

مدیریت محترم سرکاری ٹریڈنگ کمپنی K.P.C. لاہور

اپیل نمبر / 1395 / 13

تاریخ

گزارش ہے کہ میں نے کئی بار ڈیپٹی منیجر صاحب سے
صاف کرنا سے قاصر ہوں۔ اور وہیں کا بیٹا بیمار ہے
لہذا استدعا ہے کہ تاریخ میں تبدیلی فرمائی جائے۔

مہربانیاں
۲

الکافی

موجودہ
لاہور

المرقوم
۱۶/۶/۱۹۶۶

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

Appeal No. 1395/13

Momin Khan S/O Umara Khan R/O Charbagh near Tablighi Markaz, Tehsil Takht Bhai, Distt Mardan, present Field Kanungo Tehsil Takht Bhai.....**Appellant**

VERSUS

1. Senior Member Board of Revenue, KPK, Peshawar.
2. Commissioner Mardan Division Mardan.
3. Deputy Commissioner, Mardan. *(W.A.C. Mardan)*
4. Assistant Commissioner, Takht Bhai.
5. District Kanungo, Mardan.....**Respondents**

Appeal U/S 4 KPK Service Tribunal 1974 the Order of Commissioner Mardan Against Order Dated 31.05.2013 In Appeal No. X Instituted on 15.04.2013 And Against The Order Dated 30.08.2013 Of Senior Member Board Of Revenue KPK Peshawar Through Which The Departmental Appeal Was Dismissed.

Respectfully Sheweth:
Preliminary Objections:

1. The appellant has got no cause of action.
2. The Tribunal has got no jurisdiction to entertain the appeal.
3. The appeal is hopelessly time-barred.
4. The appellant has not come Tribunal with clean hands.
5. The appellant has no locus Standi to file the appeal.
6. The appeal is bad for non-joinder and mis-joinder of necessary parties.

Joint Parawise Comments on behalf of Respondent No. 01 to 05.

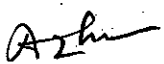
Reply on Facts:

1. Pertains to record, hence no comments may be offered.
2. As above.
3. As above.
4. As above.
5. Incorrect. The Inquiry Officer conducted the inquiry properly and as per rules, wherein it has been proved that while holding charge of Patwar Halqa Feroz Pur, the appellant recorded wrong entries in the daily Diary No. 102 and 106, dated 05.12.2000 and 09.12.2000 respectively that possession of land measuring 31 kanal 15 Marla was given to one Murad Ali who in lieu thereof had to transfer land measuring 09 Kanal in favour of Gul Rehman and Mir Zaman as per terms and conditions of compromise between the parties. The said land was transferred in the names of Gul Rehman and Mir Zaman through mutation No. 365 and mutation No.367. But entries in the Khasra Girdawri were not changed by the appellant according to DD No. 102 and 106 in the name of Murad Ali and, thus committed misconduct. As a result thereof, the Inquiry Officer recommended stern action against the appellant. Therefore the penalty imposed upon the appellant is just and in accordance with law.
6. Pertains to record.
7. Correct.
8. No comments.

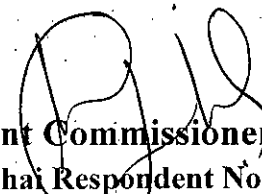
Reply on Grounds is as under:


- i. Incorrect, the judgments referred to have been delivered after applying due course of law and as such same are completely in accordance with law.
- ii. Incorrect, hence denied.
Incorrect, after carrying out proper inquiry, guilt of the appellant was proved. That's the Penalty imposed and maintained in the appeals, is legal.
- iv. Incorrect, the impugned orders are in accordance with law and rules.
- v. Incorrect and denied.
- vi. Incorrect. Inquiry conducted by the Deputy District Officer (Revenue) manifests that illegal act has been committed by the appellant and as such he has been punished for his misconduct.
- vii. Incorrect.
- viii. Incorrect. The orders are appropriate and suited to the misconduct committed by the appellant.
- ix. Incorrect.

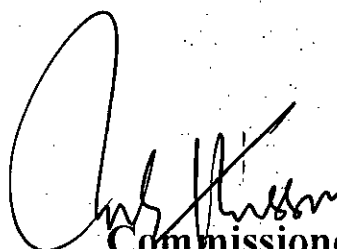
In view of the above, the appeal seems baseless, therefore it is requested to be dismissed with costs.



District Kanungo
Respondent No.06.


Assistant Commissioner
Mardan Respondent No.04


Assistant Commissioner
Takht Bhal Respondent No. 05


Deputy Commissioner
Mardan Respondent No. 03a


Commissioner
Mardan Division Mardan
Mardan Respondent No. 02


Senior Member
Board of Revenue & Estate
Khyber Pakhtunkhwa Peshawar
Respondent No. 01

BEFORE THE SERVICE TRIBUNAL KP, PESHAWR.

Appeal No 1395/2013

Momin Khan Qanungo VS S.M.B.R KPK, Peshawar & Others

Appeal Under Section 4

**Re-Joinder on behalf of the Appellant in response of
Comments submitted by respondents is as under;**

Respectfully Sheweth:-

Preliminary Objections

- 1. Para No. 1 of the preliminary objections is incorrect, the appellant having a cause of action, because Respondent No. 3 illegally, without any lawful authority imposed a minor penalty against the appellant.**
- 2. Para No. 2 of the preliminary objection is incorrect, this honourable Tribunal have jurisdiction to entertain the appeal.**
- 3. Para No. 3 of the preliminary objection is incorrect, appeal is not time barred and a few days delay is made due to bonafide mistake of filing appeal before wrong forum and an application for condonation of delay has been filed and according to law it is condonable.**
- 4. Para No. 4 is incorrect, the appellant came to the Court with clean hands.**
- 5. Para No. 5 is incorrect, the appellant is penalized and two increments for two years have been stopped so how**

appellant have no locus standi.

6. Para No.6 of the preliminary objection is incorrect.

Parawise Comments are Incorrect On the above score as under

- i. Para No. i to iv is admitted therefore, facts are not necessary to be mentioned.*

- v. Para No. v of the factual objections is totally incorrect, not according to law because the said allegations leveled on the present appellant has been completely brushed aside by competent civil courts and all the suit filed by the concerned person Murad Ali is dismissed by civil Courts and even appeal, revision and second revision upto High Court has been dismissed and allegation regarding Daily Diary No.102,106 dated 05-12-2000, 09-12-2000 and mutation No. 365 and 407 etc which is leveled in a civil suit by the said Murad Ali for which Civil Court framed proper issues and produced and examined revenue record by concerned people and Civil Court Completely thrash the entire evidence and dismissed the suit of Murad Ali But the Inquiry Officer made summary inquiry under influence of one Murad Ali illegally suggested penalties for the present appellant and even though said Murad Ali which is mentioned in Para No. 5 also file application to D.O.R Mardan who conducted inquiry and the appellant was declared innocent and application was dismissed. Appeal, revision up to SMBR were also been dismissed. The Inquiry officer without attending the original record and keeping in view the responsibilities and liabilities of the Patwaris not taking into consideration the previous allegations and orders of the hierarchy unlawfully recommended stern action against the appellant which is illegally been accepted by Deputy Commissioner. {Copies of the entire suit, orders, judgments and appeal etc is hereby attached}*

vi. *Para No. vi, vii & viii needs no reply.*

Replay of grounds taken in the comments is as under;

i. *Para No. i of the grounds of comments is incorrect.*

ii. *Para No. ii of the grounds of comments is also incorrect.*

iii. *Para No. iii of the grounds is incorrect, because the Inquiry officer not honestly conducted the inquiry because the said allegation was once turned down up to SMBR and the Inquiry officer due to the threat of Murad Ali suggested penalties because one Murad Ali is one of chronic person and whenever any revenue officer or subordinate to revenue officer i.e Patwari Halqa or Girdawar Circle not do anything according to his will, he file suit and applications against them, because of this threat the application was illegally maintained. Even no complete opportunity was provided by investigation officer at the time of departmental inquiry.*

iv. *Para No. iv is incorrect; the impugned orders is incorrect, not according to law and is liable to be set aside.*

v. *Para No. v is incorrect.*

vi. *Para No. vi is also incorrect, while the ground taken in appeal is perfect and correct. No impartial inquiry has been conducted, civil Court decrees, judgments & orders up to High Court has made it crystal clear that present appellant acted rightly under section 42 of the Land Revenue Act 1967 and not made any illegal acts or omissions because one Murad Ali wanted to transfer Khasra Girdawri of the entire property in his name and wanted to deprive other decree holders from the fruit of his decree. Therefore, the penalty imposed is unlawful.*

and liable to be dismissed.

- vii. Para No. vii of the comments is incorrect and that of the appeal is correct.*
- viii. Para No. viii of the comments is incorrect. The impugned order is inappropriate and passed without applying judicial mind.*
- ix. Para No. ix is incorrect and the appeal is correct and the appellant relying on the judgments of August and Apex Court reported in 2017 SCMR 56, CLC 2016 page 377, CLC 2014 page 1418 and PLR 2013 Peshawar D.B 426*

It is, therefore, humbly prayed that the comments are not based on truth and going to support illegal order, therefore the appeal may kindly be accepted.

Date: 30/01/2017

Appellant

Momin Khan.

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

REVIEW PETITION No. 723-P/2012
IN
CIVIL REVISION No. 723-P/2012



Murad Ali S/o Muhammad Ali
R/o Mohallah Rustam Khel, Tehsil & District Mardan.

VERSUS...

1. Amir Zaman S/o Akbar Khan
2. Sultan Muhammad S/o Ghulam Habib
Both residents of Haji Karim Kalay, Mahal, Feroz Pur, Tehsil Takht Bhai, District Mardan.
3. Faiz Muhammad ASI, PP Saro Shah, Police Station Takht Bhai.
4. Shah Hassan, Incharge Investigation, Police Station Takht Bhai.
5. Havaldar Alam Taj, Police Station Takht Bhai.
6. S.P Mardan.
7. D.I.G. Mardan.
8. I.G Police, CPO, Peshawar.
9. Momin Khan, Ex-Patwari Halqa Feroz Pur.
10. Zair Ullah, Patwari.
11. Irshad Ali Patwari Halqa Mahal Feroz Pur.
12. Mir Afzal Patwari, Irrigation Department, Mahal Feroz Pur, Mardan.

RESPONDENTS

REVIEW PETITION U/S 114 R/W ORDER XLVII C.P.C. ALONGWITH ALL ENABLING PROVISIONS OF LAW, GOVERNING THE SUBJECT, FOR REVISITING JUDGMENT & DECREE DATED 15.06.2015, OF THIS HON'BLE COURT, AND RE-HEARING OF CIVIL REVISION NO. 723-P/2012.

FILED TODAY

Deputy Registrar

29 JUL 2015

ATTESTED

EXAMINED
Peshawar High Court

16 SEP 2015

Respectfully Sheweth:

1. That the titled Revision Petition was dismissed by this Honourable Court, vide judgment and decree dated 15.06.2015, though petitioner alongwith counsel was present in the court, however, due to C.R.No.1543/2010, titled "Murad Ali vs. Mst. Khalida & others", amongst the connected petitions, was leading case, wherein, senior counsel Abdus Sattar Khan, Advocate Supreme Court of Pakistan was not available and was busy before the Apex Supreme Court of Pakistan, therefore, the cases were not possible to be heard/ argued, even otherwise, instant case is subservient to C.R.No.1543/2010 and without disposal of the same, instant petition could neither be heard, nor be argued, but astonishingly, the judgment is silent regarding presence of counsel of the petitioner, while counsels of respondents have been marked present, although all of them were before the Hon'ble Court, but inadvertently, his counsel was marked absent, which resulted into instant petition.

(COPY OF JUDGMENT DATED 15.06.2015 ALONGWITH MEMO OF CIVIL REVISION NO.723-P/2015 AND ADMITTING NOTE DATED 11.03.2013 IS ATTACHED AS ANNEXURE "A").

2. That this Honourable Court decided case of petitioner without providing proper opportunity of hearing and counsel of petitioner had categorically conveyed at the bar to the learned Bench that first the C.R.No.1543/2010 should have been heard, because the titled petition was dismissed by the trial court on the pretext of dismissal of suit in C.R.No.1543/2010, rather main Civil Revision of petitioner was admitted to full hearing by this Honourable Court on this sole ground, therefore, it would have been more appropriate to provide opportunity to the petitioner to be represented by counsel of his choice, if at all, this Honourable Court was of the view that attendance of senior counsel in connected C.R.No.1543/2010 ibid was not possible, but it is not the case in hand, as counsel of petitioner was present on the day and was ready to argue his case, but the Honourable Court did not so

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EXAMINER
Peshawar High Court

16 SEP 2015

desired and counsel of complainant was of the impression that we will argue the titled case after the fate of C.R.No.1543/2010, which are co-related and if C.R.No.1543/2010, the titled Civil Revision would definitely met the same fate, therefore, legally it was not possible to argue the titled petition in absence of the connected petition ibid, hence proprietary demands to restore the original Civil Revision and be decided on merits, by providing opportunity of hearing to the petitioner to be represented by legal counsel, enshrined under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

3. That counsel of petitioner, on the date of hearing, was statedly present in the court, but so far as arguments are concerned, the same were not delayed due to the petitioner or his counsel, but due to another connected petition, which was beyond his control, rather occasioned due to absence of counsel therein, therefore, petitioner may not be hurt for the mistake of others, even otherwise, the Apex Supreme Court of Pakistan in its judgment dated 10.01.2013 in C.A.No.109-P/2008 and C.P.No.110-P/2008, titled "Rab Nawaz vs. District Council Swabi & others" and "Zarjab Khan vs. District Council Swabi & others" respectively, has settled the principle that decision in absence of legal counsel of either of the parties would have no legal effect, contents of the judgment are as under:

"The impugned judgment in Civil Revision No.108 & 123 of 2005 was delivered when the petitioners before us were present in person before the High Court. The learned counsel appearing for the petitioners states that the two petitioners were the only private parties to the lis before the High Court and no legal assistance was provided to the court on behalf of the petitioners, therefore, the matter be remanded to the High Court for decision afresh. In this view of the matter, we convert these petitions into appeals and allow the same. The impugned judgment of the High Court is set aside and the matter is remanded to the High Court where Civil Revision Nos. 108 & 123 of 2005, shall be deemed to be pending, which shall be disposed of after due notice to all the parties."

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EXAMINER
Peshawar High Court

16 SEP 2015

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29 JUL 2015

Similarly, judgment dated 15.12.2011 of the Apex Supreme Court of Pakistan in case of "Muhammad Yousaf vs. Ajab Noor & others", C.A.No.169-P/2009, has hold as under:

"We would not like to comment on the arguments addressed at the bar by the learned counsels for the parties on the merits of the case. Once it is writ large from the impugned judgment that the case was decided without hearing the counsel of the parties, we do not think it could be said to have been decided fairly and justly. Our system of administration of justice, which is essentially adversarial, lawyers have a role as officers of the court. They are eyes and ears of the court. Decision of a case without their assistance would amount to negation of the whole system. We have been told that this case was heard during the days when the lawyers, in view of PCO and deposition of judges, were on strike. We, therefore, don't feel persuaded to maintain the judgment, thus delivered. For the reasons discussed above we allow this appeal, set aside the impugned judgment and send the case to High Court for decision afresh after hearing the counsel of the parties, as it is an old case, be decided within a period of two months."

In view of the aforementioned judgments of the Apex Supreme Court of Pakistan, petition of petitioner may also be restored in its original form by re-visiting judgment dated 15.06.2015 in the best interest of justice and equity.

(COPIES OF JUDGMENT DATED 10.01.2013 IN C.A. NO.109-P/2008 AND C.P. NO.110-P/2008 AND JUDGMENT DATED 15.12.2011 IN C.A. NO.169-P/2009 ARE ATTACHED AS ANNEXURE "B" & "C").

4. That there is no legal bar to re-visit the impugned judgment dated 15.06.2015, for being passed without assistance of counsel for petitioner, therefore, the judgment of this Honourable Court needs to be re-visited for the purpose of fair play and justice and petitioner may not be knocked out on the basis of technicalities, rather the Apex Supreme Court of Pakistan in its judgment reported in PLD-2003-SC-724, whereby such like judgments have been discouraged and in another judgment of full court, comprising of 14 Judges of the Apex Supreme Court of Pakistan, reported in PLD 2010-SC-483, whereby principle of audi-alteram-partem was equated with the natural justice.

ATTES

EXAMINER
Registrar High Court

16 SEP 2015

TODAY
Registrar
JUL 2015

5.

That the titled petition was one amongst four connected petitions and there was application for adjournment on behalf of counsel for another connected petition, therefore, the matter would either adjourn; if the application for adjournment would allow or rejection of the same, arguments in rest of the cases would have been heard, but neither the application for adjournment was rejected, nor such offer was made by this Honourable Court to argue case in such like situation, therefore, dismissing petition of petitioner has caused grave miscarriage of justice, hence the impugned judgment and decree required to be re-visited and re-hearing of C.R.No.723-P/2012, so as to secure the ends of justice.

6.

That any other ground, with the permission of this Honourable Court, will be taken at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of instant Review Petition, the impugned judgment & decree dated 15.06.2015, may please be revisited and the main Civil Revision No.723-P/2012 may be re-heard and he may be provided opportunity to be represented by the counsel of his choice for the purpose of assistance of this Honourable Court, so as to secure the ends of justice.

THROUGH

PETITIONER

AMIN-UR-REHMAN,
ADVOCATE, PESHAWAR.

DATED: 29.07.2015

NOTE:

It is a fit case for review.

ADVOCATE

FILED TODAY

Deputy Registrar

29 JUL 2015

ATTORNEY
15 SEP 2015

PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
11.09.2015	<p><u>Review Petition No.150-P/2015 in C.R.No.723-P/2012.</u></p> <p>Present: Ms Abdul Sattar Khan & Amin-ur-Rehman, Advocates for the petitioner.</p> <p>*****</p> <p><u>WAQAR AHMAD SETH, J.:-</u> Through this single order, I propose to dispose of, the instant Review Petition No.150-P/2015 in C.R.No.723-P/2012 as well as the connected Review Petitions No. 146-P/2015 & 151-P/2015 in C.Rs. No.1543/2010 & 743-P/2010, respectively as they arose out of one and the same judgment.</p> <p>2. In these petitions, the petitioners seek review of the judgment and decree dated 15.06.2015, passed by this Court, in Civil Revisions bearing Nos.723-P/2012, 1543/2010 and 743-P/2012 which were dismissed on merits.</p> <p>3. The learned counsel contended that all the</p>

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Peshawar High Court

16 SEP 2015

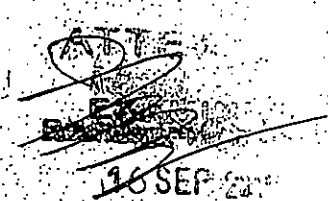
revision petitions were connected matters with another C.R.No.1543/2010 and all the petitions were fixed for hearing before the Court on 15.06.2015; that the petitioner as well as his learned counsel both were present before the Court but the senior counsel Mr. Abdul Sattar Khan, Advocate in the connected C.R.No.1543/2010 was not present before the Court, having gone to Islamabad to attend some cases before the Supreme Court of Pakistan; that this Hon'ble Court decided the case of petitioner but no proper opportunity of hearing was provided rather the learned counsel for the petitioner, who was present in Court, was marked absent and even otherwise it was not possible for the learned counsel for the petitioner to argue the title petition in absence of the learned counsel for the petitioner in the connected petition; thus, the propriety demands to restore the civil revisions and decide the same on merits by providing an opportunity of hearing to the petitioner. The learned counsel in support of his arguments placed reliance on the case bearing No.C.A.No.109-P/2008 decided on 10.01.2013 and

ATP
EXAMINER
Peshawar
16 SEP 2015

judgment dated 15.12.2011 of the apex Court in the case of Muhammad Yousaf -Vs- Ajab Noor and others (C.A.No.169-P/2009).

4. Arguments heard and record perused.

5. The review application / petition could not be filed as an alternate for an appeal as the court could review its order only, if falling within the limits prescribed by order XLVII, order-I CPC and the same, could be filed only when some new facts and important matter or evidence which, after exercise of the diligence, was not within the knowledge of petitioner and could not be produced at the time when the decree was passed or order made, or account of some mistake, appearing on the face of judgment / order. Application for review was maintainable for correcting the error in the judgment / order and not for correcting the wrong decision, meaning thereby that review was restricted to some mistake or error apparent on the face of record, none of the said ground is available with the petitioner as neither in the review petition nor at the time of arguments at the bar,


16 SEP 2011

namely Mr. Amin ur Rehman, is available and the other senior counsel has gone to Supreme Court. These four civil revisions were the oldest on the diary of court being filed in the year 2010 & 2011.

7. In the case of Mst. Shahida Zarin Vs Iqrar Ahmad Siddique, 2010 SCMR, 1119, it has been held as

under:-

“---O. XVII, R.---Hearing of arguments by court before disposing of case---Necessity---Hearing of arguments by court before disposing of case not absolutely essential under law---Court could not force a party to address arguments, but could at best afford him at his request an opportunity to do so---Principles.

Likewise in the case of Allah Rakha and others Vs Muhammad Yousaf etc, PLD 1991 SC 601, it has

been held that:-

“---O. XXII, R.6 & O. XVIII, R.2---Where a date was given for hearing of the arguments but none of the parties appeared to address the arguments which showed that in fact they were not interested in addressing the arguments and indeed, did not wish to address the arguments. Courts, held, were right in considering that for the purposes of O. XXII, R. 6, C.P.C, the hearing would be deemed to have concluded with the conclusion of the evidence of the parties in the case.

EXAMINER
Sindh High Court

16-SEP-2015

The hearing of arguments is not enjoined on the court by the Civil Procedure Code, 1908 and all that can be said on the language used in Rule, 2 of Order XVIII, C.P.C, is that if the parties or their counsel want to address arguments, the trial court has to give them an opportunity to do so, but the hearing of the arguments is not essential before disposing of the case. If the arguments are not heard before the judgment is passed the hearing will, for the purpose of Order XXII, Rule-6 of the Civil Procedure Code, 1908 be deemed to have concluded with the conclusion of the evidence of the parties, but if the arguments are heard, the stage at which the hearing concludes is the one when arguments conclude.

