

JUDGMENT SHEET

PESHAWAR HIGH COURT

ABBOTTABAD BENCH

(Judicial Department)

CR No. 187/2023.

Muhammad Ajab (deceased) through LRs and others.

Petitioner(s)

V e r s u s.

Yousaf & others.

Respondent(s)

***For Petitioner(s): Mr. Imran Younis Tanoli,
Advocate for petitioners.***

For Respondents: Nemo being motion case.

Date of hearing: 10.10.2024.

J U D G M E N T

MUHAMMAD IJAZ KHAN, J. Through this civil revision petition filed under section 115 of *The Civil Procedure Code, 1908*, petitioners have assailed the judgment and decree dated: 07.02.2023, passed by the learned Additional District Judge-V, Abbottabad whereby, the appeal No. 12/13 of 2020 filed by the petitioners/plaintiffs was dismissed and thereby maintained the judgment and decree dated: 28.09.2020 passed by the learned Civil Judge-I,

Abbottabad, whereby, plaint of the petitioners/plaintiffs was rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908.

2. Precisely, facts of the case are that the petitioners/plaintiffs filed a suit for declaration and permanent injunctions against the respondents/defendants with respect to the property duly mentioned in the headings of plaint. Respondents/defendants were summoned, out of them, respondent No. 6 appeared before the Court and submitted his written statement alongwith reply of application for temporary injunction. In the meanwhile, with respect to maintainability of suit, an objection was raised by the respondents'/defendants' side and then the case was fixed for arguments on the question of maintainability of suit. The learned trial Court after hearing arguments of learned counsel for both the parties rejected the plaint of the petitioners/plaintiffs vide one of impugned judgment and decree dated: 28.09.2020, which order was then challenged by the petitioners before the learned appellate Court by filing an appeal, however, the

said appeal was also dismissed by the learned appellate Court vide second impugned judgment and decree dated: 07.02.2023, hence, the petitioners/plaintiffs being aggrieved of both the judgments and decrees of Courts below have now approached to this Court by filing the instant revision petition.

3. Arguments of learned counsel for the petitioners were heard in considerable detail and record perused with his able assistance.

4. At the very outset, it was noted that the suit property is a joint property and both the parties alongwith others are co-owners in the said property but the petitioners have filed the instant suit by seeking a declaration, issuance of permanent injunction and dispossession against the other co-owners to the effect that they are in possession of the suit property on the basis of private partition. It is also an admitted fact that the petitioners have neither made any prayer for partition of suit property nor they have impleaded all the other co-owners in the suit, therefore, in the given facts and circumstances, the suit of petitioners in the present form is not maintainable, as it is an established

jurisprudence that one co-owner could not seek a declaration or permanent injunction against the other co-owners specially, when the title of the property is not disputed. In the case¹, it was held that, it is established law that a co-sharer cannot file a suit for declaration and possession against the other co-sharer but a suit for partition can only be filed. In an another case², it was held that by now it is settled law that no suit for declaration, permanent injunction and possession could be filed by a co-sharer against other co-sharer and only remedy is for him to ask for partition of the suit. Similarly, in an another case³, it was also held by this Court that a co-owner cannot seek injunctive relief regarding his proprietary or possessory rights as against a co-owner without seeking partition. Likewise, the Lahore High Court in case⁴ too has held that there is thus ample authority for the proposition that if a co-sharer has been in exclusive possession of a certain portion of the joint property for a long period, he cannot be dispossessed therefrom by another co-sharer

1 Mst. Roshan Ara Begum etc-Vs-Muhammad Banaras etc (2016 YLR 1300)

2 Zamurad Khan-Vs-Ghulam Rabbani (2023 MLD 733)

3 Khan Sher and others-Vs-Israil Shah and others (2016 CLC 176)

4 Ashiq Hussain-Vs-Prof: Muhammad Aslam and others (2004 MLD 1844)

except by bringing a suit for partition of the joint property.

