 1832 may be referred, however, in order to comprehend the scope of Jurisdiction of civil Court regarding the matters, pertaining to correction of entries of revenue record, made by the revenue officers, the case law reported as 1996 SCMR 78 may be quite helpful, wherein, the Hon’ble Supreme Court of Pakistan, while dealing with section 172 and 53 of the Land Revenue Act, 1967 and section 42 of Specific Relief Act, 1877, has ultimately, concluded that the Jurisdiction of Civil Court under Section 172 of the said Act is excluded in respect of correction of entries made by revenue officers,

however, if such entry interferes with the rights, the remedy lays before the Civil Court, as provided by section 53 of the said Act and section 42 of the Specific Relief Act. It would be useful to reproduce the relevant para of the aforesaid judgment, as under:-

“Regarding bar of Jurisdiction of the Civil Court under Section 172, subsection (2), clause VI of the West Pakistan Land Revenue Act, 1967, it may be pointed out that exclusion of Jurisdiction of Civil Court relates to the correction of the entries made by the Revenue Officer in performance of his duty without touching the right of the persons in the land, but whenever, such entries interferes with the rights of a person in the land record in the Record of Rights, and such person feels aggrieved, for correction of such entries he has to approach Civil Court for declaration under section 53 of the Act or in other relief available being of the same nature and identical. The dispute herein, pertained to the nature of the transactions in the suits for pre-emption based on the impugned mutation. The suits were therefore, rightly held triable by the Civil Court.”

19. Now, having guidance from the aforesaid dictum, it is to be determined; that in the matter in hand, while making correction in the entries of revenue record, prepared during settlement proceedings, as to whether, rights of the parties have been interfered with or not?

20. The claim of the appellant is that proceedings regarding correction in entries, ultimately, have affected the right of his ownership, accrued in his favor under the sale-deed and the said proceedings, being tainted with malice are liable to be interfered into.

21. In view of the afore-narrated pronouncement of Hon'ble apex Court, the matter in hand may be dealt with under section 53 of the Land Revenue Act, 1967, by the Civil Court and that's why, the learned Senior Civil Judge is of the view that the civil Court is vested with the powers to look into the sanctity of the orders passed by the officers of Courts of revenue hierarchy.

**22. The second question is, as to whether, the appellant, herein, has succeeded to substantiate his claim or not?**

22. A perusal of judgment of Senior Civil Judge indicates that while disagreeing with the rectification proceedings, the learned Senior Civil Judge has relied upon the statement of plaintiff and one of defendant, regarding defective "Aks Latha". The learned Senior Civil Judge has not evaluated the findings of the Courts of revenue hierarchy and, similarly, the

plaintiff-appellant, herein, in order to challenge the veracity of proceedings of revenue hierarchy has brought no material evidence on record, hence, in such a situation, without determining the veracity of proceedings and findings of officers/Courts of revenue hierarchy, how the said proceedings could be declared colorable exercise of Jurisdiction, whereas, a perusal of proceedings and orders of officers of revenue hierarchy indicates that while dealing with the matter of correction in revenue record, the said proceedings have been conducted quite in a legal fashion and matter being pertaining to the rectification in settlement record has rightly been addressed by the field staff/officers and Courts of revenue hierarchy. Hence, it is observed here that plaintiff-appellant, herein, failed to bring on record any illegality in the rectification proceedings but the learned trial Judge, beyond any proof and assigning any cogent reason has questioned the sanctity and veracity of rectification proceedings, so, the judgment of the learned trial Judge, was not sustainable in the eye of law, which has rightly been turned down by the learned Additional District Judge.

23. The crux of the above discussion is that appeal in hand, being devoid of substance fails, resultantly, the same is hereby dismissed with no order as to costs.

**Camp Muzaffarabad:**

20.12.2023

**JUDGE**

**Approved for reporting.**

**JUDGE**