In the present case, although a date was given for hearing of the arguments but none of the parties appeared to address the arguments which showed that in fact they were not interested in addressing the arguments and indeed, did not wish to address arguments. In these circumstances, the courts below were right in considering that for the purposes of Order XXII, Rule-6 C.P.C, the hearing will be deemed to have concluded with the conclusion of the evidence of the parties in the case".

8. The bare perusal of the petitions would show that the petitioner has not uttered a single word on the merit of the case in the memo of appeal, nor at bar despite mentioned by the Court.

9. In the wake of above discussion, this review


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EXAMINER
Peshawar High Court.

16 SEP 2015

both the learned counsels for the petitioners in three connected review petition argued the merits of the case; not discussed in the judgments, rather they relied on two judgments of the apex court one is CP No.186-P/2009 in which the judgment was announced during the days when the lawyers community was on strike, in view of PCO and deposition of judges, and the other CP No.109-P is in different circumstances, not applicable to the present case.

6. Order XXVII, Rule-II provides that "Where on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX, CPC, or make such other orders as it thinks fit. In the instant case, counsel for respondents was present and he argued the case at length. Learned counsel for the petitioner / plaintiff (both) were directed time and again to argue the case and finally on 18.05.2015, all the parties were given one month time, as last chance and on the said date, petitioner / plaintiff was present in person and he never informed that his counsel



 1108

petition alongwith other connected, being without substance is hereby dismissed in limine.

Announced.
11.09.2015

JUDGE

Sd/- Wasar Ahmad Sethi



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Examiner,
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order, 1984

16 SEP 2015

5372

Date of Presentation of Application: 16-9-15

No of Pages: 12P

Copying fee: _____

Urgent Fee: _____

Total: 24.00

Date of Preparation of Copy: 16-9-15

Date Given For Delivery: 16-9-15

Date of Delivery of Copy: 16-9-15

Signed by: Hizbullah Clerk



1
IN THE COURT OF Mrs. QURATUL AIN CIVIL JUDGE-I,
MARDAN

Civil suit No. 407/1 of 2011.

Date Of Institution 16.12.2011.

Date Of Decision..... 05.07.2013..

Murad Ali s/o, Mohammad Ali Khan r/o Mohallah Rustam Khel,
Tehsil and District Mardan.

(Plaintiff)

VERSUS

Mohammad Fayaz Tehsildar, Tehsil Takht Bhai(presently District
Officer Finance Officer Local Government , District Peshawar)
through Momin Khan Patwari, being special attorney and three
others r/o Tehsil Takht Bhai, District Mardan

(Defendants)

SUIT FOR DAMAGES.

JUDGEMENT:

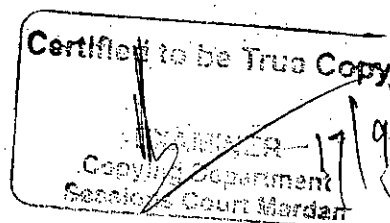
Through this judgment, I am going to dispose off , suit
brought by plaintiff against the:-

(Alif) Defendant No.1 for recovery of Rs.1,00,000,00/- (One Crore/Ten Million) as damages, due to mental torture and monetary losses;

(Bey) Defendant No.2, 3 and 4 for recovery of Rs.25,00,000/- as Compensation/damages, due to mental torture and monetary losses, against each.

Brief facts of the case are such that initially plaintiff instituted the suit for recovery of Rs.1,00,000,00/- against the defendant No.1 (Mohammad Fayaz Khan Tehsildar), but later on due to impleadment of defendants No.2 to 4, vide order dated. 04/12/2009, the amended plaint was submitted.

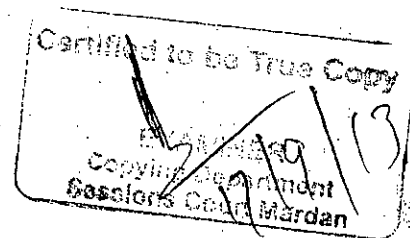
Plaintiff asserts that plaintiff is a noble and respectable citizen of District Mardan, good reputed in the society, being president of Yousaf Zai Jirga, Mardan. That plaintiff is owner of more than 50 Jeribs landed property, which might be worth of Millions. That plaintiff had filed an application before



143
 D.O.R, Mardan for correction of revenue papers, which was sent to defendant No.1 for further necessary proceedings as well as inquiry report. That instead of adopting proper proceedings, defendant No.1 by misusing his powers, deprived the plaintiff from his precious property, by declaring illegal possessors, as legal possessors of property, which was sole ownership of plaintiff. Thus plaintiff claimed recovery of Rs.100,00,00/0- as damages from defendant No.1.

That defendant No.2 Momin Khan ex Patwari Halqa Mahaal Feroz Purr remained Patwari Halqa since 1997 up till 2001, who intentionally and without any lawful order has changed the entries of plaintiff's ownership in Fard Jamabandi for the year 1991/1992. Similarly, said Patwari Halqa has also not entered Gardawari of 2/08/2000 as per Roznamcha 346 and 347 and shown the gift mutations No.365 & 367 dated. 09/12/2000 in Parth Sarkaar, as sale mutations, thus doubted the authenticity of gift mutation and possession of plaintiff as well. That defendant No.2 has not prepared/arranged Khasra Gardawari according to Madd No.102 dated. 05/12/2000, Madd No.106 dated.09/12/2000, and due this act of said defendant, plaintiff lost possession of whole Khasra Nos.1125, 1126, 1152, 1154 and 1137/1; while in Khasra No.1127 09-Kanal 09-Marlas, total property as 44-Kanals. Whereas as per amended Warr-Bandi of irrigation Department, plaintiff was used to pay Abyaana/Malyaana of 100-Kanal property.

That defendant No.3 Zerullah ex partwari Halqa Mahall Feroz Purr Tehsil Takhat Bhai performed his duty from 2001 to 2004. That the said Patwari Halqa during his tenure had deprived the plaintiff from his ownership as well as possessed property, due to non mentioning the entries in Roznamcha Madd No.102 dated. 05/12/2000, Madd No.106 dated.09/12/2000 in respect of Khasra Nos.1122, 1124, 1125, 1126, 1152, 1154, 1137/1, and 1118. While, vide Roznamcha No.102 and 106 entries were made in the names of Sultan Mohammad, Gul Rehman sons of Ghulam Habib, Ajmeer s/o Mohammad Jan, Haji Meer Zaman s/o Akbar Khan in Khasra Nos.1127, 1128 and 1138, but the land which was handed over to



14/9/19
plaintiff by above mentioned possessors through gift mutations No.365 and 367, and thus plaintiff's possession was made doubtful due to non mentioning entries in it. That due to said entries plaintiff caused mental torture and monetary losses;

That defendant No.4 Irshad Ali(ex partwari Halqa) Mahaal Feroz Purr during his tenure i.e 2004 to 2006, has rejected a pending mutation No.407 without any permission/authority and had entered mutations No. 471, 472, 566. While in FIR No.1028 dated. 08/12/2003 registered at Police Station Takht Bhai during investigations according to site plan at spot, plaintiff has shown owner in possession of Khasra Nos.1122, 1124, 1225, 1126 and 1127 vide Roznamcha Madd No.102, 106, but inspite that entries, Gardawari has not attested in plaintiff's favour. That all these wrong entries are the result of collusion by defendant No.1 with defendants No.2 to 4 due to which plaintiff occurred great mental torture and monetary losses as well. That due to these wrong entries , plaintiff compelled so that, he sold out his precious property at very low rates to one Meer Zaman.

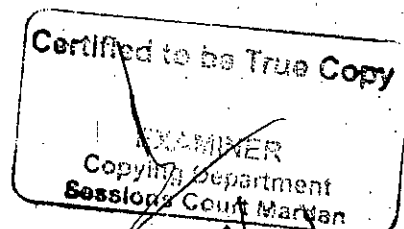
Mat
It is pertinent to mentioned here that initially plaintiff brought the suit against one defendant namely Mohammad Fayaz (Tehsildar Takht Bhai), but thereafter vide order dated.04/12/2009 amended was allowed and plaintiff filed amended plaint with impleadment of defendant No.2 to 4 being necessary proper party to the suit in hand.

That the defendants were asked time and again to admit the claim of plaintiff, but they refused, hence the present suit.

After institution of the suit, defendants were summoned, Whom appeared before Court and contested the suit by filing written statement.it is worth mentioned that one of defendant No. 4 recorded dead on judicial file. From the divergent pleadings of the parties, the following issues were framed:-

ISSUES.

- 1- Whether plaintiff has got cause of action ? OPP.



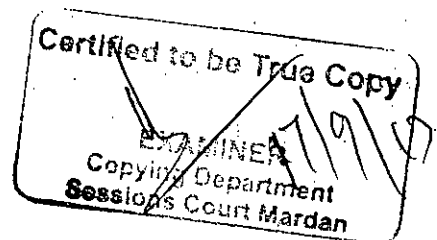
- 145
- 2- Whether the suit of the plaintiff is bad in its present form ?
 - 3- Whether the plaintiff filed another suit of the similar nature before the Civil Judge Takht Bhai against the present defendants, which was dismissed, if so, its effect?
 - 4- Whether the defendants tempered the revenue record pertaining to the property owned by the plaintiff, due to which plaintiff suffered mentally and financially as plaintiff has to apply for correction of the same, if so its effect?
 - 5- Whether the plaintiff is entitled to the decree for the damages as prayed for?
 - 6- Relief.

After framing of issues parties were directed to adduce their respective evidence in support of their contentions. Whereby plaintiff produced as many as 11 witnesses in support of his contention.

Peer Raj Wali Shah Moharrir/Reader of Tehsildar, Takht Bhai appeared as PW-1 and produced his Diary register as Ex.PW1/1.

Mat.
Riaz Mohammad Khan s/o Nawab Khan appeared as PW-2 and stated that he effected a compromise between Murad Ali Khan and Ameer Zaman etc in respect of suit property and produced the relevant documents regarding compromise as Ex.PW2/1 and Ex.PW2/2. Similarly the witness also produced original documents/stamp papers between Murad Ali, Sultan Mohammad, as well as between Murad Ali and Gul Renman etc, photocopies whereof are Ex.PW2/3 and Ex.PW2/4 respectively.

Saleem Shah Stamp vendor Katcheri Mardan appeared as PW-3. The said witness produced copies of stamp No.1169 dated. 04/12/2000 (two sheets) and Stamp paper No.1171 dated. 04/12/2000 (two sheets), which are Ex.PW3/1 and Ex.PW3/2 respectively. (counsel for the defendants objected that said



146

documents exhibited above are false, fabricated and bogus and having no relevancy with defendants and issue to these documents has already been decided by different Civil Courts hence inadmissible in evidence).

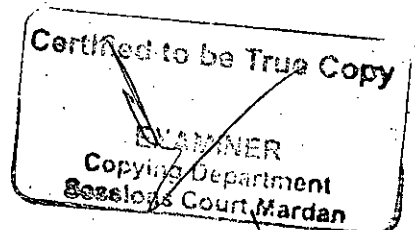
In cross the witness admitted that the documents produced by him, neither having no name or signature of any of defendants, nor any concern with them. Similarly shown his ignorance that whether Murad Ali has sold out his property at the spot or not, rather it is relates to revenue papers.

Zaiwar Haq petitioner writer Katcheri, Mardan appeared as PW-4, whom was confronted with agreement deeds No.2377 and 2378 dated. 04/12/2000, to which he met with affirmation and stated that both these documents are scribed by him, which bears his signatures and seal as well as bears the signatures of parties of agreement coupled with signatures of marginal witnesses. Copies of agreements are Ex.PW4/1 to Ex.PW4/2 respectively. Counsel for the defendants put objection that both documents are forged, fabricated, having no relevancy with defendants, hence not admissible in evidence). The witness also produced his register pertaining to above deeds, copy of which is Ex.PW4/3.

Maf

In his cross the witness stated that he do not know Mohammad Fayaz Tehsildar, Momin Khan, Zairullah Khan and Irshad Ali Patwaris. Similarly, also admitted that Ex.PW4/1 and Ex.PW4/2 having no relevancy with defendants. The witness also answered in affirmative that regarding two documents mentioned above, prior to the instant suit, he has recorded his evidence before Civil Judge, Takht Bhai. The relevant portion is reproduced as under:-

یہ درست ہے کہ یہ دو مذکورہ میں دستاویزات یہ ہیں کہ
ایک دفعہ بلکہ عدالت سہولت جمع کردان یا تخت بھائی یعنی
شہادت دی کہ یہ درست ہے کہ مذکورہ دستاویزات
کے ثبوت پر ایک دیوان دعویٰ میں بھی عدالت دیوانہ دائر
کی گئی کہ جس میں میں نے بطور غیر الحقی لائسنس شہادت دی کہ
تاہم مجھے اس مقدمہ کے اخراج یا ڈسپوزیٹ کا علم نہیں ہے



17/9/13

148
 came to my Hujra, where Murad Ali asked to transfer the Gardawari in his name, but Fayaz Tehsildar refused to do so, thus the Jirga was failed.

PW-9 Waqas Khan appeared to strengthen the stance of plaintiff.

In cross witness admitted that Murad Ali (plaintiff) is his relative. The witness further admitted that Meer Zaman is Maternal uncle of Sardar Shah s/o Arbab Khan, and the said, Arbab Shah has obtained a decree of Rs.1,20,000,00/- against me. In last he also admitted that plaintiff (Murad Ali.) for his needs had sold out some landed property to Meer Zaman, while 04 jerib property has also gifted to Meer Zaman.

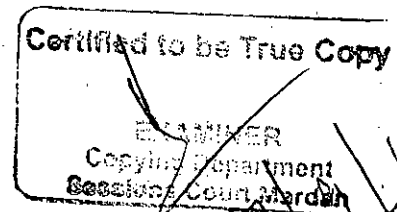
Waleed Khan appeared as PW-10 and stated that in the year 2000, a suit of Murad Ali was pending and vide order of August Supreme Court of Pakistan we obtained possession on 02/08/2000.

In cross he admitted that he himself has not perused the judgment of Supreme Court, related to Murad Ali, however, Murad Ali told him in this regard that he/Murad Ali has won the said suit. The witness further shown his ignorance that whether Mst; Khalida (aunt of Murad Ali) has sold her property(due share) through registry sale deed in favour of Ameer Zaman, or not. Regarding that property/due share of Mst: Khailda, Murad Ali filed a suit, which was dismissed. Volunteered that plaintiff/Murad Ali in lieu of compromise has given property measuring 04-Jeribs to Ameer Zaman. Etc.

Waleed

Javed appeared as PW-11, who stated that he is tenant under Murad Ali and property 29-Jedribs was in his possession. Further stated that Plaintiff/Murad Ali has gifted 04 jeribs property to Ameer Zaman etc, while 06 Jeribs property sold out to Ameer Zaman. While remaining property was possessed by Meer Zaman forcibly.

In cross, the witness admitted that today he cannot produce any document regarding his possession. Witness further deposed that he do not know that whether Meer Zaman has purchased any property from Mst; Khalida, or not. The witness admitted that,



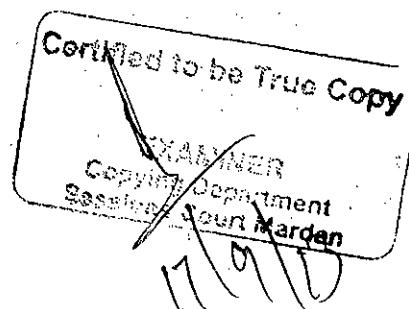
148
 prior recording his evidence, the whole statement was taught to him at the seat of plaintiff's counsel. The witness deposed that he is not acquainted with revenue record and cannot say anything regarding any wrong or correctness of revenue record.

ADK (Yousaf Haroon) appeared as PW-12, and produced Jamabandi for the year 2003/2004 regarding Khata No.95/437 to 441, as Ex.PW12/1. In cross the witness produced revenue record as Ex.PW12/D1 to Ex.PW12/D-5. He clearly admitted that the plaintiff/Murad Ali the owner of 38-Kanal, 12 and 1/3 Marlas vide mutation No.266 (Ex.PW12/D-1) and the same property has been sold by Murad Ail vide different mutations i.e mutation No.265 dated. 9/12/2000, Ex.PW12/D-2, mutation No.367 dated. 09/12/2000 Ex.PW12/D-3, mutation No.667 dated. 4/5/2007 Ex.PW12/D-4. And therefore, as per record of right Ex.PW12/D-5 of Moza Feroz Pur, plaintiff remained no owner.

Statement of Gulab Khan (AOK) Takht Bhai recorded as PW-13, who produced mutation No.407 dated. 25/3/2004 Ex.PW13/1, mutation No.566 dated. 20/07/2012 as Ex.PW13/2.

In cross examination, he deposed that mutation No.704 was entered on 12/10/2001 and the same was rejected on 25/3/2004, the said mutation was kept pending for two and half years, because the government taxes were not paid by the plaintiff in the prescribed period. Further deposed that again the same property was entered in the mutation No.407 by an other patwari Halqa as mutation No.566 and the same was attested by the revenue officer on 14/9/2012 and this time taxes were paid by the plaintiff. The mutation No.566 was entered and attested on the judgment dated 18//4/2011 during the execution proceedings by the concern Court.

PW-14 is the statement of Shad Ali Naib Tehsilder, Swabi Scarp, Mardan , produced register attestation and cancellation of mutations. He produced mutation No.515 and the relevant page No.82 ,whereas the mutation No.515 is mentioned at serial 14 is Ex.PW14/1. Furthermore, self stated that he has cancelled mutation No.515 dated. 17/03/2008 because, neither he was not in knowledge



of status quo granted by the competent court, nor anyone informed him.

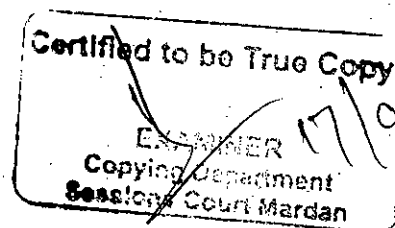
150
 Mohammad Ibrahim record keeper Irrigation Mardan Division appeared as CW-1 and produced amended Warbani of Mogaa (outlet) No. 20606 Rajbah No. 8 Moza Feroz Pur as Ex. CW1/1. Similarly, application for warbandi on behalf of Murad Ali and proceedings thereupon as Ex. CW1/2 & Ex. CW1/3. Application warrant of possession from Court of Mubashir Hussain Shah Assistant Collector, Mardan and ejectment proceedings No. 177 dated. 24/7/2000, Memorandum No. 37 dated. 7/8/2000 as Ex. CW1/4. Witness further produced Shajara Kishtwar/documents regarding warbandi, statements of Sher Gul, Faqir Khan, Kachkol, Murad Ali Khan, notices issued from Divisional Officer Canal Irrigation and statements of Sultan Mohammad etc as Ex. CW1/5 to Ex. CW1/13 respectively.

In cross CW the said witness deposed that he cannot say regarding revenue papers, however, according to our record, warbandi has been made for Khasra No. 609, 635, 610, 634.

Peer Ghulam appeared as CW, who stated that being Jirga member, he made efforts for compromise between Fayaz Tehsildar and plaintiff/Murad Ali, but upon illegal demand of Murad Ali from Fayaz regarding illegal entries, Fayaz Tehsildar straight away refused, the said compromise failed.

Meer Afzal Patwari Halqa irrigation department Moza Feroz Pur appeared as CW-2, who produced receipts regarding Abyana, Gardawari Rabi 2002/2003, Gardawari Kharif 2003, as Ex. CW2/1 to Ex. CW2/5 respectively.

In cross, the witness deposed that at the time of partition for irrigation we used to visit the spot and according to spot I prepared Warabandi for 100 Kanals, which Ex. CW1/6. According to which Murad Ali/ plaintiff was allowed irrigation for landed property measuring 100 and 05 Marlas, because the said property was in possession of Murad Ali. The witness deposed it is correct that Mst: Khalida has no possession, however, the property is in her



name. I cannot say regarding ownership, and record of ownership is in custody of revenue officials.

15)

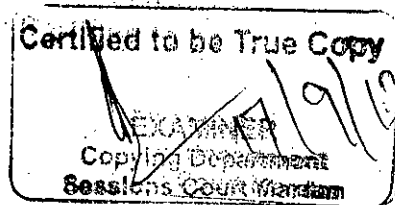
On the other hand, Momin Khan defendant No.2 in person and attorney for 1, 3 appeared and recorded his statement as DW-1. Power of attorneys on behalf of defendants are Ex.DW1/1 and ExDW1/2 respectively. The witness deposed that neither defendant No.1 has tempered with revenue record, nor plaintiff proved any tempering before revenue authorities, against defendants. That plaintiff filed an application before DOR, Mardan for conducting inquiry against defendant No.2 to 4, which was handed over to defendant No.1 and after conducting inquiry, defendant No.2 and 3 found innocent and later on DOR, Mardan dismissed the said inquiry. Copy of said inquiry is Ex.DW1/3. Against said inquiry and decision, plaintiff filed appeal/revision, which was also dismissed. Copy of appeal/revision is Ex.DW1/4. Thereafter plaintiff filed second inquiry, which was also dismissed. Copy is Ex.DW1/5. That thereafter plaintiff on the basis of these finalized inquiries, filed a suit before Mr. Khalid Mansoor Civil Judge, Takht Bhai, which was dismissed being wrong and baseless and then he went in appeal. The appeal also dismissed. Similarly, other suits/miscellaneous application moved by plaintiff. Copies of judgments/order and appeal are Ex.DW1/6 to Ex.DW1/10 respectively. The witness further produced documents in rebuttal to the stance of plaintiff, as Ex.DW1/11 to Ex.DW1/13. In cross Ex.DW1/P1 produced.

Went

ISSUE NO.3 & 4.