5. It is also relevant to mention here that through the instant suit, petitioners seek implementation of a private partition, however, it is settled since long that private partition does not confer any right upon the party unless the same is admitted and endorsed by all the stakeholders and the same is duly incorporated in the revenue record and since, the present petitioners had already approached to the revenue hierarchy by filing a partition application of the subject property, which has already been accepted and mode of partition has also been drawn, however, as per the averments of the plaint the same could not be materialized for the pleaded reasons as mentioned in the plaint and, thus, any plea of private partition or any request of enforcement of private partition could be laid before the revenue hierarchy and the same could be entered and enforced, if the same is acceptable to all the co-owners and thus, when the petitioners have already approached to the appropriate forum, then the proceedings in the instant case would be a futile exercise. In a

recent case⁵, this Court has held that under section 135 of The Act of 1967 as well as all other enabling provisions, the revenue hierarchy is bound to make official partition amongst the co-sharers and during this process, if there is any private arrangement/private partition amongst the parties, the same could be entertained and acted upon in view of Section 147 of The Act of 1967, however, such private partition could only be entered and acted upon if all the stakeholders are agreed to the same but the moment, private arrangement/private partition is denied or disputed or controverted by a co-sharer, then he could not be compelled for the same and then in such eventuality, the revenue hierarchy is bound to proceed with the official partition. Likewise, in an another case⁶ it is held that “before we enter into the merits of the case, it would be appropriate to reproduce the provisions of section 147 of West Pakistan Land Revenue Act, 1967:--

147. Affirmation of partitions privately effected.---(1) "In any case in which a partition has been made without the

5. Lajbar Khan and others-Vs-Kamin Khan and others (2023 CLC 690)

6. Syed Musarrat Shah and another-Vs-Syed Ahmed Shah alias Lal Bacha and 8 others (PLD 2012 Peshawar 151)

intervention of a Revenue Officer, any party thereto may apply to a Revenue Officer for an order affirming the partition.

- (2) On receiving the application, the Revenue Officer shall enquire into the case, and if he finds that the partition has in fact been made, he may make an order affirming it and proceed under sections 143, 144, 145 and 146, or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this Chapter".

A look at the above-quoted provision of Law would make it clear that if there is private partition between the parties/joint owners, any of them, under the law, has to apply to the Revenue Officer for an order affirming the said private partition effected between the joint owners. The Revenue Officer then would inquire into the matter about the existence or otherwise of private partition and if he is satisfied after the inquiry, then he has to make an order affirming the private partition between the parties and then has to proceed further under the other relevant provisions regulating the partition proceedings like administration of property excluded from partition, distribution of revenue and rent amongst the co-owners after partition, instrument of partition and delivery of possession to all the concerned

according to the partition so reached between the parties and affirmed by the Revenue Officer. The above-said procedure is required to be adopted by the Revenue Officer even if it is a private partition with consent of the parties”.

7. In this case two Courts below have concurrently recorded their findings as against the present petitioner and in favor of respondents by correctly appreciating the law on the subject, which this Court find them perfectly in accordance with law on the subject and thus, the same do not suffer from any irregularity or material irregularity, so as to warrant interference of this Court in revisional jurisdiction under section 115 CPC. The scope, extent and domain of revisional jurisdiction of this Court has elaborately been dilated upon by the Hon’ble Apex Court in its recent judgments ⁷, where it has held that section 115, C.P.C empowers and mete out

7. Nasir Ali vs. Muhammad Asghar (2022 SCMR 1054), Salamat Ali and others vs. Muhammad Din and others (PLD 2022 Supreme Court 353), Muhammad Sarwar and others vs. Hashmal Khan and others (PLD 2022 Supreme Court 13), Mst. Zarsheda vs. Nobat Khan (PLD 2022 Supreme Court 21), Shahbaz Gul and others v. Muhammad Younas Khan and others, (2020 SCMR 867) and Khudadad vs. Syed Ghazanfar Ali Shah alias S. Inaam Hussain & others (2022 SCMR 933)

the High Court to satisfy and reassure itself that the order of the subordinate Court is within its jurisdiction; the case is one in which the Court ought to exercise jurisdiction and in exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. If the High Court is satisfied that aforesaid principles have not been unheeded or disregarded by the Courts below, it has no power to interfere in the conclusion of the subordinate Court upon questions of fact or law. The scope of revisional jurisdiction is limited to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or if the conclusion drawn therein is perverse or conflicting to the law. Furthermore, the High Court has very limited jurisdiction to

interfere in the concurrent conclusions arrived at by the courts below while exercising power under section 115, C.P.C.

8. In view of the above, we do not find any irregularity or illegality in the impugned judgments and decrees of both the Courts below, therefore, same are maintained and upheld and consequently, this petition being bereft of any merit, is hereby dismissed in *limine*.

Announced.
10.10.2024.
Tahir PS

J U D G E