Plaintiff brought the instant suit for damages, against the defendants for making tempering in the revenue record pertaining to the property owned by the plaintiff, due to which plaintiff suffered mentally and financially.

The brief history of plaintiff is that plaintiff filed a suit for official partition on behalf of Mst: Sheda (mother of plaintiff), Mst: Khalida and Mst: Saleema as their attorney. During pendency of suit, plaintiff become the owner of the share of her mother i.e 38-



kanal and 12-Marlas, through gift mutation No.266 dated 24/10/1998 Which is not in dispute. And vide partition mutation No.265 dated. 22/9/1998 attested. Which is Ex.PW5/1.

152

That Mst; Khalida aunt of the plaintiff, the owner of her share i.e 38-Kanal 12 Marlas, she has sold out her share through registry dated. 20/3/2003. To one Mr. Meer Zaman. The suit is pending before august Peshawar High Court, Peshawar. Therefore, this Court has no powers to interfere in the matter to the extent of mst: Khalida's share.

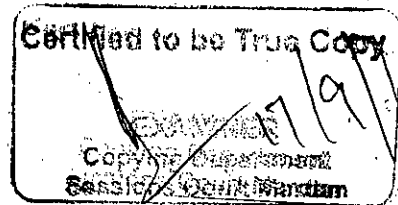
That Mst; Saleema the maternal aunt of plaintiff was also the owner of 38-knanal 12-Marlas, allegedly plaintiff purchased her share through different deeds and in the Court of Civil Judge, Ihsanullah decreed the suit in favour of plaintiff dated 18/4/2011; and Patwari Halqa namely Zaheerullah entered mutation No.407 dated. 10/10/2004. Now it is worth mentioned that the mutation No. 407 was entered, but not attested due to non payment of taxes. Then plaintiff /decree holder filed an execution in the instant lis and mutation No.566 dated. 20/7/2012 was duly entered and attested. After payment of taxes i.e 20-lacs (20,00,000/-).

Plaintiff in support of his claim, produced Atlas Khan Patwari Halqa Moza Feroz Pur, Takht Bhai, as PW-5, who produced Roznamcha Madd No.382 dated. 30/8/2003 as Ex.PW5/19, mutation under consideration No.566, 571 and 572 as Ex.PW-5/20 to Ex.PW5/22; Khasra Gardawari as Ex.PW5/23; record of rents of the year 2007/2008 as Ex.PW5/24.

Mst

In cross examination, he has admitted that the plaintiff has completely sold out his property/share in the said Moza Feroz Pur and he remained no owner. The relevant para is reproduced as under:-

میرزا محمد علی صاحب نے اپنے تمام حصوں کو اپنے بیٹے میرزا محمد علی صاحب کو بیچ دیا ہے اور اس کے بعد وہ اس ملک کا مالک نہیں رہا ہے۔
نقولات فہرست سے یہ ثابت ہے کہ میرزا محمد علی صاحب نے اپنے تمام حصوں کو اپنے بیٹے میرزا محمد علی صاحب کو بیچ دیا ہے اور اس کے بعد وہ اس ملک کا مالک نہیں رہا ہے۔
میرزا محمد علی صاحب نے اپنے تمام حصوں کو اپنے بیٹے میرزا محمد علی صاحب کو بیچ دیا ہے اور اس کے بعد وہ اس ملک کا مالک نہیں رہا ہے۔
میرزا محمد علی صاحب نے اپنے تمام حصوں کو اپنے بیٹے میرزا محمد علی صاحب کو بیچ دیا ہے اور اس کے بعد وہ اس ملک کا مالک نہیں رہا ہے۔



154

He/plaintiff further admitted that he had filed an other suit u/s 8 of Specific Relief Act. bearing No.284/1 Titled Murad Ali...vs...Ameer Zaman and 13 others. before Mr. Khalid Mansoor, the learned Civil Judge Takht Bhai . decided on 22/12/2010 which was not the similar nature suit (suit for damages) . but in that suit the present plaintiff alongwith Meer Zaman vendee was party to the suit. Also admitted that in that suit, the present plaintiff has alleged as same tempering in the revenue record by the present defendants, which is once again based in the instant suit, and was prayed for taking action against the same defendants. But his suit was dismissed. The relevant para/portion is reproduced for assistance as under:-

” (دوسرے یہ کہ اس مقدمہ میں بھی یہی ریفارٹ ہے۔
 ردعمل میں موجود مدعا علیہم کے خلاف احمد ریفارٹ ہذا
 میں یہی ریفارٹ ہذا ہے۔ یہی ریفارٹ اور جو دوسرے ریفارٹ
 کے خلاف داد درسی مانگی گئی تھیں وہ امرہ دستری صریح ہے۔“

Scrutiny of plaintiff's evidence revealed that the statements of PWs are not in consonance. The PWs did not uttered a single word regarding tempering of revenue record by defendants. mental torture and monetary loss of the plaintiff. except plaintiff(PW-6).

Perusal of suit No.284/1 revealed that the defendants in the instant suit were the defendants in suit No.284/1 too and by the divergent pleading of the parties that the learned Civil Judge-IV-Takht Bhai had framed issue No.4, which is reproduced for assistance:-

“Whether the defendants have collusively tried to legalize the legal possession of defendant No.1 and 2 via wrong entries in the revenue record? OPP. “

Perusal of issue No.4 discussion revealed that issue was decided in negative with intention that:-

The learned counsel for the plaintiff could not pointed out at to what illegality has been committed by the revenue authorities in doing so.”

“The learned counsel for the plaintiff argued that the mutation No.407 has been intentionally misplaced by the revenue officials just to

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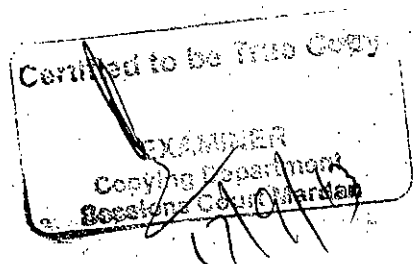
155

legalize the defendants' possession over the disputed property; but this argument has no force, because the PW-1 Patwari Halqa has stated in categorical terms that the same mutation has been rejected. If the same is presumed to be still pending, even then the same is of no help to the plaintiff. hence issue is decided in negative. (against the plaintiff)''

Section 79 & 80 of Civil procedure Code, provide procedure for bringing suit against public officer as per section 80 of C.P.C. A notice to be given. And the notice is required to be given where it can reasonably be claimed the act was performed by virtue of office. The acts done within the sphere of official duties, act purporting to be done in official capacity means any act intended to be seen to be done in an official capacity. The act within the sphere of official duties, not incidental or consequential thereto or not done in good faith, cannot be said to be act purporting to be done in official capacity.

Plaintiff had also filed an application dated. 15/2/2006, before D.R.O.Mardan namely Mubashir Hassan, for initiating inquiry against the defendants. Mr Mubashir Hussan DRO has appointed Mohammad Fayaz Tehsildar as inquiry officer, who conducted inquiry and submitted before D.R.O on 18/7/2006 P.N:PW6/D. Mardan with observation held hat respondents as innocent. Then plaintiff/petitioner approached to Director Anti corruption for initiating departmental inquiry, wherein D.D.O.R Mr. Tanveer Khan held Mr. Irshad Ali, Zaheerullah, Momin Khan, Patwari Halqas as guilty and their two increments were called as penalty. It is worth mentioned that the appeal is pending before the Senior Member Board of Revenue, Khyber pukhtoonkhwa, Peshawar in this respect.

The word Compensation signifies that, which is given in recompense and equivalent rendered/damages, on the other hand, constitute the sum of money claimed, or adjudged to be paid as compensation for loss or injury sustained.



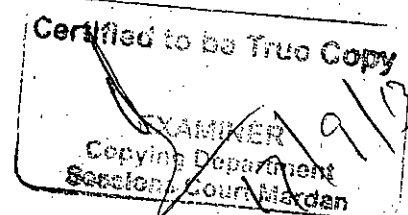
Loss signifies some detriment or deprivation or damage injury too means any injury by damage or wrong, it means invasion of any legally protected interest of an other.

156

It is now a well accepted proposition in the most of the jurisdictions. that monetary or pecuniary compensation is an appropriate and in deed an effective in some times perhaps the only suitable remedy for redressal of the established infringement of the fundamental rights to life. In the instant suit this Court observed that no wrongful act on behalf of the defendants noted, even the same issue is already decided in prior instituted suit. As, the graph prepared above, the plaintiff has sold his property measuring 38-Kanals on difference mutations and share of Mst: Khalida is subjudice before honourable Peshawar High Court, Peshawar; and the remaining share of Mst: Saleema was decreed in favour of plaintiff and in that his mutation No. 566 Ex.PW17/2 was attested through which plaintiff is owner in possession, therefore, plaintiff claim for damages could not be substantiated. Even plaintiff dragged the public officers in series of litigation. As, afore discussed that the same issue was discussed by the learned Civil Judge Mr. Khalid Mansoor and the present dispute (tempering in revenue record by the defendants) was discarded by the competent Court. Rather to accept the findings of the competent Court, once again raised the same issue before this Court, and opened Pandora Box for long period.

Damages might be claimed in such an action under three heads.

- 1- damaged to the person
- 2- and damages to the property
- 3- or damage to reputation; and that rule has prevailed ever since. In dealing with such like cases, it must born in mind that the claim for damages resulting from what type of injury and the proper scrutiny of rightful claim. Similarly, to found an action for damages is necessary to test that whether respondents acted with illwill, which damaged



157

to the petitioner in result. In the instant lis, the plaintiff must have suffered mental shock which must have further deteriorated is held in mental condition. Loss and suffering, occurred to the plaintiff due to the hands of defendants, requires very strong evidence, while in the suit in hand, plaintiff posed mere and oral allegations. So keeping in view the above mentioned facts of the case, statements recorded plaintiff could not substantiate his claim and contention of wrong entries by the defendants in revenue record, and due to wrong entries plaintiff suffered from mental torture as well monetary, therefore, there is no scope for grant of damages. Hence issue No.3 is decided in positive, while issue No.4 is decided in negative.

ISSUE NO.2.

The onus of proof of this issues was upon defendants, but this issue was neither pressed during evidence, nor pointed out at the time of arguments, hence left redundant.

ISSUES No.1 and5.

Keeping in view the above discussion, Court held that plaintiff has got no cause of action; and thus not entitled to the decree as prayed for. Issues are decided in negative.

Relief.

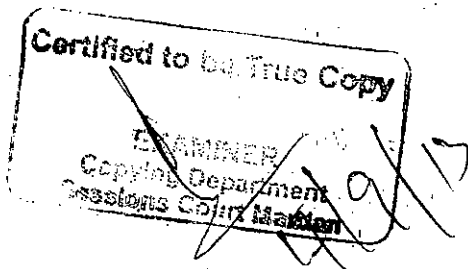
Crux of my issue wise discussion, the plaintiff is failed to substantiate his claim and contention through cogent and reliable evidence, therefore, suit is hereby dismissed. No order as to costs.

File be consigned to record room after its completion.

Announced
16.06.2013.

Mansur

(Mrs. Quratul Ain)
Civil Judge-I, Mardan



CERTIFICATE

Certified that this judgment consist of seventeen (17) pages, each has been read, checked, signed and corrected by me wherever it was necessary.

158

Mrs. Quratul Ain
(Mrs. Quratul Ain)
Civil Judg-1, Mardan.

Copy

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Date on which	<i>19P</i>
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Court Fee	
Urgent fee	
Signed of Copy	<i>Mrs. Quratul Ain</i>
Date of Delivery	<i>25-9-13</i>

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EXAMINED

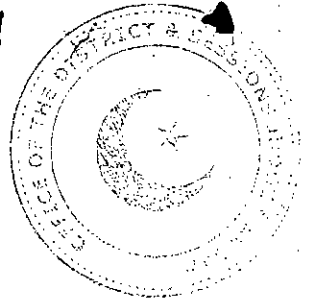
Recording Department

Sessions Court Mardan

17/9/13

پریس ڈسٹری

لیدر جناب محنت قر العین سولے آ سردن



نمبر

407/1

رجوعہ

16-12-11

منسلہ

16-7-13

159

09.12.11

مراد علی ولد محمد علی خان، ساکن محلہ رستم خیل ضلع مردان۔

بنام

(۱) محمد فیاض تحصیلدار، تحصیل تخت بھائی حال ڈسٹرکٹ آفیسر فنانس لوکل گورنمنٹ ضلع پشاور۔

بذریعہ مؤمن خان پٹواری مختیار خاص

(۲) سابقہ پٹواری حلقہ مؤمن خان محال فیروز پور تحصیل تخت بھائی حال حلقہ سری بہلول ضلع مردان

(۳) زیر اللہ سابقہ پٹواری حلقہ محال فیروز پور تحصیل تخت بھائی حال حلقہ خرمی ضلع مردان۔

(۴) ارشاد علی سابقہ پٹواری حلقہ محال فیروز پور تحصیل تخت بھائی حال حلقہ چیل ضلع مردان۔

(الف) دعویٰ دلاپانے مبلغ ایک کروڑ روپے بابت ہرجانہ نقصان رسائی و ایذا رسائی و ذہنی و جسمانی کوفت

برخلاف مدعا علیہم نمبر 1۔

(ب) دعویٰ دلاپانے مبلغ پچیس لاکھ روپے بابت ہرجانہ و عوضانہ، بابت ایذا رسائی و نقصان رسائی و

مالی و ذہنی کوفت برخلاف مدعا علیہم نمبر 2 مؤمن خان۔

(د) دعویٰ دلاپانے مبلغ پچیس لاکھ روپے بابت ہرجانہ و عوضانہ، بابت ایذا رسائی و نقصان رسائی و

مالی و ذہنی کوفت برخلاف مدعا علیہم نمبر 3 زیر اللہ۔

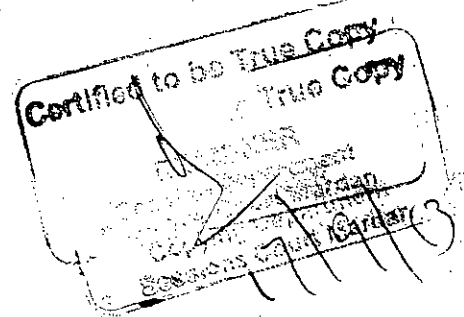
(ج) دعویٰ دلاپانے مبلغ پچیس لاکھ روپے بابت ہرجانہ و عوضانہ، بابت ایذا رسائی و نقصان رسائی و

مالی و ذہنی کوفت برخلاف مدعا علیہم نمبر 4 ارشاد علی۔

کورت فیفا لیز من اسٹا رسائی

175,000,000/2

P-T-0



or-131
16-7-13

Parties present vide my detailed separate judgment of today consisting of (17) pages, placed on file. As Plaintiff is failed to substantiate his claims, therefore suit in hand is hereby dismissed. No order as to costs. File be consigned to S.R.R after its completion.

Announced
16-7-13

Muz.
(CJ-I-muz)



ردیف	تاریخ	توضیحات	ملاحظات	تاریخ
1	16-7-13	قرارداد		
2	16-7-13	اشهاد برادران		
3	16-7-13	یکایک		
4	16-7-13	مستند در حق		
5	16-7-13	مهرش		
6	16-7-13	فرموده		
7	16-7-13	الهام		
8	16-7-13	منقح		

۹۰۰ بیت دستگیر اور سر عدالت سے دی گئی

Muz.
سید ۱۰/۱۲/۱۳



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7/9/13

IN THE COURT OF MUHAMMAD JAMAL KHAN, ADDITIONAL DISTRICT JUDGE-VII
MARDAN.



Civil appeal No.....16/13 of 2011

Date of institution.....9.2.2011

Date of decision.....23.1.2012

(22)

M. J. Khan ————— 26-3-12

Murad Ali S/o Muhammad Ali Khan R/o Rustam Khel Mardan Tehsil &
District Mardan.....Appellants

Versus

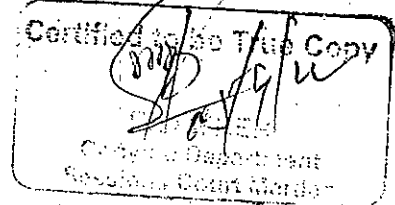
1. Amir Zaman S/o Akbar Khan 2. Sultan Muhammad S/o Ghulam Habib
R/o Haji Karim Kaley Mahal Feroz Pur Tehsil Takhtbai District
Mardan 3. Faiz Muhammad ASI Incharge PP Sare Shah P.S Takhtbai
4. Shah Hassan IO Incharge Investigation P.S Takhtbai 5. Hawaldar
Alam Taj PS Takhtbai 6. Superintendent of Police Mardan 7. D.I. 6
Mardan 8. Inspector General of Police Provincial Government
Khyber Pakhtoon Khwa Peshawar 9. Mumin Khan Ex-Patwari Halqa
Ferozpur 10. Zairullah Patwari Halqa 11. Irshad Ali Patwari Halqa
Mahal Ferozpur 12. Mir Afzal Patwari Halqa Irrigation Mardan
Mahal Feroz Pur.....Respondants.

APPEAL AGAINST THE JUDGMENT ORDER AND DECREE
OF CIVIL JUDGE-IV DATED 22.12.2010

JUDGMENT

This appeal has been directed against judgment order
and decree dated 22.12.2010 passed by the learned Civil Judge-IV
Mardan whereby suit of the Plaintiff for declaration, possession
and permanent injunction was dismissed.

Brief facts essential for the disposal of the instant
appeal as contained in the plaint are that the Plaintiff



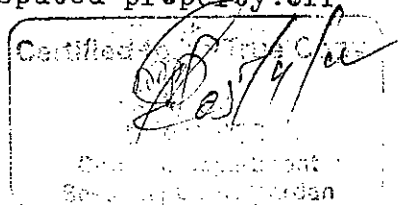
(2)

123
instituted a suit for declaration claiming to be owner in possession of the suit property measuring 32 kanals or which ever area is found correct against the defendants as fully detailed in the head note of the plaint, and defendants No.1 and 2 with the conjoint collusion of the rest of defendants have taken into possession the same illegally and have made wrongful entry in the revenue record which act of the defendants have been challenged against the law and facts and void and ineffective upon the rights of the Plaintiff. The Plaintiff prayed for recovery of the possession of the suit u/s 8 of the specific relief act 1877 and for the issuance of permanent injunction restraining the defendants from alienating the disputed property or making any construction therein.

Defendants were summoned to the court and on attendance they contested the suit through the submission of their written statement controverting the claim of the plaintiffs on a number of legal and factual objections such as cause of action and estoppel etc. The divergent pleadings of the parties were condensed into the following issues by the learned trial court:-

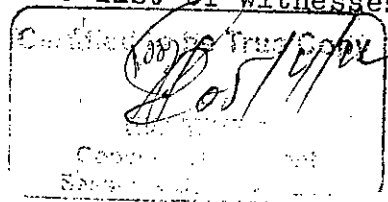
ISSUES

1. Whether the Plaintiff has got a cause of action?@PP
2. Whether the Plaintiff is the owner in possession of the land measuring 12 kanals of the disputed property?@PP



- 126
3. Whether the Plaintiff was dispossessed by the defendants No. 1 and 2 within Six months from the date of institution of the suit?@PP
 4. Whether the defendants have collusively tried to legalize the illegal possession of the defendant No. 1 and 2 via wrong entries in the record?@PP
 5. Whether the suit being bad in its present form is liable to be dismissed ?@PD
 6. Whether the Plaintiff is estopped @@ by his conduct from bringing the instant suit?@PD
 7. Whether the defendant No. 1 has purchased the suit property and he has been in possession while the Plaintiff has nothing to do with the same ?@PD
 8. Whether the suit has been filed just to harass the defendants, therefore, they are entitled to special compensatory costs?@PD
 9. Whether the Plaintiff is not entitled to any relief under section-8 of the Specific Relief Act?@PD
 10. Whether this court has got no jurisdiction?@PD
 11. Whether the suit is liable to be dismissed due to non-joinder and mis-joinder of necessary parties?@PD
 12. Whether the defendant No. 2 has become owner of land 17 kanals 3 marlas vide mutation No. 471 and 367 and he has taken possession of the same in accordance with law and with the consent of the Plaintiff?@PD
 13. Whether there is legal defect in the suit, if so, its effect?@PD
 14. Whether the Plaintiff is entitled to the relief as prayed for in the pl-int?@PP
 15. Relief.

After the formulation of the issues list of witnesses were



125
sought followed by recording of pro and contra evidence . Arguments were heard in view of which the learned trial court was pleased to dismiss the present suit through the impugned judgment order and decree which is the subject matter of the instant appeal .I have heard the arguments of the learned counsel for the parties and was able to go through the record in view of which my findings are as under:-

According to the claim of appellant that the Plaintiff is co-owner in the disputed Khata since the Plaintiff has been handed over the possession of the suit property on the basis of partition proceedings, therefore, he is owner and the decree passed in his favour is sufficient to create a valid title in his favour. That at the time of the registry Mst. Khalida was not holding possession of the property so alienated, the owner of property is entitled to recover possession of the land in view of section-8 of the Specific Relief Act and not u/s 9 of the referred to enactment .The perusal of record abundantly clarified the fact that mutation on the basis of which the Plaintiff have preferred their claim of ownership has already been cancelled. The judgment and decree on the basis of which the Plaintiff claims ownership in the suit property has not been executed and in this regard there is no pending execution Petition in the court having

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126

jurisdiction in the matter ; in case the Plaintiffs were in possession of a decree they must have executed so as to have obtained possession of their due shares so granted in their favour . A co-owner has to recover possession u/s 8 of the Specific Relief Act but first of all he has to verifiably establish his respective ownership with regard to the property which he claimed and unless and untill he has so established his claim he cannot claim the recovery of possession u/s 8 of the referred to enactment .The documents produced by the Plaintiff in his favour has got no relevancy with the fact enunciated in the instant suit. The seeking of any remedy u/s 8 of the Specific Relief Act 1877 cannot be sought before seeking declaration first. The contents of the appeal just contained arguments without raising any objection on the issues on which the Plaintiff is at variance. The record reveals that the mother of the Plaintiffs have transferred his share in her name as a result of partition proceedings. The Plaintiff was unable to substantiate his very claim and in this regard evidence produced by his opponent pre-ponderates on the evidence he adduced if put into juxtaposition, the findings of the learned trial court on the material issues are thus a true reflection and evaluation of the evidence recorded on file. No instance of none or mis-reading was found, therefore, the same

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 possession of the original

(6)

are up-held .The findings of the learned trial court on the
a of evidence
remaining issues are also/correct appraisal/and are up-held.

Resultantly, this/being appeal devoid of any force and the

same stands dismissed while the judgment order and decree of
the learned trial court dated 22.12.2010 is maintained. Parties
are left to bear their own costs. Record of the lower court be
returned while file of this court be consigned to the record
room after necessary completion.

127

Announced

Dated. 23.1.2012.

(MUHAMMAD JAMAL KHAN)

Additional District Judge-VII, Mardan

CERTIFICATE

Certified that this judgment consists of 6
pages and each page has been signed by me after necessary
correction made therein.

Dated. 23.1.2012.

(MUHAMMAD JAMAL KHAN)

Additional District Judge-VII,
Mardan

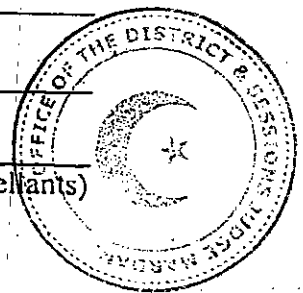
Handwritten notes: 16-11, 5-4-12, 5-4-12

Name	
Date	16-11/05/12
Date of	5-4-12
Date of	5-4-12
No.	16-11
Court	
Agent	
Signed of	<i>[Signature]</i>
Date of Delivery	05/11/12

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[Signature]
05/11/12

Muhammad Jamal Khan ADJ VII Mardan

Munad Ali



(Appellants)

VERSUS

Amin Zaman

(Respondents.)

Date of presentation of plaint in first court 14-6-2005

Date of Decision in First Court 22-12-2010

Appeal No. 16/13 of 20011 from the decree of the court of Munad Ali
Main Sess Civil Judge IV Mardan.

Dated the 29th Day of December 20010 Suit for Declaration

MEMORANDUM OF APPEAL

Munad Ali

Plaintiff(s)

Amin Zaman

Defendant(s)

The Muhammad Jamal Khan Above named appeal.

To the appellate court at ADJ VII from the decree of Civil Judge IV

Mardan In the above suit, dated the 9-2-2011 day of 11

for the following reasons, namely: ground appeal in order

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EXAMINER
Copying Department
Sessions Court Mardan

This appeal coming on for hearing on 23-1-12 day of — 200—12 before me.

In the presence of Muhammad Khan Advocate for the appellant and of Taj Khan Khan Muhammad Advocate for the respondent, the ordered: -

ORDER 23-1-12

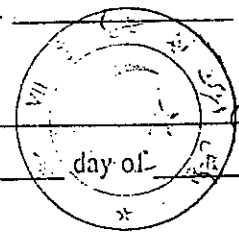
Parties present - vide my detailed judgment of today separately placed on file this appeal being devoid of any force and the same stands dismissed while the judgment order and decree of the learned trial court dated 22-12-10 is maintained - parties are left to bear their own costs. Record of the lower court be returned while file of this court be consigned to the record room after necessary completion -

(Signature)
ADJ VII Muzaffar

The cost of this appeal as detail below, amounting to Rs. _____ are to be paid by the _____

The cost of the original suit are to be paid by _____

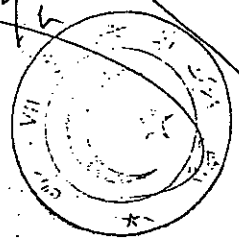
Given under my hand and the seal of the court, this _____ day of _____ 200_____



COST OF APPEAL

S.No.	Appellants.	Amount		Respondents	Amount	
		Rs.	Ps.		Rs.	Ps.
1.	Stamp for Memorandum of Appeal	-	-	Stamp of Power	-	-
2.	Stamp of Power.....	-	-	Service of Process	-	-
3.	Service of Process.....	-	-	Pleader's Fee on Rs.	-	-
4.	Pleader's Fee on Rs.	-	-	Miscellaneous	-	-
5.	Miscellaneous.....	-	-		-	-
Total		-	-	Total	-	-

(Signature)
ADJ VII Muzaffar



Certified
(Signature)
Deputy District Judge
Muzaffargarh

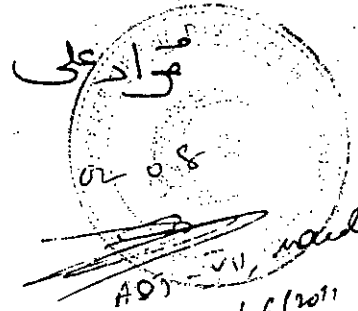
بعد التايد ليشن ل دستک طرح و دات

۱۷۱

۱ پير زمان و عیہ

بناک

اپیل

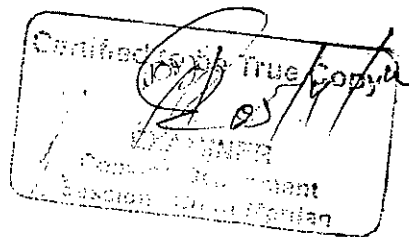


جناب عالی :- درخو است بجزاد اصافی شهادت زیر صف
 آرڈر ۱۱۱ رول 270 بت پیشی نے بنی مقدمہ 209
 مقدمہ ۱۱۱ و مقدمہ مثل بنی ۱۲ مقدمہ ۱۸ ۱/۲۵۸
 جناب احسان اللہ خان محمود سول جج و دادنا
 از محافظ خانہ اربکار دکم و دات مناسب
 دیا ہے

① یہ مقدمہ بالا میں آجکی تاریخ پیشی مقرر ہے

② یہ بہ نسبت جائیداد مقدمہ عدلی نے برخلا من
 مسماۃ سیدہ، خالد کے خلاف بطور وارثان مسماۃ سلیم
 کے ترقی کی بت دعویٰ دخلیا بی تمیل مختص داد
 کیا تھا، جو کہ مقدمہ ۱۱۱ کو مقدمہ ہوا۔ عدلی دعویٰ
 ر مقدمہ نقل نظر ثانی و حکم
 و حکم لیا ہے

③ یہ عدلی نے لیدہ مقدمہ بنی ۱۲ مقدمہ ۱۸ ۱/۲۵۸ کی
 دت مقدمہ بنی 209 میں Review کی درخواست
 گئی ادی، جو کہ منظور ہوئی۔ اور اس طرح ترقی
 مسماۃ سلیم در جائیداد مقدمہ عدلی بنی ۱۱۱
 د گری ہوا۔ ر مقدمہ نقل نظر ثانی و حکم
 لیا ہے



4 یہ مقدمہ بالا میں ماتحت عدالت میں انتقال
ہئی 107 سے لو پٹواری سے ADK، ADK نے پیش کیا، جو کہ
ڈگری مقدمہ ہئی 209 کی بنیاد پر راج ہوا تھا۔

108

5 یہ مقدمہ بالا میں ماتحت عدالت میں ڈگری مقدمہ ہئی 209
پیش نہیں ہوا، جبکہ ڈگری بحق ایڈوانس، مدعی ایڈوانس
کی ملکیت و بیفہ کو ظاہر کرتی ہے، بدینہ جب بطور
Additional شہادت پیش کرنا از حد ضروری ہے۔

16/06/2011

6 یہ دستاویز فیصلجات عدالت دیوانی Additional
شہادت میں پیش ہونے کے بعد عدالت
حضور کو فیصلہ کرنے میں آسانی ہوگی۔

لہذا استدعا ہے کہ منظور دی درخواست
ہذا ایڈیشنل شہادت میں محافظان اہلکار
کا بیان ثبت فیصلہ ہو ڈگری کا ریکارڈ میں پیش
کرانے کے احکامات صادر فرمائی جائے۔

بیان حلفی

16/6/2011

M. Kamal Khan
Advocate
Mardan.

Notary Public Mardan
No. 16/6/11

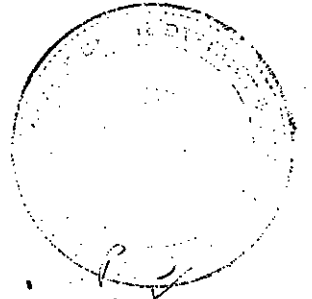
Attested
Muhammad Muslim
Notary Public Mardan.
No. 16/6/11

میں حلفی بیانی کا ایڈوانس
مقدمہ رجسٹر ہوا ہے
بالا تا دہرہ عملوں میں
تہ مطابق دست نامہ میں
ماری علی

بعد التذکرہ حج صاحب مردان

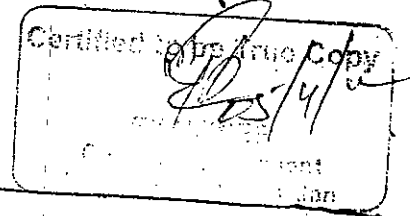
11/11/91

مُراد علی ولد محمد علی خان ساکن رسم خیل
مردان تحصیل و ضلع مردان (ایپلانٹ)



بنا

1 امیر زمان ولد البرخان 2 سلطان محمد ولد غلام حبیب
ساکن حاجی ریم علی محلہ فیروز پور تحصیل تخت بھائی ضلع
مردان 3 مین محمد ASI اچارج چوکی سارو شاہ
بھانہ تخت بھائی 4 شاہ حسن لہ اچارج الوٹکشن بھانہ
تخت بھائی 5 حوالدار عالم نام بھانہ تخت بھائی 6 میسر شدت
پولیس مردان 7 ڈی. آئی. جی مردان 8 انسپٹر جنرل
آف پولیس صوبائی حکومت جی ٹی خواہ صوبہ پشاور
9 مومن خان سابق پٹواری حلقہ فیروز پور 10 ازیر الدہا پٹواری
11 ارشد علی پٹواری حلقہ محلہ فیروز پور 12 میر افضل پٹواری
محلہ ابرگیشن مردان محلہ فیروز پور



1 پیل زبرد فف 96 ضابطہ دیوانی برخلاف حکم و مفید
و دگری مقدمہ جی 284/1 مورخہ 12/22 جناب
خالد منظور سول حج صاحب مردان حبکی
رسم دعوی اپیلانٹ امدی غلط طور سے

پر خلاف ریپازڈ ٹران اوردی علیہم خارج فرمایا گیا ہے

Handwritten signature and date: 9/2/11

اسد عاتے اپیل :- منظور ہے اپیل ہذا حکم و فیصلہ و ڈگری کا فاضل عدالت ماتحت منسوخ فرما دیا جاتی دعویٰ اپیلانٹ پر خلاف ریپازڈ ٹران ماتحت ہوئی ہے عدالت کے ڈگری فرمایا جاوے

جناب عالی :- وجوہات اپیل عجاب اپیلانٹ کے دلی عرف ہے

① یہ کہ حکم و فیصلہ و ڈگری پر چ ڈگری فاضل عدالت ماتحت غلط ، خلاف قانون ، خلاف واقعات خلاف اصول انصاف و خلاف رویہ دار مثل ہونے کی وجہ سے پر ڈگری قابل بجالی نہ ہے جبکہ قابل منسوخ ہے ۔ مقدمہ نکل حکم و فیصلہ و ڈگری پر چ ڈگری مخالف ہے

② یہ کہ فاضل عدالت ماتحت نے مقدمہ نقل پر موجود سٹمیا دلوں کا بغور ملاحظہ کئے بغیر ، ایم سٹمیا دلوں کو تسفیحات وضع شدہ پر اسٹمیا دلوں کے بغیر سے سرتی ملاحظہ کرنے غلط نتیجے اخذ کرنے غلط فیصلہ صادر فرمایا ہے ، بدین وجہ بھی حکم و فیصلہ فاضل عدالت ماتحت قابل منسوخ ہے

③ یہ کہ حکم و فیصلہ فاضل عدالت ماتحت پر تسفیح بھری ہے سراسر غلط اور بے بنیاد ہے یہ کہ تسفیح بھری میں عدالت ماتحت نے دو مقامات زیر تجویز بعدالت عالیہ لٹا دی ہیں اور کورٹ کا ذکر کیا ہے ، لیکن عدالت

True Copy stamp with signature and date 05/11/11

I
11/12/2011

تحت انتقال بنی 407 جو کہ عدالتی ڈگری پر ذیل پر
 تجویز ہے جو کہ نا حال نہ لو خارج ہوئے اور نامال OK
 تحت بھائی نے زیر تجویز انتقال بالا پٹی لیکے اور OK نے
 بوجہ ترقی مقدمہ ہونے قعداً او محمد چھپایا، لیکن اس کے باوجود
 عدالت ماتحت نے کہ ارشاد ہی تحت بھائی کے غلام
 کسی قسم کی کارروائی نہیں کی اور نہ ہی عدالت ماتحت نے
 بحق مدعی ایپلائٹ ڈگری کے باوجود بلا کسی مالوثی
 جواز کے مدعی ایپلائٹ کو کھاتہ فتح دعویٰ میں مالک
 لپنی گئی داتا ہے اور اس حقیقت کے باوجود مقدمہ خود ہی
 غلط الفاظ اس طرح تجویز لکھے ہیں کہ مدعی ایپلائٹ نے
 کھاتہ فتح دعویٰ میں خود کو مالک ثابت نہیں لکھتے کی
 بنا پر تنقح بنی غلط طور پر مقدمہ لیکے بدیہ
 وجہ بھی حکم و مفید ناضل عدالت ماتحت قابل منوع ہے

3 یہ کہ تنقح بنی میں ناضل عدالت ماتحت یہ امر حقیقت درست
 طور سے تسلیم کر لیکے کہ مدعی کو جیت ڈگری یاد و جواز اور نامال جات
 منبر 347 346 جیت مختیا تقسیم کی ڈگری پر کل الارفی
 کا مفاد لوالہ کیا لیا ہے۔ لیکن عدالت ماتحت نے اور نامال
 واقعات EAPW₁₂ تا EAPW₁₂ و اعنی نامجبات EAPW₁₂ و EAPW₁₂
 جو کہ دیانہ نشان بکوانے نے جو کہ خود میں بھی ریت طور سے
 کیا ہے جو یہ اگے عدالت ماتحت مدعی کے حق میں ڈگری کو لپنی
 مانتی، لوقہ لوقہ عدالت ماتحت میں آتے ہیں بدیہ وجہ
 بھی حکم و مفید ناضل عدالت ماتحت قابل منوع ہے

4 یہ کہ عدالت ماتحت نے ابرخان OK کے بیان کو بھی
 بلکہ طور سے نظر انداز لیکے ہے۔ جسے مطابق اس نے بیان خود
 میں کہا ہے کہ انتقال بنی 407 نہ لو خارج ہوا ہے
 اور نہ ہی تقدیق ہو لیکے اور نہ ہی بد بیان خود ہی
 لپنا ہے کہ انتقال بنی 407 نا حال زیر تجویز ہے
 کہ نے مورخہ 15 کو دوسرے مقدمہ میں انتقال
 بنی 407 کے زیر تجویز ہونے کے بارے میں کہا ہے لیکن ان تمام

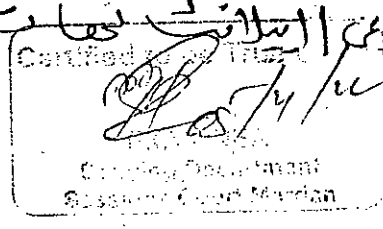
Certified Copy
 11/12/2011
 Court of Sessions
 Sindh, Pakistan

تفاتیق کے باوجود نتیجہ ہمز 2 غلط طور سے ضمیمہ کیلئے
 (5) یہ کہ حکم و فیصلہ میں غلطی ہوئی ہوگی اور عدالت ماحکم
 درست طور سے ثابت کیلئے اور عدالت ماحکم
 گواہ Pw12 فیصلہ ثالثی اپنی ایکٹی EXPW12 اور EXPW12
 کو بھی یکساں طور سے ضمیمہ خود میں نظر انداز کیا ہے
 اور ضمیمہ کیلئے ہمز 2 خود میں ہی اپنی ایکٹی ضمیمہ
 کو بھی درست طور سے قسیم کیلئے۔ بدین وجہ بھی حکم
 و فیصلہ ماضل عدالت ماحکم قابل منسوخ ہے

(6) یہ کہ حکم و فیصلہ ماضل عدالت ماحکم اس لحاظ سے بھی
 غلط ہے کہ رجسٹری بیج بچاؤ ضمیمہ میں ایسے کھاتے
 میں ہوئی ہے اور ضمیمہ ہمز نے جزی خود میں یہ
 تسلیم کیلئے کہ یہ ایسا کوئی بیوت یا گڈ اداری
 پیش اپنی کی سکتا کہ جہاں وہ سے صماء خالدہ کے
 پاس ہمزات خیرہ 1124 تا 1128 کا بٹلر رجسٹری تھا
 مزید روزنامہ 382 رجسٹری بیج کے چھ سات ماہ بعد درج
 ہوا ہے۔ جس سے یہ حقیقت عیاں ہے کہ بیوت رجسٹری
 صماء خالدہ کے پاس بٹلر اپنی تھا اور اسی طرح بیوت خیرہ
 ہمز کے روزنامہ جات و داعی نام جات کو پاؤں تلے
 روندے ہوئے درج ہے
 یہ یعنی ثالثی طور سے عدالت سے بٹلر بوجہ غلط انداز میں
 مال لے لیا ہے۔ بدین وجہ بھی حکم و فیصلہ ماضل عدالت ماحکم
 مایلا منسوخ ہے

(7) یہ کہ ماضل عدالت ماحکم نے ارشاد علی بیوتی حلت کے فوجداری
 فقہ میں لفت تقویٰ بٹلر EXPW14 کے ماضی کو نظر انداز کیے
 غلط فیصلہ صادر فرمایا ہے

(8) یہ کہ حکم و فیصلہ ماضل عدالت ماحکم برتنجات ہمز
 اور 13 ایسی غلط ہے کیونکہ بوجہ عدالت کے فیصلے
 کے عدالت ماحکم کے ماضی ماضی سے



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یہ کہ مجھ پر قانونی نفاذ بددلت پٹ برائیل
اٹھائی جائے گی

9/2/11

لہذا

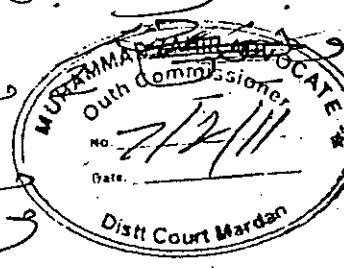
برائیل میں حکم و فیصلہ دہری خاقل بدالت
ماعت منوعہ میں مانا جا کر دیوی عدلی
برخلاف ایسٹڈ شان مجھے فی جہ عدالت
دہری کیا جا رہے

ایسٹڈ شان
مذکورہ بالا کے خلاف
مذکورہ بالا کے خلاف

بیان حلفی

میں حلفاً بیان کرتا ہوں کہ
مذکورہ بالا تمام کے علم

مطابق رہا ہے جس سے
مذکورہ



Certified
[Signature]

(Opening Sheet for Civil Revision)

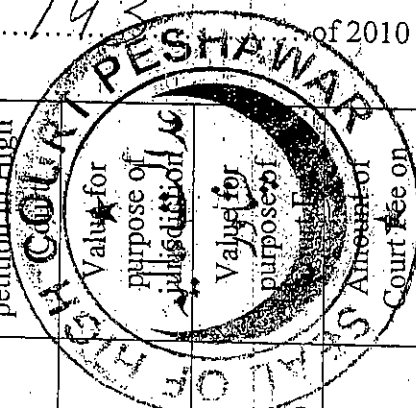
IN THE PESHAWAR HIGH COURT, PESHAWAR

JUDICIAL DEPARTMENT

13

Civil Revision..... 743 of 2010

Original Suit				First Appeal Application				Date of filing petition in High Court	Value for purpose of jurisdiction	Value for purpose of court fee	Court Fee on petition
Instituted		Decided		Instituted		Decided					
Court	Date	Court	Date	Court	Date	Court	Date				
Civil Judge, Mardan	9.10.2004	Civil Judge-I Mardan	7.5.2009	District Judge Takhtbai	10.6.2009	ADJ-II, Takhtbai	18.11.2009	11.3.2010	Rs.600/-	Rs.45/-	Nil



Presented by: **Amjad Ali Advocate**

Petitioner (Plaintiff or Defendant): **Murad Ali (Plaintiff)**

Respondent (Plaintiff or Defendant): **Sultan Muhammad (Defendant)**

Order of First Court and Date: **Suit of the petitioner was dismissed on 7.5.2009 by Civil Judge-I, Mardan.**

Appellate Court and Date: **Appeal of the petitioner was dismissed vide judgment dated 18.11.2009 by ADJ-II, Takhtbai.**

Confirming, Reversing or Modifying: **Confirming**

Original Claim: **Suit for declaration-cum-perpetual injunction and for possession of the suit property mentioned in the plaint.**

Claim in Revision: **On acceptance of this Petition, judgments of Civil Judge, Takhtbai dated 7.5.2009 and Additional District Judge, Takhtbai dated 18.11.2009 may please be declared as void, illegal, consequently set aside and suit may please be decreed.**

Enactment and Section under which revision lies under: 115 C.P.C

5829
FILED TODAY
 Deputy Registrar
 17 MAR 2010

(GROUNDS FOR REVISION ARE ATTACHED)
 9060
RE-FILED TODAY
 Deputy Registrar
 15 APR 2010

10689
RE-FILED TODAY
 Deputy Registrar
 03 MAY 2010

ATTESTED
 EXAMINER
 Peshawar High Court
 16 SEP 2015

BEFORE PESHAWAR HIGH COURT, PESHAWAR.



C.R.No. 743 /2010

✓ Murad Ali son of Muhammad Ali Khan
R/O Mohallah Rustam Khail, Tehsil Takhtbai
District Mardan.....Petitioner

Versus

Sultan Muhammad son of Ghulam Habib
R/O Ferozpur, Tehsil Takhtbai District Mardan..... Respondent

CIVIL REVISION PETITION U/S 115 C.P.C.
AGAINST THE ORDER/ JUDGMENT/
DECREE OF CIVIL JUDGE, TAKHTBAI
DATED 7.5.2009 AND ADDITIONAL
DISTRICT JUDGE DATED 18.11.2009 IS
ILLEGAL, AGAINST LAW AND FACTS.

Prayer-in-Revision:-

On acceptance of this revision petition,
judgments of Civil Judge, Takhtbai dated
7.5.2009 and Additional District Judge,
Takhtbai dated 18.11.2009 may please be
declared as void, ^{illegal} consequently set aside
and suit may please be decreed.

Sir,

Petitioner humbly submits as under:-

- 1) That petitioner filed suit on the basis of deed dated 4.12.2000,
whose conditions are violated. (Copy of suit is Annexure "A").

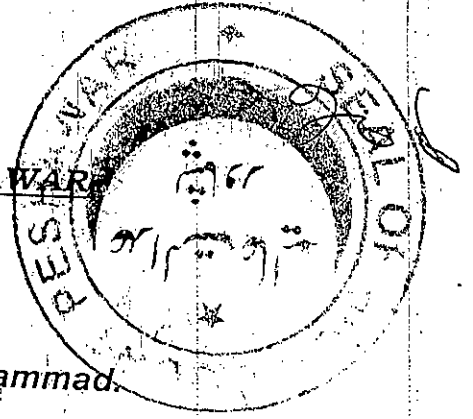
FILED TODAY
Deputy Registrar
12 FEB 2010

ATTESTED
EXAMINER
Peshawar High Court
16 SEP 2010

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT)

Civil Revision No.743 of 2010.

Murad Ali.....Vs.....Sultan Muhammad.



JUDGMENT.

Date of hearing 15-06-2015

Appellant/Petitioner (Petitioner in person)

Respondent Def: Aliq Ahmad - & Khan Ghazas lehr
Obseates.

WAQAR AHMAD SETH, J:- Through this single

judgment I propose to dispose of the instant Civil Revision No.743 of 2010 as well as the connected Civil Revision Nos. 1543 of 2010, 127 of 2011 and 723 of 2011 as the subject matter in all the petitions is one and the same.

The present petitioner/plaintiff Murad Ali through all these revision petitions has questioned concurrent findings of two Courts below whereby his suits were dismissed by the learned trial Court and his appeals there against were dismissed by the learned Appellate Court. Relevant

facts of each case are as under:-

2- **CIVIL REVISION NO.743 OF 2012.**

Murad Ali petitioner/plaintiff instituted suit bearing No.359/1 against Sultan Muhammad respondent/defendant in the year 2004 for declaration-cum-perpetual injunction and for possession of the suit

ATTESTED
EXAMINER
Peshawar High Court.
16 SEP 2015

subsequent transfer of the suit property in favour of Haji Mir Zaman respondent/defendant No.2 and then in favour of Sultan Muhammad respondent/defendant No.3 as ineffective against his rights under the agreement to sell between the petitioner/plaintiff and respondent/defendant No.1 Mst.Khalida. The suit was contested by the respondents/defendants and after conclusion of trial, the learned Civil Judge-I, Takht Bhai vide his judgment and decree dated 30/09/2009 dismissed the suit of the petitioner/plaintiffs which was also upheld and maintained by the learned Additional District Judge-I, Takht Bhai vide judgment and decree dated 02/06/2010. Hence the instant revision petition.

4- CIVIL REVISION NO.127 OF 2011.

Murad Ali petitioner/plaintiff instituted a suit against Mir Zaman and others respondents / defendants for declaration, permanent/mandatory injunction and in alternate for possession to the effect that gift deed dated 04/12/2000 regarding the suit property fully described in the heading of the plaintiff on the basis of which gift Mutation No.365 dated 09/12/2000 was attested, on the ground that the terms and condition of the deed dated 04/12/2000 have not been fulfilled, hence the same is liable to be cancelled. This suit was contested by the respondents/defendants by filing written statement and

ATTESTED
EXAMINER
Peshawar High Court
16 SEP 2015

after conclusion the same was dismissed by the learned Civil Judge-IX, Mardan vide his judgment and decree dated 24/03/2010 against which the appeal of the petitioner/plaintiff also met the same fate vide judgment and decree dated 30/09/2010 passed by the learned Additional District Judge-II, Mardan. Hence this revision petition.

5- CIVIL REVISION NO.723 OF 2011.

In the instant revision petition, the petitioner/plaintiff Murad Ali filed a suit against the respondents/defendants for declaration to the effect he is owner in possession of the property comprising in Khasra Nos.1125 to 1127, 1154, 1137/1, Khata No.93/421 situated at Mauza Feroz Pur and the respondents/defendants No.1 and 2 with the collusion of the rest of the respondents/defendants have illegally taken its possession and have tried to deprive him of his rights over it by making wrong entries in the revenue record which acts of the respondents/defendants are against law and facts and void and ineffective upon his rights. He has also prayed for the recovery of possession of the suit property under section 8 of the Specific Relief Act, 1877. A prayer for issuance of permanent injunction restraining the respondents/defendants from alienating the suit property and from raising construction on the same was also

ATTESTED
 EXAMINER
 Peshawar High Court
 16 SEP 2015

made. The respondents/defendants No.1, 2 & 9 contested the suit by filing their separate written statements. After recording pro and contra evidence the learned Civil Judge-IV, Mardan vide his judgment and decree dated 22/12/2010 which was upheld and maintained by the learned Additional District Judge-VII, Mardan vide his judgment and decree dated 23/01/2012. Hence the instant revision petition.

6- Counsel for respondents in all the civil revision heard at length and record perused. Learned counsel for petitioner / plaintiff was directed to argue the case positively on next date failing which matter would be decided on available record. On 18.05.2015, all the parties were given last chance and the case was fixed for today for arguments and orders.

7- Record is suggestive that petitioner / plaintiff is claiming his right regarding the cancellation of gift mutation No. 367 dated 09.12.2012 Ex.PW-4/1, alleging that as per compromise deeds Ex.PW-5/1 and Ex.PW-5/2 the respondents violated the terms and conditions thereof hence, the cancellation of said gift deed is inevitable.

8- Ex.PW-2/4 & Ex.PW-2/5 are the Roznamcha waqiatee, dated 05.12.2000 & 09.12.2000, respectively which were entered by petitioner / plaintiff himself and

210

ATTESTED
EXAMINER
Peshawar High Court
16 SEP 2015

2/11

according to which he expressed his willingness to make the gift. The said gift deed is not denied by the petitioner / plaintiff. Roznamcha Waqiatee Ex.PW-5/1 & Ex.PW-5/2 clearly reflects that the physical possession of the property in dispute was also delivered to the donee / respondent by the petitioner / plaintiff himself. In nutshell it can easily be said that the impugned gift mutation Ex.PW-4/1 was attested in furtherance of the compromise deeds, which were executed by the elders of the society in order to settle the long standing dispute in between the parties and the peace of the area was endanger, as there were number of FIR's registered, also.

9- Nothing is on record to show that any of the terms and conditions of compromise deeds Ex.PW-5/1 & Ex.PW-5/2 was made or were violated. Importantly no such terms and conditions are mentioned in both the said exhibits or Roznamcha Waqiatee. Moreover, Ex.PW-5/1 & Ex.PW-5/2 are unregistered documents, one with the heading relinquishment deed and the other as compromise deed, respectively, with no such conditions which warrants cancellation of registered / attested gift deed Ex.PW-4/1. There is no evidence on record showing any violation of said compromise deeds, rather it is established and proved on record that gift

ATTESTED
 EXAMINER
 Roshwar High Court
 16 SEP 2015

212

mutation No. 367 dated 09.12.2000, which was registered by the petitioner / plaintiff himself on own sweet will, is in violation of any valid gift. Nothing is on record that petitioner / plaintiff was dispossessed from the property. Even otherwise, the compromise deeds Ex.PW-5/1 & Ex.PW-5/2 were reached and settled by the elders of the locality, in order to end up the ongoing litigation between the parties, which revival is not advisable at this stage. The claim of the petitioner, that in fact gift mutation No. 367 was Hiba-bashrt-ul-iwaz is not correct as there are no such conditions which declare the gift mutation as conditional one. The conditions mentioned in the said deed are only to the effect of possession which has been fulfilled by the way of transfer of the disputed property, nor there is any conditions of further sale etc. The essential of a valid gift are on record hence, both the courts below rightly interpreted the same while dismissing the claim / suit of the petitioner / plaintiff.

10- In civil revision No.1543/2010 petitioner / plaintiff instituted a suit for specific performance of agreement to sell, executed in his favour by one Mst. Khalida, in respect of the same suit property. Petitioner / plaintiff failed to prove on record, through his evidence the contents of agreement deeds dated 15.3.2001 &

ATTESTED
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 EXAMINE
 Registrar High Court
 16 SEP 2011

31.12.2001 and the both the court below rightly concluded the finding in favour of the present respondents. In CR No. 127/2011, one gift mutation No. 365 dated 9.12.2000 was challenged which was executed after the compromise deeds dated 4.12.2000 exactly in the same circumstances which are discussed in above paragraphs, whereas, in civil revision No. 723 dated 2011, petitioner has asked for recovery of possession of the disputed property under section 8 of the Specific Relief Act, 1877, which property was allegedly taken from him by the respondents. Record is suggestive that although possession was with the petitioner / plaintiff but in the capacity of special attorney of one Mst. Sheda and her ants Mst. Khalida & Mst. Saleema and this fact is reflected in the entries in Khasra Girdawari Ex.PW-1/2. Subsequently, Mst. Khalida sold her share to respondent No.1 who further sold out to respondent No.2 and as such the learned trial court recorded correct conclusion that petitioner plaintiff has nothing to do with the property in dispute.

11- The claim of petitioner is based on unregistered documents i.e deeds of compromise etc, which are not acceptable in view of number of judgments of the superior courts, few such are cited, In the case of Mst.

213

ATTESTED
 EXAMINER
 Rajasthan High Court
 16 SEP 2015

GULSHAN HAMID Vs Kh. ABDUL REHMAN & others

reported in 2010 SCMR 334 it has been held as under:-

“---Ss. 12 & 22, Illus I---Suit for specific performance of agreement to sell---Signing of such agreement by vendor---defendant, but its non signing by vendee-plaintiff---Validity---Such agreement created rights and liabilities on both sides---Vendee by not signing agreement had kept himself immune from any future claim of vendor---Had there been an occasion for vendor to bring such suit, then she should not have succeeded as vendee had not signed agreement so as to accept any liability thereunder---Such case was hit by illustration I of S.22 of Specific Relief Act, 1877---Plaintiff was not entitled to exercise of discretion in his favour, who had not accepted any liability, but had claimed all rights under such agreement---Such unilateral agreement not signed by plaintiff -vendee was not mutually enforceable, whereupon no decree could be passed---Suit was dismissed in circumstances.

Likewise in the case of Ali Rehman Vs Fazal Mehmud

& others reported in 2003 SCMR 327 it has been held

that:-

“---S.53A---Registration Act (XVI of 1908), S.49---Part performance---Non-registration of document---Effect---No equitable doctrine including the one contained in S.53.A. Transfer of property Act, 1882 can override the specific provisions of S.49, Registration Act, 1908 and no document required to be registered can confer title to

ATTESTED
EXAMINER
Reshawar High Court

16 SEP 2015

immovable property in case the same was unregistered".

In the case of Muhammad Sadiq Vs Muhammad Ramzan, reported in 2002 SCMR 1821 (d) it has been held as under:-

"---S.48---Registered and unregistered document---Precedence---Registered document would have precedence over unregistered document, even if the same was executed earlier in time.

Likewise in the case of Mirza Muhammad Shareef etc Vs Mst. Nawab Bibi, reported in 1993 SCMR 462 (c) it has been held that:-

---Ss. 17 & 49---Registered document had sanctity attached to it, and stronger evidence was required to cast aspersion on its genuineness---No evidence on record that sale-deed in question was either forged or fictitious---Attesting witnesses and scribe having certified to the genuineness of sale-deed, mere fact that their statement did not mention the perusal of original sale-deed at the time of their examination in court, would not per se lead to conclusion that their veracity was doubtful.

In the case of Mst. Azeemun Nisa Begum Vs Ali Muhammad, reported in PLD 1990 382, (c) it has been held as under:-

"---S.53-A---Specific Relief Act, (I of 1877), S.12---Agreement to sell---Part performance---Merely because the agreement to sell used the expression that

ATTESTED
EXAMINED
Roshanwar High
16 SEP 20

216

the possession of the property was given on purely caretaker, basis, would not imply that transferee was put in possession in his own right as a vendee in part performance of sale agreement.

12- Although this Court is not called upon to reappraise the evidence on record in exercise of its revisional jurisdiction, yet, in the interest of justice, I have gone through the evidence produced by the parties and find that the findings of learned two Courts below are in consonance with the evidence on record and no prejudice seems to have been caused to the petitioner/plaintiff. The petitioner/plaintiff has failed to substantiate his claim through convincing, reliable and conclusive oral and documentary evidence while the respondents/defendants have satisfactorily rebutted the claim of the petitioner through convincing evidence. Thus both the Courts below have rightly clinched the factual controversy and have dealt with the matter in a thread bare manner and have come to the concurrent conclusion after due application of independent mind, which needs no interference by this Court in exercise of revisional jurisdiction. The memo of petitioner has failed to point out any illegality by way of misreading and non-reading of evidence by the learned two Courts below. The trial Court as well as the appellate Court have elaborately discussed every aspect of the case and have

ATTESTED
EXAMINER
Roshanwar High Court
16 SEP 2015

217

dealt with the same in detail, leaving no room for further consideration. It is settled law that findings on question of fact or law recorded by the Court of competent jurisdiction cannot be interfered with in the revisional jurisdiction unless those findings suffer from jurisdictional defect, illegality or material irregularity. The jurisdiction of the High Court to interfere with the concurrent finding of fact in revisional jurisdiction under section 115 C.P.C. is very limited.

13- The process of examination of evidence for upsetting the concurrent findings of fact in exercise of powers under section 115 C.P.C. in my view is neither permissible nor warranted by law. I may also mention here that the High Court while examining a concurrent findings of fact recorded by the Courts below in exercise of its revisional jurisdiction under section 115, C.P.C. has to attend the reasons given by the Courts below in support of such findings and misreading, non-reading or perverse appreciation of evidence has to be discovered in reasoning of the Courts below to justify interference in exercise of its revisional jurisdiction. In the case of Muhammad Idrees and others Vs Muhammad Pervaiz & others reported in 2010 SCMR 05 (b) it has been held as under:-

“---S.115---Revisional jurisdiction of
High Court---Findings by Court of

ATTEST
EXAMINER
REGISTRAR HIGH COURT

16 SEP 20

218

competent jurisdiction---Scope---
Finding on question of fact or law,
how erroneous the same may be, if
recorded by court of competent
jurisdiction, the same cannot be
interfered with by High Court in
exercise of its revisional jurisdiction
under S.115 CPC, unless such findings
suffer from controversial defects,
illegality or material irregularity".

14- In view of what has been discussed above, I have
come to the conclusion that the learned trial Judge as
well as the learned appellate Court have passed well
reasoned judgments and decrees after proper appraisal
of the evidence on the file and thus the same do not at
all seem to have been tainted with any illegality or
irregularity or jurisdictional error to warrant interference
by this Court while exercising revisional jurisdiction.
Hence, revision petition in hand is without substance;
therefore, the same is dismissed with no order to costs,
CM 1674 of 2010 is for restraining respondent from
construction, alienation etc has become in fructuous and
disposed of while CM No. 1928-P of 2013 regarding
additional documents is allowed.

Announced.
15/06/2015

Ab-Waqar Ahmad Sebt

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court
Authorised Under Act
The Oath & Shahadat

16 SEP 2015

JUDGE

Office 24/6



IN THE COURT OF KHALID MANSOOR CIVIL JUDGE-IV,
MARDAN.

Civil Suit No..... 284/1
Date of original institution.....14-06-2005.
Date of present institution.....03-11-2010.
Date of Decision.....22-12-2010.
Murad *12-11-11*
Murad Ali S/O Muhammad Ali Khan R/O Rustam Kheil,
Mardan.....(Plaintiff)

VERSUS

1. Amir Zaman S/O Akbar Khan and thirteen others.
.....(Defendants)

SUIT FOR DECLARATION, POSSESSION
AND PERMANENT INJUNCTION.

JUDGMENT:
22-12-2010

W.A.
This judgment shall dispose of the instant suit declaration to the effect that the plaintiff is the owner-in-possession of the property measuring 32-kanals or whichever area is found correct bearing Khasra No.1125, 1126, 1127, 1154 and 1137/1 comprised in khata No.93/421 jamabandi for the year 1999-2000 situated at mauza Ferooz Pur Tehsil Takht Bhai, District, Mardan; that the defendants No.1 and 2, with collusion of the rest of the defendants, have illegally taken possession of the same and have tried to deprive the plaintiff of his rights over the disputed property by making wrong entries in the revenue record; and that all the above mentioned acts of the defendants are against the law and facts, hence, void and ineffective upon the rights of the plaintiff. Prayer-B is for the recovery of possession of the disputed property under Section-8 of the Specific Relief Act, 1877 while the issuance of permanent injunction has been asked for in prayer-C of the plaint for restraining the defendants from alienating the disputed property and also restraining them from raising construction on the same.

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Copying Department
Sessions Court, Mardan

247

The plaintiff has asserted in the plaint that he is the owner of the disputed property; that the defendants No.1 and 2 have forcibly and illegally taken possession of the disputed property; and that the rest of the defendants have tried their best to legalize the illegal possession of the said defendants by making wrong entries in the revenue record and they have also tried their best to save the defendants No.1 and 2 from legal action under the criminal law; that all the above mentioned acts of the defendants are and the possession of the defendants No.1 and 2 is against the law and facts, therefore, the plaintiff is entitled to the recovery of possession under Section-8 of the Specific Relief Act, 1877 and that the defendants were repeatedly asked to recognize the plaintiff's right over the suit property and to do the needful but they ultimately refused, hence, this suit.

Key

The defendants were summoned out of whom only the defendants No.1, 2 and 9 contested the suit by filing separate written statements wherein they totally denied the claim of the plaintiff.

Important to mention is the fact that though evidence of the parties was completed and the case was fixed for arguments but perusal of the record revealed that issues were not available on the case file which were framed and placed on file. The learned counsels for both the parties were asked as to whether they want to produce any evidence upon which the learned counsels for both the parties stated at the bar that they fully agree with the issues so framed; that they rely on their previous list of witnesses as well as their evidence already recorded; and that they do not want to produce any further evidence. Their joint-statement was also recorded as is clear from the order-sheet No.102 dated 13.12.2010.

The divergent pleadings of the parties were reduced into the following issues;

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Sessions Court Mardan

248

ISSUES:

1. - Whether the plaintiff has got a cause of action? OPP
2. - Whether the plaintiff is the owner-in-possession of the land measuring 32-kanals out of the disputed property? OPP
3. - Whether the plaintiff was dispossessed by the defendants No.1 and 2 within six months from the date of institution of the suit? OPP
4. - Whether the defendants have collusively tried to legalize the illegal possession of the defendants No.1 and 2 via wrong entries in the revenue record? OPP
5. - Whether the suit being bad in its present form is liable to be dismissed? OPD
6. - Whether the plaintiff is estopped by his conduct from bringing the instant suit? OPD
7. - Whether the defendant No.1 has purchased the suit property and he has been in possession while the plaintiff has nothing to do with the same? OPD
8. - Whether the suit has been filed just to harass the defendants, therefore, they are entitled to special compensatory costs? OPD
9. - Whether the plaintiff is not entitled to any relief under Section-8 of the Specific Relief Act? OPD
10. - Whether this court has got no jurisdiction? OPD
11. - Whether the suit is liable to be dismissed due to non-joinder and mis-joinder of necessary parties? OPD
12. - Whether the defendant No.2 has become owner of the land 17-kanals 3-marlas vide mutation No.471 and 367 and he has taken possession of the same in accordance with law and with the consent of the plaintiff? OPD

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2023/16
EXAMINER
Copying Department
Sessions Court Mardan

249

13. - Whether there is legal defect in the suit. If so, its effect? OPD
14. - Whether the plaintiff is entitled to the relief as prayed for in the plaint? OPP
15. - Relief.

Parties were given opportunity to produce their evidence who have produced their pro and contra evidence.

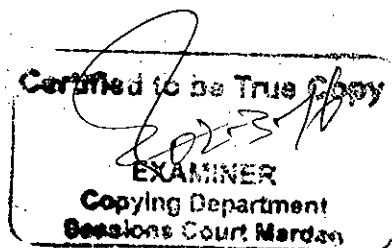
PW-1, Atlas Khan Patwari Halqa produced jamabandi for the year 2007-08, Khasra Girdawari from Kharif 1995 to Kharif 2009, perth patwar of mutation No.266, 346, 365, 367, 374, 407, 471, 472, 498, 515, 571, 572, Rooznamcha/Daily Diary Mad No.1,102, Rooznamcha No.106, Rooznamcha No.346 and Rooznamcha No.347 as ExPW-1/1 to ExPW-1/18.

Statement of Abdur Rehman Madad Moharrir Police station Takht Bhai was also recorded as PW-1 who produced FIRNo.627 dated 20.08.2000, FIR No.601 dated 12.08.2000 and FIR No.1028 dated 13.12.2000, as ExPW-1/1 to ExPW-1/3.

PW-2, Muhammad Aftab Moharrir General Record Room Mardan produced the Stamp-vending register from 26.05.2000 to 19.06.2001 of Syed Salim Shah and exhibited the photo-copy of relevant page as ExPW-2/1.

PW-3, Syed Salim Shah Stamp-vendor District Courts, Mardan stated that he had sold out the stamp paper No.1169 dated 04.12.2000 ExPW-3/1 to Murad Ali and Gul Rehman and stamp-paper bearing No.1171 dated 04.12.2000 ExPW-3/2 to Murad Ali and Sultan Muhammad.

PW-4, Zaiwar Haq Petition-writer stated that he has seen the original deeds bearing No.2377 and 2378 dated 4.12.2000 copies



250

ExPW-3/1 and ExPW-3/2 which have been written by him and correctly bear his signature; that the same were also signed by all the concerned. He also exhibited the photo-copy of relevant page from his register as ExPW-4/1.

PW-5, Sabz Ali Record Keeper Irrigation Department produced Misal Wara-bandi as Ex.PW-5/1, Application for Wara-bandi as Ex.PW-5/2, list of Amended Wara-bandi as Ex.PW-5/3, Notice in the name of Mir Afzal Patwari as Ex.PW-5/4, Notice Information of Amended Wara-bandi as Ex.PW-5/5, Statements of Sher Gul, Faqir Khan through Kachkool and Murad Ali as Ex.PW-5/6, Report of DCI and statement of Sultan Muhammad and Wara-bandi as Ex.PW-5/7, the Order of Divisional Canal Officer dated 26.02.2001 as Ex.PW-5/8, Notice for compliance of the same in the name of the concerned Patwari as Ex.PW-5/9, the Notice Information as Ex.PW-5/10, the concerned list dated 08.03.2001 as Ex.PW-5/11, Notice of Satisfaction of the same, Report of the concerned Patwari dated 08.03.2001 as Ex.PW-5/14.

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PW-6, Patwari Halqa mauza Ferooz Pur produced jamabandi Zair-e-Kar 2007-08 as Ex.PW-6/1, Khasra Girdawari 2004 to 2008 as Ex.PW-6/2, the mutations No.266, 365, 471, 498, 407, 367 and 515 as Ex.PW-6/3 to Ex.PW-6/9 respectively. He also produced Mad No.102 dated 05.12.200 Ex.PW-6/10, the photo-copy of relevant page of his Daily Diary as Ex.PW-6/11, Mad No.346 Ex.PW-6/12, Mad No.347 as Ex.PW-6/13.

Riaz Muhammad S/O Nawab Khan also appeared as PW-6 and stated that the deeds Ex.PW-6/1, Ex.PW-6/2, Ex.PW-6/3 and Ex.PW-6/4 are in his hand writing.

The ADK, Mardan, namely Yousaf Haroon while appearing as CW-1 produced jamabandi 2003-04 regarding Khata No.95/437 to 441 as Ex.CW-1/1.

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EXAMINER
Copying Department
Sessions Court Mardan

251

The Moharrir of the Office of Sub-Registrar Mardan appeared as PW-7 and exhibited the registered deed No.14 dated 12.03.2003 as Ex.PW-7/1.

The ADK, Mardan was also examined as PW-8 who produced the original mutations No.365 dated 9.12.2000, 367 dated 9.12.2000, 471 dated 31.07.2003, 498 dated 14.04.2004, 346 dated 23.08.2000, 374 dated 17.02.2001, 265 dated 22.09.1998 and 266 dated 24.10.1998. He also exhibited the photo-copies of the same as Ex.PW-8/1 to Ex.PW-8/8 respectively. He also produced fard jamabandi 2003-04 regarding Khata No.95 as Ex.PW-8/9.

The patwari halqa was yet again examined as PW-8 and he also produced almost the same revenue record.

Kha
PW-9 Ali Azam patwari Halqa mauza Jehangir Abad stated that he remained OK, Takht Bhai for 3/4 months, that he does not know any thing about mutation No.407; that he handed over the charge to one Sultan Bahader and that neither the parties had contacted him during he tenure about the said mutation nor he had seen any of them during that period.

The PW-10, namely Fawad Akhtar Khan stated that the possession of property 115-kanal 17-marlas was handed over to the plaintiff in the year 2000 regarding which certain disputes arose and the plaintiff filed an FIR against the concerned persons and thus he became acquainted with the Mir Zaman etc; and that certain compromise had also been affected between the parties in his hujra but few days after the same Mir Zaman etc. forcibly took possession of the plaintiff's property.

PW-11, Abd-ur-Razzaq has stated nothing material about the dispute in hand between the parties.

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Sessions Court Mardan

252

PW-12, namely Asif Khan Advocate stated that certain reconciliation proceedings had taken place between the plaintiff and the defendant No.1 through the reconciliation committee with respect to the dispute in hand between the parties; that both the parties had authorized the concerned members of the committee vide the Ex.PW-12/1; that the reconciliation committee has passed the order Ex.PW-12/2 and the same has been duly signed by him as well as the rest of the members of the committee as is clear from the Ex.PW-12/3. But the perusal of Ex.PW-12/2 would reveal that the plaintiff was also bound to hand over possession of 15-kanals to the defendant No.1 in compliance with the decision of the committee but the plaintiff has not even stated a single word as to whether he has complied with the relevant clause of the decision or not, therefore, this document is of no help to the plaintiff.

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PW-13, namely Javid stated that he was tenant of the plaintiff over the property from which he has illegally been dispossessed by the defendants.

The plaintiff himself appeared as PW-14 and reiterated the contents of the plaint. After producing the copies of relevant suit and other documents as Ex.PW-14/1 to Ex.PW-14/9, he prayed that the suit be decreed as prayed for in the plaint with heavy costs. Thereafter, the plaintiff closed his evidence.

On the other hand the defendant No.1 appeared as DW-1 and stated that he has become owner-in-possession of the disputed property vide the deed No.14 dated 20.03.2003 and the deed No.24 dated 27.03.2007 as Ex.DW-1/1 and Ex.DW-1/2 respectively; that plaintiff's suit with regard to the disputed property and his appeal have also been dismissed by the competent courts. He lastly prayed that the suit be dismissed.

The defendant No.2 while appearing as DW-2 has stated that out of the total disputed property he has purchased land measuring 12-kanal

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Copying Department
Sessions Court Mardan

253

from the defendant No.1 vide a mutation for a sale consideration of Rs.700000/-; and that the plaintiff has got no concern whatsoever with the same. He lastly prayed that the suit be dismissed. Thereafter, the defendants closed their evidence.

I have heard the arguments of the learned counsels for both parties and have also perused the record. My issue-wise findings are as under;

ISSUE No. 2.

Kha

The burden to prove this issue was upon the plaintiff. The plaintiff's case is that he is the owner of the disputed property. The record of the instant suit reveals that the plaintiff had earlier, too, filed two suits, i.e, (i) the suit No.271/1 of 12.9.2002 titled "Murad Ali vs Mst. Khalida etc." and (ii) the suit No.143/1 titled "Murad Ali Vs Sultan Muhammad". The attested photo-copies of the suit No.271/1 and the judgments therein including the judgment of the learned appellate court were submitted by the learned counsel for the defendant No.1 during the course of his arguments which are available on the case file while the attested copy of the suit No.143/1 is available in the shape of Ex.PW-14/8. Further, the institution and dismissal of these suits have also been admitted by the plaintiff in his statement as PW-14. The perusal of the said copies would reveal that the present defendant No.1 and 2 were arrayed as defendants in the said suits, too. The present disputed khasra numbers were also included in those suits and the plaintiff had asserted his ownership over the same but both these suits were decided against the present plaintiff and even his appeal No.106/13 of 2009 was also dismissed as is clear from the attested photo-copy available on the instant case file meaning thereby the plaintiff's claim of ownership over the present disputed khasra numbers was discarded by the competent courts. Rather, the learned appellate court has held in concluding para of its judgment that the present plaintiff had no locus standi to challenge the subsequent transfers of the property by the respondent No.1 (Mst. Khalida as she was the respondent No.1) in favour of the respondent No.2 (namely, Mir

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Copying Department
Sessions Court Mardan

254

Zaman as he was the respondent No.2) and then respondent No.3 (namely, Sultan Muhammad as he was the respondent No.3). Thus competent courts have given findings against the plaintiff regarding the disputed khasra numbers and this court has got no jurisdiction to sit in appeal against the findings of the court of equal jurisdiction, i.e, the court of learned Civil Judge and yet again this court has got no jurisdiction to sit in revision against the judgment of the learned Appellate Court, i.e, the court of the learned Additional District Judge, Takht Bhai. This means that the alienations in favour of the present defendants No1 and 2 have been validated by the learned appellate court in the earlier suits.

Murad

Though there is sufficient evidence on the case file that the suit for partition filed by the plaintiff's mother, namely Mst. Sheda and her aunts, namely Mst Khalida and Mst. Saleema was allowed and possession of their share was handed over to them through the plaintiff but the possession was so handed over to the plaintiff in the capacity of special attorney for the said ladies including Mst. Khalida and legally speaking said Mst. Khalida had also become owner-in-possession of her share in khasra numbers including the disputed khasra numbers. This fact has been supported by the entries for year 2000 in khasra girdawari produced by the plaintiff's own witness as Ex.PW-1/2. The said Mst, Khalida sold out her share to the defendant No.1 who further sold out property to the defendant No.2 and these transactions have been endorsed by the learned courts as against the plaintiff as explained above. So, the plaintiff has nothing to do with that much property. The plaintiff has further asserted his ownership on the basis of two mutations, i.e, the mutation No.266 Ex.PW-8/8 and the mutation No.407 Ex.PW-1/8. The plaintiff has firstly tried his best to prove that the 407 mutation is still pending and the revenue officials are not intentionally producing the same but the PW-1, namely Atlas Khan patwari Halqa has admitted in his cross-examination that the mutation No.407 Ex.PW-1/8 has been rejected on 25.03.2004. Further, if it is presumed that the said mutation is still pending even then the plaintiff has failed to prove that the same has been attested and he has also not stated even a single word with respect to its attestation and

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Copying Department
Sessions Court Mardan

255

legally a mutation does not confer any title unless and until it is attested. So, this mutation whether pending or rejected is of no help to the plaintiff. In addition, though the mutation No.266 Ex.PW-8/8 was attested in favour of the plaintiff to the extent of 38-kanals and 12-1/2 marlas but the record reveals that the plaintiff has sold out properties measuring 23-kanals and 10-marlas vide the deed Ex.DW-1/2; 9-kanals vide the mutation No.365 Ex.PW-8/1; and 6-kanals and 3-marlas vide mutation No.367 Ex.PW-8/2 in favour of the (i) defendant No.1, (ii) one Gul Rehman and (iii) the defendant No.2 respectively and he thus extinguished his ownership in the relevant khasra numbers. This fact has also been admitted by the patwari halqa (PW-1) in his cross-examination by stating that the plaintiff is no more owner in the disputed property.

Kha

In short, the plaintiff has failed to prove his ownership on the basis of mutation No.407, he has extinguished his ownership which he had on the basis of mutation No.266 and his claim of ownership over the disputed property/khasra numbers has been repelled by the competent learned courts through the well reasoned judgments regarding which this court has got no jurisdiction even to pass any opinion about much less to set aside the same. Hence, the plaintiff has badly failed to prove this issue, therefore, the issue No.2 is decided in the negative.

ISSUES No. 5 and 13:

The burden to prove both these issues was upon the defendants. The plaintiff has filed the present suit u/s 8 of the Specific Relief Act, 1877 (hereinafter called the said Act) for success in which it was of utmost importance for the plaintiff to prove his ownership over the disputed khasra numbers but he has failed to prove his ownership as is clear from my findings on issue No.2 above. Further, though the suit has been filed under section-8 of the said Act but the contents of the plaint read with relevant portion of plaintiff's statement on page-4 of his examination-in-chief would reveal that the plaintiff's case is that he has been dispossessed otherwise than in due course of law, therefore, the

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256

plaintiff should have file a suit for restoration of possession under Section-9 of the said Act. Further, it is clear from the record that the main contesting defendants are co-owners in the disputed property and this fact, in my opinion, is very good defence for one co-owner in a suit for possession under Section-8 of the said Act filed by another co-owner. In addition, if the plaintiff is presumed to be a co-owner even then a co-owner can recover possession from defendant co-owner only through a suit for official partition and that, too, only if the defendant co-owner is found in possession of property more than his entitlement. Otherwise the plaintiff co-owner cannot ask for possession of specific portion of joint-property which is in possession of the defendant co-owner whose possession is commensurate to his ownership in the joint-property. As the plaintiff has failed to prove his ownership over the disputed property as explained above, therefore, he should have file a suit under Section-9 of the Specific Relief Act, 1877 and that, too, should have been filed within time. Though the collective share of Mst. Khalida Sheda, Mst. Khalida and Mst. Salima was partitioned through the partition mutation from the other co-owners but no partition in between the said ladies had taken place meaning thereby all the said ladies were joint-owners of their collective share, therefore, had the plaintiff been a co-owner in the joint-property even then he would have not succeeded in recovering possession from the co-owners/the contesting defendants through the suit under Section-8 of the said Act for reasons explained above.

Mst

In light of what has been discussed above, there is legal defect in the suit and the suit is also bad in its present form and the suit is liable to be dismissed on this score too. Hence, the issues No.5 and 13 are decided in favour of the defendants.

ISSUE No. 3.

Though the issue is not properly framed because limitation for a suit u/s 8 of the Specific Relief Act, 1877 is not six months but it can be decided on the basis of available record and complete justice can be

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2023
EXAMINER
Copying Department
Sessions Court Mardan

257

done between the parties, therefore, the error in framing of this issue to the extent of period six months is not fatal to the merits of the instant case. Hence, I proceed to disposed of this issue in light of the available record. Though, sufficient evidence is available on the case file to show that possession was handed over to the plaintiff in the capacity of special attorney of the above mentioned three ladies but the instant suit is for recovery of possession under Section-8 of the Specific Relief Act, 1877 for which the plaintiff must have proved his ownership first. As the plaintiff has failed to prove his ownership over the disputed property as is clear from my findings on issue No.2 above, therefore, this issue has become redundant. Hence, the issue No.3 is decided accordingly.

KW
ISSUE No. 4:

The burden to prove this issue was upon the plaintiff. The record of the case reveals that the defendant No.1 has purchased property including the disputed khasra numbers from Mst. Khalida vide the registered deed Ex.DW-1/1 and the plaintiff's claim of ownership-p-in-possession over the same has been discarded by competent courts as explained in my findings on issue No.2 above. The record further reveals that the said Mst. Khalida along with two other ladies became owner-in-possession of property including the disputed khasra numbers vide the partition mutation No.265 and entries in khasra girdawari were also corrected in light of the same as is clear from entry with red ink for the relevant year, i.e, 2000 in khasra girdawari Ex.PW-1/2. The learned counsel for the plaintiff could not point-out as to what illegality has been committed by the revenue authorities in doing so. The learned counsel for the plaintiff argued that the mutation No.407 has been intentionally misplaced by the revenue officials just to legalize the defendants' possession over the disputed property but this argument has no force because the PW-1 patwari halqa has stated in categorical terms that the said mutation has been rejected. If the same is presumed to be still pending even then the same is of no help to the plaintiff as explained in my findings on issue No.2 above. Further, the plaintiff has himself

202-3-16
EXAMINER
Copying Department
Sessions Court Muzaffar

(258)

sold-out property including the disputed khasras numbers in favour of the defendant No.1 vide the deed Ex.DW-1/2. Hence, the issue No.4 is decided in the negative.

ISSUE No. 6:

In light of my above issue-wise findings, this issue has become redundant. Hence, the issue No.6 is decided accordingly.

ISSUE No. 7.

The burden to prove this issue was upon the defendants. The record reveals that the defendant No.1 has become owner-in-possession of the property including the disputed khasras numbers vides the deed Ex.DW-1/1 and the deed Ex.DW-1/2. The learned appellate court has held in its findings that the plaintiff had no locus standi to challenge the deed Ex.DW-1/1 as explained in my findings on issue No.2 above while the deed Ex.DW-1/2 has not been challenged by the plaintiff in the instant suit. Hence, the issue No.7 is decided in the affirmative.

ISSUE No.8:

The burden to prove this issue was upon the defendants who have failed to produce any evidence in this regard. Hence, the issue No.8 is decided in the negative.

ISSUE No.9:

In light of my above issue-wise findings, the plaintiff is not entitled to any relief u/s 8 of the Specific Relief, 1877. Hence, the issue No.9 is decided in favour of the defendants.

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Bazalona Court Marden

259

ISSUE No.10.

Though the disputed property is situated out side the local jurisdiction of this but court but Government officials have been made party in the instant suit, therefore, the suit had to be tried at the Head Quarters, i.e, in a Civil Court functioning at Mardan. Further, the defendants have been contesting the suit for so many years and they have also produced complete evidence as they desired and it would not be just to return the suit at this stage. In light of what has been discussed above, the issue No.10 is decided against the defendants.

ISSUE No.11:

Klu / The burden to prove this issue was upon the defendants. But no evidence has been produced in this regard. Hence, the issue No.11 is decided in the negative.

ISSUE No.12:

The burden to prove this issue was upon the defendant No.2. The record of the case reveals that the plaintiff has sold out property measuring 6-kanals and 3-marlas vide the mutation No.367 Ex.PW-8/2 against which the plaintiff had also filed the suit Ex.PW-14/8 and he has admitted that the same has been dismissed. The record further reveals that the defendant No.1 has also sold out property measuring 12-kanals vide the mutation No.471 Ex.PW-8/3 and the same has not been set aside till to-date. Hence, the defendant No.2 has become owner to the extent of 18-kanals 3-marlas vide the above mentioned mutations. The possession of 6-kanals 3-marlas was handed over by the plaintiff himself as has been admitted by him in the heading of the plaint of the suit Ex.PW-14/8 while possession of the rest of the property was handed over by the lawful owner, i.e, the defendant No.1. Hence, the issue No.12 is decided in the affirmative.

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Sessions Court Mardan

26^o

ISSUE No.1.

The suit being for recovery of possession u/s 8 of the Specific Relief, 1877, it was necessary for the plaintiff to prove his ownership over the disputed property which he has badly failed to prove as is clear from my findings on above issues, therefore, the plaintiff has got no cause of action. Hence, the issue No.1 is decided in the negative.

ISSUE No.14.

In light of my above issues-wise findings, the plaintiff has failed to prove his case, therefore, he is not entitled to any relief much less the relief as prayed for in the plaint. Hence, the issue No. is decided in the negative.

RELIEF.

In light of my above issue-wise findings, the suit is hereby dismissed. Parties are left to bear their own costs. File be consigned to Record Room after its necessary completion and compilation.

Announced
22-12-2010.

KMA
Khalid Mansoor
Civil Judge-IV, Mardan.

CERTIFICATE.

Certified that this judgment consists of fifteen (15) pages and each page has been signed by me after making necessary corrections therein.

KMA
Khalid Mansoor
Civil Judge-IV, Mardan.

Name of Applicant	<i>Murad Ali vs Amir Zamab etc</i>
Date of Presentation of Application	<i>18/12/10</i>
Date on which copy Prepared	<i>02/3/16</i>
Date on which copy Examined	<i>02/3/16</i>
No.s of words	<i>227</i>
Court Fee stamps	
urgent fee	
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پرچہ ڈگری (261)

عدالت صواب عالی لاہور میں سولہ سو چالیس سال

مہینہ ستمبر 284 سال 2010



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ڈگری عدالت صواب عالی لاہور میں سولہ سو چالیس سال

Main handwritten text in Urdu script, appearing to be a legal or administrative document.

Secondary handwritten text, possibly a list or continuation of the main document.

Printed text: "Certified to be True Copy EXAMINER Copying Department Mardan Court Mardan"

اور زمین محمد زور (۳) محمد زور سے منسل زمینوں کی ریفرنس اور حاکم کے حکم کی کاپی کے ساتھ

ب۔۔۔ دکن زمینداروں کی درسی تہذیب کے فائنل دور کی مسجودہ ۱۹۰۷ء میں ۸۰۰ روپے ۸۰ پائی میں
موجودہ زمینداروں کے نام پر زمینداروں کے نام سے ۳۰۰ روپے ۳۰ پائی کے ساتھ زمینداروں کے نام پر زمینداروں کے نام سے
۱۰۰ روپے ۱۰ پائی کے ساتھ زمینداروں کے نام سے ۱۰۰ روپے ۱۰ پائی کے ساتھ زمینداروں کے نام سے
۱۰۰ روپے ۱۰ پائی کے ساتھ زمینداروں کے نام سے ۱۰۰ روپے ۱۰ پائی کے ساتھ زمینداروں کے نام سے

۲۔۔۔ دکن زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے
تحت معینوں کی درسی تہذیب کے فائنل دور کی مسجودہ ۱۹۰۷ء میں ۸۰۰ روپے ۸۰ پائی میں
تحت معینوں کی درسی تہذیب کے فائنل دور کی مسجودہ ۱۹۰۷ء میں ۸۰۰ روپے ۸۰ پائی میں

نام زمیندار	رقبہ زمین	قیمت زمین
محمد زور	۲۰۰/۰	۱۵۱
محمد زور	۲۰۰/۰	۱۵۶
محمد زور	۲۰۰/۰	۱۵۱

محمد زور کی زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے
محمد زور کی زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے
محمد زور کی زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے

محمد زور کی زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے
محمد زور کی زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے زمینداروں کے نام سے



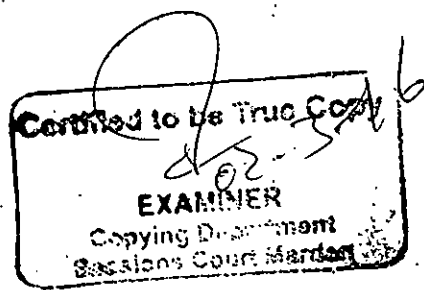
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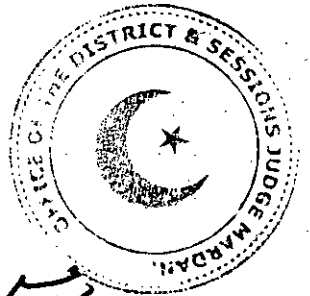
سید احمد	عہدہ	فریڈ نائٹ	درجہ	رہنمائی	تعمیر
X		<p>امتیاز عالی و جوان رنگارنگ دکھائی داتا رنگارنگ دکھائی داتا مستندہ کتب و بیورو خود کتب و زبان سین ڈیٹو عتید لوگ و صفت مستندہ</p>		X	X
سیڈال					

تعمیرت کے لئے 22 مارچ 2010ء کو ڈسٹرکٹ جج کے احکام پر عملدرآمد ہوا ہے

تعمیرت کے لئے
سیڈال

(جج عدالت)





(25)

سدادت درائی لکھنؤ ۱۰/۱۱/۲۰

درائی دہلی علی بن سید حسن متیل درو - ۲۰

مک

Civil Judge
Mardan

ایرین دہ آریان فی سلطان لہو ویدم حبیب سائن فاجو کیم مال سنیزویر
تھیل متھائی فیڈرارن فی منین لہر ۸۸۸ اینی بی فوجی ساؤرناہ قفانتھ کا
باتہ سن ۱۰۰۹ اینی بی انو سٹیشن قفانتھائی ۵۰ جواردری عام قفانتھ
کامیڈرٹڈ لوین درون دی رومی آئی بی درو (ایڈیٹر فیڈرل لوین جوہانی فو سکاویہ
لج درو فون ساؤر نیوری فقہ سنیزویر ۱۰/۱۱/۲۰ زررہ نیوری ۱۰/۱۱/۲۰
علقہ مال سنیزویر ۱۰/۱۱/۲۰ درنفل نیوری قلم آرٹیکلین درو فقہ سنیزویر ۱۰/۱۱/۲۰
۱۰/۱۱/۲۰ منلدر آرٹیکلین قلعہ سنیزویر قلم آرٹیکلین درو فقہ سنیزویر ۱۰/۱۱/۲۰

مک

۱- دھو مورقی مدین درو ام مد علی ۱۱/۱۱/۲۰ ۵- ۱۱۳۷-۱۱۳۶-۱۱۲۷-۱۱۲۵-۱۱۲۶

نبردتوں ۱۱۲۵ - ۱۱۲۶ - ۱۱۲۷ - ۱۱۳۶ - ۱۱۳۷ مندرتوں ۹۳/۶۲

درو فقہ سنیزویر ۱۰/۱۱/۲۰ درو مال سنیزویر قلم آرٹیکلین درو قلعہ سنیزویر ۱۰/۱۱/۲۰

ساکو فقہ سنیزویر ۱۰/۱۱/۲۰ ۱۰/۱۱/۲۰ ۱۰/۱۱/۲۰ ۱۰/۱۱/۲۰ ۱۰/۱۱/۲۰

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Sessions Court Mardan

اور غیر ذمہ داری میں داخل ہو گیا اور اس کے ساتھ ساتھ وہ اپنے ساتھ ایک کھانا لے کر
 رہتی تھی اور کئی عمارتوں میں مگر انہوں نے ہر عکس آمدی ان کا ٹھکانا
 اور ان کی تحریروں وغیرہ کو جان بوجھ کر مٹا دیا۔

3 - یہ تمام دعویٰ کی وجہ سے اس عرصہ کی تمام معلومات کا علم ہو گیا ہے کہ وہ کون سی عمارتوں
 کے احوال کیا اور زیادتی کی تاریخ (1978) میں نے FIR اور 1978 میں اس کے خلاف
 دفترا کی طرف سے اس کے خلاف ایک اور مقدمہ (1978) میں اس کے خلاف ایک اور مقدمہ
 جس کے نتیجے میں اس کے خلاف ایک اور مقدمہ (1978) میں اس کے خلاف ایک اور مقدمہ
 ہے اب اس کے خلاف ایک اور مقدمہ (1978) میں اس کے خلاف ایک اور مقدمہ
 لگوانے کی ضرورت ہے کہ اس کی اسٹوری کا ساتھ کرنا اور اس کے خلاف ایک اور مقدمہ

4 - یہ تمام حقائق کے ساتھ ساتھ اس کے خلاف ایک اور مقدمہ (1978) میں اس کے خلاف ایک اور مقدمہ
 فقہانی کے ساتھ ساتھ اس کے خلاف ایک اور مقدمہ (1978) میں اس کے خلاف ایک اور مقدمہ
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5 - یہ تمام حقائق کے ساتھ ساتھ اس کے خلاف ایک اور مقدمہ (1978) میں اس کے خلاف ایک اور مقدمہ
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6 - یہ تمام حقائق کے ساتھ ساتھ اس کے خلاف ایک اور مقدمہ (1978) میں اس کے خلاف ایک اور مقدمہ
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(98) (16)

6 - دو کدھو رام اننتی تندی دوری (مہندفہ) موصوفہ اللہی بندہ
مہوون نسبت کتھ عدلیہ دوری وین زین کتھ لکھی لکھی اور کتھ
نستہ لکھی - اور اس دوری کتھ لکھی موصوفہ وین زین

د - یہ نسبت کتھ لکھی - لکھی کتھ لکھی کتھ لکھی

استہ کتھ دوری کتھ لکھی کتھ لکھی کتھ لکھی کتھ لکھی
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No. 7
Magistrate Civil Judge
Muzaffargarh

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بہ علیہ
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رہا علیہ کتھ لکھی کتھ لکھی کتھ لکھی

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EXAMINER
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Sessions Court Muzaffargarh

**IN THE COURT OF AABID SARWAR,
ADDITIONAL DISTRICT JUDGE-III, MARDAN**

Civil Revision No.14/C.R. of 2014

Date Of Institution 17.01.2012

Date of entrustment to this Court 13.01.2013

Date Of Decision..... 03.12.2014

Murad
Murad Ali s/o Muhammad Ali Khan r/o Mohallah Rustam Khel,
Tehsil & District Mardan

..... (Petitioner).

VERSUS

(1) Irshad Ali, Ex-Patwari Halqa, (2) OK, Takht Bahi, (3) Lal Said
Ex-Fehsildar (4) Zair Ullah Ex-Patwari Halqa Mauza Farozpur, Takht
Bahi, District Mardan

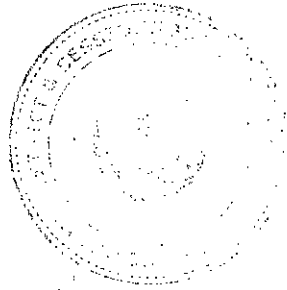
..... (Respondents)

JUDGEMENT:

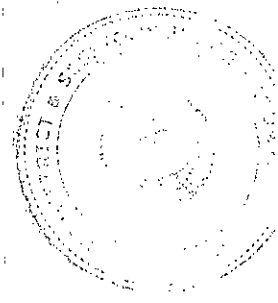
Petitioner Murad Ali has filed the instant Civil Revision against the order dated 19.12.2011 passed by learned Civil Judge-I, Mardan in contempt petition No.57/6 vide which the application submitted by the present petitioner for initiating contempt proceedings against the respondents was rejected.

Aggrieved with the said order the instant civil revision is filed inter-alia on the ground that the impugned order is wrong, against law and facts. The learned Civil Judge-I, Mardan had not recorded any evidence and had decided the application in haphazard manner, so the impugned order is not maintainedable in the eyes of law. Prayer in the revision is that on the acceptance of this revision petition, the impugned order be set aside and the application for contempt be remanded back to the Court of learned Civil Judge-I, Mardan with the direction to record evidence and thereafter decide the petition on merit.

5/1/12
3-12-2014
Mardan



Certified
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After filing of the revision petition, notice was issued to the respondents, who appeared and contested the revision petition.

52

Brief facts of the petition submitted by Murad Ali (petitioner) before the Court of learned Civil Judge-I, Mardan are that a decree was passed in favour of petitioner, for the execution of which a petition was filed. Respondent Irshad Patwari Halqa was directed to attest mutation regarding the change of ownership, mutation No.407 was entered but the same was not attested by respondent Lal Said, who at that time was Tehsildar, Mardan despite the fact that both the respondents were directed to attest the mutation, but respondents in total disregard to the decree of competent Court did not attest the mutation in favour of the petitioner and lateron the same was rejected. Petitioner requested for initiating contempt proceedings against the respondents.

The learned Civil Judge-I, Mardan issued notices to the respondents and on the appearance of the respondents, written reply was submitted. During the pendency of the application the learned Civil Judge-I, Mardan after hearing the arguments of both the parties, rejected the application of the petitioner vide impugned order, hence the present revision petition.

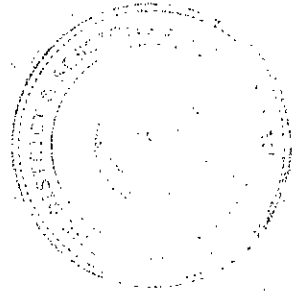
M. Sidiq
3-12-2014

I have heard the arguments advanced by counsel for the parties and perused the record.

Perusal of the contents of the application and the record available on file reveals that a decree dated 18.04.2001 was passed for the correction of revenue record and attestation of mutation in favour of the petitioner. The decree was produced before the Patwari Halqa and Tehsildar Mardan on the basis of which mutation No.407 was entered but was lateron rejected by respondents. According to the petitioner the said mutation was rejected with malafide intention by the respondents by neglecting a valid decree as well as order passed by the Civil

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Court, therefore, they are liable to be proceeded for contempt of Court.



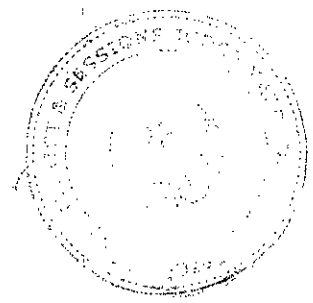
U3

Undisputedly and undeniably reviewed decree dated 18.04.2001 was passed in favour of the present petitioner, when the said decree was produced before the revenue staff, mutation was also entered, when the petitioner was asked to deposit the requisite fee as well as taxes chargeable on the attestation of mutation, same were not deposited due to which the mutation was cancelled. Petitioner was having a decree in his favour and he should have approached the Court for the execution of the same, it is the duty of the Court to execute the said decree accordingly to its spirit. The petitioner instead of resorting to the Court of learned Civil Judge-I, Mardan for the execution of decree in his favour filed contempt application ignoring the fact that if an execution petition was filed before the Court, mutation according to the decree would have been attested, ~~but~~ he himself took the decree to the revenue staff for attesting mutation. Mutation was entered but later on cancelled. No order is passed by the competent Court to direct the revenue staff to attest mutation rather petitioner himself went to the office of revenue staff for attestation of mutation, so the assertions of the petitioner is not supported by any express provision of law.

W-511224
3-12-2014
Judge

Needless to mention that initially the revenue staff was not made a party to the suit but even then if the revenue staff is not party to the suit they are bound by the Court decree and they have to comply the decree. It is also admitted that execution petition in this respect was filed before the Court, which was pending for the execution of the same decree. There is a growing tendency on the part of the litigants to file frivolous application for contempt of court against the revenue staff/public servants who in discharge of their official duty pass orders adversely effecting their interest, which is condemned by the superior courts.

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As the execution petition was pending for the execution of decree, so the contempt application submitted by present petitioner has been rightly rejected by the Court of learned Civil Judge-I, Mardan. No illegality, irregularity, misreading or non-reading of record is observed in the impugned order, so as to warrant interference by this Court, therefore, same is maintained and the revision petition being devoid of merit, stands dismissed. Requisitioned record alongwith the copy of this judgment be returned forthwith while file of this Court be consigned to the record room after its necessary completion and compilation.

53

Announced:
Dated: 03.12.2014

M. Sidiqa
3.12.2014
(Aabid Sarwar)
Addl: District Judge-III,
Mardan
Addl: District Judge-III,
Mardan

CERTIFICATE

Certified that this judgment consist of four (04) pages, each has been read, checked, signed and corrected by me wherever it was necessary.

M. Sidiqa
3.12.2014
(Aabid Sarwar)
Addl: District Judge-III,
Mardan

جسٹس کی پیشکش کے تحت

Name of Applicant	
Date of Presentation	15-12-14
Date of Admittance	15-12-14
Name of which Court	P-18
Date of Receipt	
Charge	
Urgent for	
Signed of Magistrate	<i>[Signature]</i>
Date of Delivery	15-12-14

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[Signature]
15-12-14
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Sessions Court, Mardan

لوہے خبثت شرکت ۳۰۰۰ روپے



12/11/11
11/11/11
10/11/11

لوہے خبثت شرکت ۳۰۰۰ روپے - قسمل وضع کرنا - قسمل وضع کرنا - قسمل وضع کرنا

تاریخ

۵۵۵۵۵
ارشاد میں سائیکل ٹوری عام حال۔ OK قسمل جہانی ضابطہ۔
قسمل طوبی - زیر اہمیت سائیکل ٹوری عام وضع فروری قسمل جہانی - قسمل قسمل جہانی - قسمل قسمل جہانی
قسمل جہانی 57% 19/12/2011 - قسمل جہانی 19/12/2011 - قسمل جہانی 19/12/2011
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قسمل جہانی 57% 19/12/2011 - قسمل جہانی 19/12/2011 - قسمل جہانی 19/12/2011

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نہیے اپنے لیے زکوٰۃ جمع کر کے دینے کے لیے

حاجت لائی گئی ہے۔
دعوتِ اولیٰ (میں) خباب امینہ سے ہے۔

عبارت

۱۔ مقدمہ کارروائی اجراء عدالتِ عالیہ کو پیش کرنا۔

تجویز یہی ہے۔ جس میں مورخہ ۱۲/۱۶/۱۹۵۱ء کو پیش کیا گیا تھا۔

۲۔ مقدمہ بلاعدالت خباب احتم سے سبیل زیر تجویز رہی۔ اور عدالتِ عالیہ کو درخواستِ عدالتِ عالیہ نادر خان سبیل پر منتقل ہوئی تھی۔

۳۔ یہ سبب المزمع ۱۹- عدالتِ عالیہ احتم حال سے سبب فرمادے۔

اور بعد از چھ ماہ تک کے حکم درج ذیل تھا۔ جو عدالتِ عالیہ

خیاب نادر خان سے منہ جاسے۔ لیکن انہی میں سے عدالتِ عالیہ میں مقدمہ کارروائی کا
رقم کے اردو سبب حسین عدالتِ عالیہ کا۔ وبلکہ درج ذیل دفعہ میں سے فائدہ چاہتا ہے۔
عائدہ عدالتِ عالیہ کو مقدمہ احتم سے سبیل سبیل کرنے چاہئے تھی۔ لیکن البتہ اس
سبب سے عدالتِ عالیہ سے ایک اہم قانونی غلطی ہے۔

۴۔ یہ سبب عدالتِ عالیہ سے رجوع کیا گیا ہے۔ اور اس سبب سے عدالتِ عالیہ میں۔ اور اس سبب سے عدالتِ عالیہ
کہ اجراء تو اب بھی زیر تجویز عدالتِ عالیہ ہے۔ اور اس سبب سے عدالتِ عالیہ ہے۔ لیکن عدالتِ عالیہ
رکھنا ہے۔

۵۔ یہ سبب عدالتِ عالیہ سے رجوع کیا گیا ہے۔ لیکن عدالتِ عالیہ میں سے فائدہ چاہتا ہے۔
کہ اس سبب میں اس سبب سے عدالتِ عالیہ میں سے فائدہ چاہتا ہے۔ لیکن عدالتِ عالیہ میں سے فائدہ چاہتا ہے۔
بھی ہے۔ کہ اس سبب سے عدالتِ عالیہ میں سے فائدہ چاہتا ہے۔

12/14
15



6۔۔۔ بارہویت و سائنس اینڈ ہنرٹ پر تھا۔ وہ ثابت کرنا۔ کہ سائنس اور ہنرٹ میں

کے آپس میں قدر و حکم عدوی کرتے ہیں۔ Contempt سے قرابت ہو رہے ہیں۔

سائنس سائنس کو پہلی طرف سے نہیں دیکھتا۔ یہ سائنس کے سائنس پر ہنرٹ کا ہے۔ وہ اس کا

عربی 407 کے عدلیہ کے۔ جو کہ علم عدالت کے معنی میں ہے۔ سائنس کے سائنس کے

کے عدلیہ کے۔ اور سائنس کے سائنس کے سائنس کے سائنس کے سائنس کے

ہم وہ سائنس کے۔ جس کا سائنس کے سائنس کے سائنس کے سائنس کے

6۔۔۔ سائنس کے سائنس کے سائنس کے سائنس کے سائنس کے

1/2001 کے سائنس کے سائنس کے سائنس کے سائنس کے سائنس کے

مذکورہ درجہ سائنس کے سائنس کے سائنس کے سائنس کے سائنس کے

کرتے ہیں۔ سائنس کے سائنس کے سائنس کے سائنس کے سائنس کے

کونستائل کے سائنس کے سائنس کے سائنس کے سائنس کے سائنس کے

8۔۔۔ سائنس کے سائنس کے سائنس کے سائنس کے سائنس کے

سائنس کے سائنس کے سائنس کے سائنس کے سائنس کے

کارتھی وین الفضا تھا۔ سائنس کے سائنس کے سائنس کے سائنس کے

9۔۔۔ سائنس کے سائنس کے سائنس کے سائنس کے سائنس کے

درجہ سائنس کے سائنس کے سائنس کے سائنس کے سائنس کے

فاز ہے

RTO

Certificate
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10- آڈیٹ شدہ حساب ملازم کے لئے - جس کے لئے مقدمہ برائے جاب فروخت
30.11.2011

14/12

فوری طور پر - جس کے لئے آڈیٹ شدہ حساب ملازم کے لئے جاب فروخت کا کوئی دوسرا سینیئر

بازو درجہ ملازم کو دیا جائے۔ جو اس کے فرائض انجام دے گا۔

2

ادارہ کے لئے جاب فروخت شدہ ملازم کو - جو عدالت کے پاس ہے، اس کے لئے جاب فروخت کا بار

کا وہ انفرج کا کوئی دوسرا درجہ ملازم ہے۔ اس کے لئے جاب فروخت کا بار

جس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار

12- اس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار

کامیاب حاصل ہے

اس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار

کو اس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار

میں دوسرے ملازم کو جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار

13/1
2012

جس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار ہے۔ اس کے لئے جاب فروخت کا بار

Certified to be True Copy

12
14

Murad Ali petitioner in his written statement submitted through his representative supported the contents of his application dated 15.2.2006.

Perusal of the record and the data so far collected would reveal that nothing illegal has been done by the respondents and whatever has been done is strictly in accordance with the Land Revenue Act and rules framed thereunder. Furthermore nothing pre-judicial to the interest of the petitioner has been done by the respondents.

In view of the above position, the present application is filed without further action.

Applicant be informed accordingly and a copy be sent to Tehsildar, Takht Bhai for service on the respondents.

Dated
18.7.2006.

Takht Bhai
District Officer (R&E)/
Collector, Mardan.



U.S.P.C.
U.S.P.C. / P. 1005/1007
Name of Applicant.....
Appl. no. 593.....
Date of Entry 9/2/07.....
Words 400.....
.....
.....
.....

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H.S.P.
Copying Agent
Mardan
9/2/07

15/2/2007

روزنامه سیدالهدایت
15/8/2006
18/7/2006
15/2/2006



Murad Ali son of Muhammad Ali resident of Russian Khel Mardan.
Tehsil and District Mardan ...petitioner

Versus

- 1- Irshad Ali Patwari halqa Mahal Ferozpur
 - 2- Zairullah Ex Patwari halqa Mahal Ferozpur
 - 3- Mr. Momin Ex Patwari halqa Mahal Ferozpur
- Tehsil Takht Bhai District MardanRespondents.

Application for taking legal action against
the respondents and correction of revenue record.

77/4

Order.

This order will dispose off an application submitted by Murad Ali praying therein that the respondents have interpolated in the revenue record and has caused great loss to the petitioner. thus, it was prayed that suitable action under the law may be taken against the respondents named above.

77/4

The application was entrusted to the Tehsildar, Takht Bhai for detail report who inquired into the contents of the application and submitted his detailed report dated 1.6.2006, the gist of which is reproduced below:-

- A) Short facts of the case are that Murad Ali above mentioned has submitted an application for taking suitable action under the law against the above named patwaris. The inquiry was conducted. Murad Ali has submitted his detailed written statement. The inquiry report of the Tehsildar Takht Bhai be considered as part and parcel of this order.
- B) Irshad Ali the sitting patwari has stated that Mst. Khalida is duly recorded owner in the revenue record who had sold her Hisadari share in favour of Haji Mir Zaman and others.

In this respect the statement of the vendor and vendee have been recorded vide daily diary report No. 382 dated 3.8.2003 on the spot. The position was changed. Similarly the statement of Momin Khan Patwari and Zairullah Ex patwaris.

(5)

اس لیے آپ صاحبان سے گزارش ہے کہ مندرجہ بالا پشاوریان (موسن خان، وزیر اللہ، اور ایشاد علی) کے خلاف عدالت
تقریباً قانوناً اودھائی کروائی کر کے اور من مدس کے ریٹائر ڈ مال میں درستی کرائے کا حکم فرمایا جائے،

سائل مراد علی خان ولد محمد علی خان مرحوم تحریر، 15/2/2006
ساکن محلہ دستم خیل تحصیل مردان

ڈاکخانہ مردان، ضلع مردان - بذریعہ ڈاک

مراد علی ولد محمد علی خان صاحب

Name of Applicant.....
Applicant No..... 593
Date of Entry... 9.1.21.07
Words..... 1200
No..... 61
No..... 9
No..... 67

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Mardan.

15/2/07

15/2/07

(۱۰)

فیضہ بزور لیا نقل F.I.R نمبر 1028 Dated=8-12-2003 لف ہے۔

۲۰۔ یہ لہ خیران گن امریہ ہے۔ کہ رجسٹری بھی نمبر 14 جلد نمبر 10 صفحہ نمبر 368-369 Dated=20-3-2003

موضع فیروز پور (مسماة خالدہ بحق میر زمان) کے عبارت میں صاف اور واضح لکھا ہے۔ کہ مسماة خالدہ نے میر زمان کو نمبرات خسره 1124 تا 1128 میں دیا گیا ہے۔ اور ان لوگوں یعنی میر زمان و سلطان محمد نے نمبر

خسره 1122-1124 کو چھوڑ کر نمبر خسره 11371-1152 پر قبضہ کیا۔

۲۱۔

یہ کہ رجسٹری بالا میں نمبر خسره 1128 کا قبضہ منجانب خالدہ مسمی میر زمان کو دیکھایا گیا ہے۔ جبکہ اصل میں یہی نمبر خسره 1128 کو مسمی نے مسمی سلطان محمد اور گل رحمان پسران غلام حبیب کو بطور حصہ بوجہ نمبرات خسره 1127-1126-1125-1124-1122 کا قبضہ من مدعی مراد علی کو دینے کے سبب بمعہ قبضہ

مورخہ 9-12-2000 بروئےء انتقالات حصہ نمبری 365-367 مصدقہ مورخہ 9-12-2000 درج

۲۱۔ اس سے ان تمام سازشوں کا مکمل پتہ چلتا ہے۔ کیوں کہ نمبر خسره 1124 میں میری آبادی ہے۔ جس میں میرے زمینوں کے دیکھ بھال کے لیے مزدوران کیلئے برقانات اور میرے بدوران زمینوں کے دلچہ بھال کے دوران ٹہرنے کے لیے حجرہ تعمیر کروایا ہے۔ اور ساتھ ہی آپنے زیر کاشت فضل نیشکر سے گڑ بنانے کے لیے ایک عدد گڑ گھانی پختہ اینٹوں سے تعمیر کروائی ہے۔ اور جگہ کا میل باقاعدہ پیواری حلقہ کو سالانہ زرعی ٹیکس بھی ادا کرتا ہوں، نقل زرعی ٹیکس بات گڑ گھانی لف ہے۔

۲۲۔

یہ کہ پیواری حلقہ موجودہ ارشاد علی نے بدوران تفشیش مقدمہ عدالت نمبر 1028 Dated= 08-12-2003 میں جو رد پیش کیا اس میں اس نے بھی انتقال تبدیلی ملکیت نمبر 407 بروئے فیصلہ عدالت احسان اللہ خان سول جج کا حوالہ دے کر زیر تجویز لکھا ہے، اور نقشہ تصدیق جو کہ اپنے ہاتھوں سے تحریر کیا ہے، اس میں نمبرات خسره جات 1125-1126 کو دکھایا گیا ہے،

۲۳۔

ما بعد بجز الت جناب آمین سید باچہ سول جج صاحب بمقدمہ (مراد علی بنام سلطان محمد) بھی بیان دیا ہے، کہ انتقال نمبر 407 زیر تجویز ہے، لیکن بعد ازاں کافی عرضہ گزرنے کے بعد جب دوبارہ فرد پیش کیا، تو انتقال نمبر 407 کو خارج لکھا گیا ہے، اور بعد ازاں اسی عدالت میں جب گردوری پیش کی، تو دیگر جعلی اندراجات کے علاوہ خانہ ملکیت کے خانے میں پہلے سے درج شدہ (جو کہ وہ بھی غلطی) کو نکال کر مزید جعلی اندراجات کر کے (عبدالستار وغیرہ) کا ایک حیران کن اندراج کر کے مزید میرے یعنی من مدعی مراد علی کے قبضہ اور ملکیت کو مستحکم بنا دیا ہے، جبکہ قانون کے مطابق کن افسر مجاز یا عدالت سول جج صاحب کی ^{مصدقہ} Long Standing Order کے بغیر کاغذات مال میں ترمیم نہیں کر سکتا، اس لیے قابل مواخذہ ہے،

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۱۰/۱۲

گرداوری میں قصداً و عمداً سابقہ قابضین کے ساتھ گٹھ جوڑی کی وجہ سے نمبرات خسروہ 1127، 1128، 1138 میں سے
حسابقہ قابضین کے مفادات کو مد نظر رکھ کر اندراج گرداوری بحوالہ روزنامہ پنج جات مد 102، 106 بحوالہ
رجسٹر گرداوری میں درج کیا۔

نوٹ:- بیٹواری موہن خان اور بیٹواری زیر اللہ نے رجسٹر گرداوری میں خانہ ملکیت میں قصداً و عمداً زمین پر حق مراد علی نے
بجائے خالدہ وغیرہ کے الفاظ لکھے۔ جن سے صاف ظاہر ہوتا ہے کہ سابقہ قابضین کو میرے ساتھ مستقبل میں کسی سے
سازش کے ذریعہ آراغی شداد سے بے دخل کرانے کیلئے سابقہ بیٹواریان حلقہ مؤمن خان کو زیر اللہ کے نام پر
کامل تعلق موجود تھا۔

۱۶- یہ کہ مابعد مسماة خالدہ نے من مدعی مراد علی سے مبلغ سات لاکھ روپیہ پیشگی لے کر اپنا حصہ رسدی ایچ چندر پری رشتہ
داروں کے ورغلا نے پرسن مدعی کے ساتھ انتقال زمین کرانے سے انکار کیا۔ جس پرسن مدعی نے اجراء الت سولینج تفت
بھائی برخلاف مسماة خالدہ دعویٰ دائر کیا۔ اسی دعویٰ سے اور اسی دعویٰ میں حکم انتہائی سے باخبر ہونے کے باوجود
بیٹواری حلقہ (زیر اللہ) نے قصداً و عمدتاً سب رجسٹر ارتخت بھائی کو دعویٰ من مدعی (مراد علی) نام خالدہ سے لے کر
رکھ کر برائے رجسٹری مسماة خالدہ بحق میر زمان کرانے میں کامیاب ہوا۔ اور یوں پہلے سے تیار کردہ دوسرے دس کے پیشی
کڑی تیار ہوئی۔

۱۷- مابعد سازش کی پہلی کڑی تیار ہونے کے بعد سازش کو اصل احداث تک پہنچانے دوسری کڑی اسی رشتہ کی (میر زمان
حق میر زمان) کو بردے انتقال نمبر 453 درج رجسٹر انتقال کیا۔ اس کے بعد بیٹواری (زیر اللہ) نے ایک
عدد روزنامہ و اقبالی نمبر 382 مورخہ 30-8-2003 درج کیا جس میں مسماة خالدہ سے قبضہ حصہ رسدی بحق
میر زمان لکھا گیا ہے۔ جبکہ کسی نمبر خسروہ کا کوئی حوالہ نہیں دیا گیا ہے۔ نقل روزنامہ و اقبالی نمبر 382
مورخہ 30-8-2003 Dated لف ہے۔

۱۸- مابعد رجسٹری و انتقال کروانے کے بعد رجسٹری کو اصل ثابت کروانے کے لیے دوسرے سازشی مسمی سلطان محمد ولد نام
جیب کو اکھاڑے میں اتارا گیا۔ اور اس کے ذریعہ میر زمان پر ایک عدد بگس دعویٰ شفع اجراء الت سولینج تفت بھائی
دائر کیا۔ جب من مدعی مراد علی کو پتہ چلا۔ تو سرمدی نے دعویٰ حذ میں خود کو فریق مقدمہ شامل کرانے سے پہلے ہی
صاحب درخواست دے کر ان کے سازش کا بھانڈہ چھوڑ دیا۔ اور یوں میر زمان اور سلطان محمد عدالتی کاروائی اور
چھوڑ کر عدالت سے بھاگ گئے۔

۱۹- مابعد مورخہ 8-12-2003 کورٹ کے اندھیرے میں کسی سوا فرد کو لے کر من مدعی کے ذریعہ قبضہ اجراء الت
فصل کاٹ کر لے گئے۔ اور من مدعی کے ذریعہ نمبرات خسروہ 1125، 1126، 1127، 1152، 1137/1

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Conving Agent

یہ کہ برائے فیصلہ عدالت رجسٹرڈ اختلافات بحال فیروز پور میں برائے فیصلہ عدالت تبدیلی ملکیت از اسما سے فیصلہ عدالت میں رجسٹرڈ
سہیل مراد علی انتقال نمبر ۷۴۰ درج تھی۔ اور زیر تجویز تھی۔

یہ کہ باجدر قبضہ بدر فیصلہ عدالت فیصلہ مورخہ ۲۸/۱۲/۲۰۰۰ جو کہ روز نامہ پنجاب نمبر ۳۳۷ و ۳۳۶ میں روز نامہ پنجاب و افغان
بحال فیروز پور میں درج ہے۔ نمبرات خسروہ (1122, 1124, 1125, 1126, 1127, 1128) کا قبضہ دربارہ

سابقہ باجدر قبضہ کن مدنی مراد علی سے سلطان محمد گل رحمان پسران غلام حبیب اور اجیر ولد محمد جان نے برائے قبضہ
لیا۔ جن کے خلاف کن مدنی مراد علی نے خانہ تخت خالی میں متعدد F.I.R درج کروائے۔ جن کے فتوالات لف سے

یہ کہ باجدر قبضہ پسران نے باجدر کن مدنی مراد علی اور ناجا پسران سلطان محمد ولد غلام حبیب و اجیر ولد محمد جان کے سا
ساتھ نمبرات خسروہ 1126, 1122, 1125 جن کا قبضہ سلطان محمد اور اجیر کے ساتھ تھا۔ کا قبضہ کن مدنی مراد علی کو
واپس دے کر سلطان محمد کو برائے قبضہ 1128 میں مع قبضہ 5 کنال 3 مرلہ اور اجیر نمبر خسروہ 1138 میں ایک کنال

مع قبضہ برائے انتقال نمبر 367 مقدمہ 9/8/2000 مع شراہط دیہہ راجسی نامہ کے پسران میں ریاض محمد خان
ولد نوات خان ساکن ہردان احسن کی دیانت اور شہادت محکمہ سال میں ایک مضبوط حقیقت کوئی ہے شامل ہے

یہ کہ باجدر ناجا پسران نمبرات خسروہ 1124, 1127 اور نمبر خسروہ 1127 میں جانب مغرب کنال 9 مرلہ
پسران ریاض محمد خان و حاجی میر زمان نمبر خسروہ 1124 کنال اور نمبر خسروہ 1127 میں جانب مشرق 7 کنال و 1 کنال نمبر خسروہ 1128 میں مع

قبضہ اور 1 کنال باجدر مراد علی کو واپس دے کر نمبر خسروہ 1127 میں جانب مشرق نمبر خسروہ 1127 میں مع قبضہ مع شراہط دیہہ راجسی
انتقال نمبر 365 مقدمہ مورخہ 9/8/2000 درج ہے اور تفصیلات جرگہ شام نمبر 1169 مورخہ 4/12/2000 اور روز نامہ و افغانی نمبر 102 مورخہ 5/12/2000 لف ہے۔

یہ کہ سابقہ پیواری حلقہ بحال فیروز پور جن کی موجودگی میں تمام کاروائی داخل برائے قبضہ عدالت مورخہ
218/2000 کو ہوئی تھی جن کا ذکر روز نامہ و افغانی نمبر 346, 347 میں خود پیواری حلقہ موکن خان نے بدست خود

کر رکھا تھا۔
سومن خان پیواری نے اسی قانونی ذمہ داری کو تصدق دیا پہلے سے سابقہ قابضین کے ساتھ ایک خصوصی پیشکش سازش
کی جس سے آئندہ آنے والے ایام گردآوری میں نمبرات خسروہ 1128, 1127, 1126, 1125, 1124 مورخہ 5/12/2000 اور روز نامہ نمبر 106 مورخہ 09/12/2000 کا حوالہ

دے کر گردآوری میں کن مدنی کے قبضہ کو سرکاری کاغذات میں مشکوک بنا کر ایک سنگین جرم کیا ہے۔
یہ کہ باجدر پیواری حلقہ موکن خان کی تبدیلی از بحال فیروز پور سے آنے والے پیواری حلقہ (زر اللہ) نے بھی رجسٹرڈ

ATTESTED
Copy in A Book

ڈی. او. سی / 51 / 2006 / 15
 ڈی. او. سی / 51 / 2006 / 15
 ڈی. او. سی / 51 / 2006 / 15
 ڈی. او. سی / 51 / 2006 / 15



ڈی. او. سی / 51 / 2006 / 15
 Tehsil Balamir
 District Mardan
 DRO صاحب ماردان

1 ارشدی بیواری حلقہ محال نیروز پور
 2 ذریعہ سابق بیواری حلقہ محال نیروز پور
 3 سوک سابق بیواری حلقہ محال نیروز پور تحت بھائی
 درخواست برادری کا ردائی برخلاف سول جج ماردان کی ریکارڈز میں
 جواب عالی!

7/1/2006

- 1- یہ کہیں سائل کا تعلق محلہ رستم خیل ماردان سے ہے۔
- 2- یہ کہیں سائل کا اراضی تعدادی 15 اکر 115 کنال کھاتا 82 واقد زقیر محال نیروز پور تحصیل تحت بھائی کا مالک کا قبض تھا۔
- 3- یہ کہ سماۃ شیدہ، سماۃ سلیمہ و سماۃ خالدہ جو کہ سماۃ شیدہ من سائل کی والدہ ام ہے۔ اور سماۃ سلیمہ و خالدہ من سائل کی والدہ کی بیسیرا گاہیں ہے۔
- 4- یہ کہ سماۃ شیدہ وغیرہ بنام نقاش وغیرہ کے مابین بذریعہ مراد علی من سائل سرکاری تقسیم کا مقدمہ ہوا تھا۔
- 5- یہ کہ سرکاری تقسیم کا فیصلہ مقدمہ نقاش وغیرہ بنام نقاش وغیرہ بعدالت جناب منسٹر حسین صاحب اسسٹ کمنشنر صاحب ماردان پورچہ 1998-8-21 کو ہوا تھا۔
- 6- یہ کہ ماعد بریڈہ اجرا از عدالت جناب عبداللہ خان اے۔ من صاحب ماردان بروئے وارنٹ دخل مورخہ 2/8/2000 کو برگرانی ای۔ اے۔ من صاحب تحت بھائی جناب عبدالشکور دادو، بانہ، او ایس پٹران ای کوڈنگ ڈی۔ ایس۔ ای تحت بھائی اسکٹر غلام حبیب خان دہسو جو دی سوک خان بیواری حلقہ محال نیروز پور من سائل مراد علی کی کسٹم ڈگری دار و مختیار ڈی کی تھی۔ جس وارنٹ دخل و رد زماجی واقعاتی لف ہے۔
- 7- یہ کہ بعد والدہ ام سماۃ شیدہ نے اپنا حصہ رندی من سائل مراد علی کے نام برزے انتقال تملیک منتقل کر دی۔ نقل لف ہے کہ ایک خال سماۃ سلیمہ موجود کی حصہ رندی زمین تقریباً ساڑھے 38 کنال زمین کھاتا 82 واقد محال نیروز پور دارا کنال واقع محال موضع ماردان تحصیل ماردان پورچہ فرمائی بروئے فیصلہ عدالت سول جج صاحب جناب احسان اللہ خان صاحب من سائل مراد علی کو منتقل ہوئی، تفصیلات اختلافات لف ہے۔

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IN THE COURT OF PRESIDING OFFICER, REVENUE APPELLATE COURT NO.V, MARDAN.

Murad Ali. Versus. Appellant.
 Irshad Ali, Patwari etc. Respondents.
 Date of Institution. 22.02.2007.
 Date of Decision. 07.07.2008.

APPEAL AGAINST THE ORDER OF D.O.R, MARDAN DATED 18.07.2006.

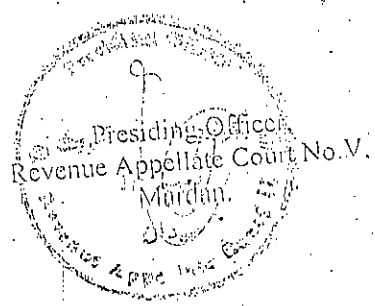
ORDER. My this order will dispose off the present appeal submitted by Murad Ali against the order of D.O.R, Mardan dated, 18.07.2006, whereby an application of the appellant for conducting an enquiry, taking necessary action against the present respondents and for correction of Revenue record was filed without further action.

Brief facts of the case are that the petitioner has submitted an application to the DOR, Mardan for the correction of Revenue record and for taking necessary action against the concerned revenue officials the DOR, has filed the application vide his order dated 18.07.2006, hence the present appeal.

Parties present, case file perused the concerned Patwari produced the relevant record, wherein it reveals that the appellant has sold his ownership; therefore he is not entitled to keep Giridawari in his name. Moreover it reveals that nothing illegal has been done by the respondent and what ever has been done is strictly in accordance with the land revenue Act and the rules framed there under.

Keeping in view the above physical and factual position of the case, I have come to the conclusion that there is no force in the present appeal, is hereby filed without further action. No order as to cost.

Announced.
07.07.2008.



ATTESTED

[Signature]
Examiner/Reader

Additional Commissioner's Court,
Mardan Division, Mardan.

22-4-13

1881-22-4-13
 Date of Application
 Name of Applicant
 Name of Court
 Date of Production
 22-4-13

تعمیرات و تعمیرات کے بارے میں

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Board of Revenue, Khy Pakhtunkhwa Province

تعمیرات و تعمیرات کے بارے میں

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تعمیرات و تعمیرات کے بارے میں

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الذات حسب دستور اوزار آف ریویژن پروگرام / ۱۸/۲/۲۰۰۵

خردین دار فدی علی خان بیان رسم ضل اربان

نام

ریاست عالی ریویژن اربان حال پروگرام آف ذات - وزارت ریویژن اربان حال پروگرام آف ذات
ریاست عالی ریویژن اربان حال پروگرام آف ذات - وزارت ریویژن اربان حال پروگرام آف ذات

گزارش فیاض علی خان در خصوص ذات اربان - وزارت ریویژن اربان حال پروگرام آف ذات

درخواست پیش بابت درج ذیل ریگارد و ریویژن اربان - وزارت ریویژن اربان حال پروگرام آف ذات

ذات اربان - وزارت ریویژن اربان حال پروگرام آف ذات

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Reader to Member
Board of Revenue, Hyderabad
S. P. Khattar

مستورین اربان حال پروگرام آف ذات - وزارت ریویژن اربان حال پروگرام آف ذات

قرارداد با صاحب اربان - وزارت ریویژن اربان حال پروگرام آف ذات

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گزارش فیاض علی خان در خصوص ذات اربان

ذات اربان - وزارت ریویژن اربان حال پروگرام آف ذات

۱۔ زمین کی قیمتیں اور زمینداروں کی حالت کے متعلق
 ۲۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق
 ۳۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق
 ۴۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق

۵۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق
 ۶۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق
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 ۸۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق
 ۹۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق
 ۱۰۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق

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 Reader to Mani
 Board of Revenue K
 Pakhtunkhwa Pesh

۱۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق
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 ۸۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق
 ۹۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق
 ۱۰۔ زمینداروں کی حالت کے متعلق اور زمین کی قیمتوں کے متعلق

کراچی ایجنسی کے تحت جاری کیے گئے ہیں۔

1118 - 1133 - 1124 - 1125 - 1126 - 1127 - 1128 - 1129 - 1130 - 1131 - 1132 - 1133

5۔ یہ سب کے سب ایک ہی جگہ پر جمع کر کے ایک ہی درخواست میں پیش کی جائیں گی۔

6۔ یہ سب کے سب ایک ہی جگہ پر جمع کر کے ایک ہی درخواست میں پیش کی جائیں گی۔

7۔ یہ سب کے سب ایک ہی جگہ پر جمع کر کے ایک ہی درخواست میں پیش کی جائیں گی۔

8۔ یہ سب کے سب ایک ہی جگہ پر جمع کر کے ایک ہی درخواست میں پیش کی جائیں گی۔

19/2/2007

ذرائع درج ذیل کے تحت جاری ہیں۔

1881 - 22-4-13

Date of Application: 22-4-13

Name of Applicant: [Signature]

Fees: 200 Fee: 20

Urgent Fee: [Signature]

Dist of Copyist: [Signature]

Date of Preparation: [Signature]

ATTESTED

[Signature]

Examiner/Reader

Additional Commissione

Hardan Division Hardin

2-4-13

22-4-13

IN THE COURT OF MR. HUSSAIN ZADA KHAN,
MEMBER BOARD OF REVENUE, N.W.F.P.

CASE NO. 199/2008.
DATE OF INSTITUTION. 4/11/2008.
DATE OF DECISION. 15/10/2009.

MURAD ALI.....(PETITIONER).

VERSUS

IRSHAD ALI ETC.....(RESPONDENTS).

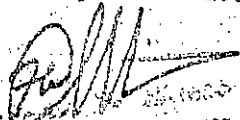
ORDER.
15.10.2009.

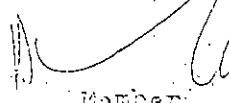
This order will dispose off the revision petition submitted by Murad Ali against the order of the Presiding Officer Revenue Appellate Court No.V, Mardan dated 7.7.2008, whereby the revision petition of the present petitioner against the order of DOR/Collector Mardan dated 18.7.2006 was dismissed.

Facts in brief of the case are that the present petitioner Murad Ali submitted an application before the court of DOR/Collector Mardan for the correction of revenue record. He also requested that the Revenue Staff involved in the case may be proceeded against Departmentally; but his request/case was filed by the DOR/Collector Mardan who vide his order dated 18.7.2006. Dis-satisfied from the order of the DOR/Collector Mardan dated 18.7.2006, the present petitioner Murad Ali submitted a revision petition before the court of Presiding Officer Revenue Appellate Court No.V, Mardan, who after hearing the parties and examining of the case file dismissed the revision petition of the present petitioner dated 7.7.2008, hence the present second revision petition before this court.

Parties present. Arguments heard, and record of the case file perused. From the perusal of the record which reveals that the orders passed by the courts below are based on facts and no illegality, irregularity or miscarriage of justice has been committed by them. The petitioner could not point out any cogent reason to interfere with the concurrent findings of the courts below, hence upheld and the revision petition, being without any force, is hereby dismissed, leaving the parties to bear their own costs.

Announced.
15.10.2009.


Member,
Board of Revenue,
N.W.F.P.


Member,
Board of Revenue,
N.W.F.P.

Board of Revenue, N.W.F.P.