JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Civil Revision No.474 of 2019

Muhammad Bilal Malik and 2 others
Vs.
Pakistan Railways through Secretary Ministry of Railways, Islamabad and 3 others

Petitioners by:	Sardar Tariq Mahmood Bashir, Advocate.
Respondents No.1, 2 & 3 by:	Mr. Binyamin Abbasi, Advocate.
Date of Hearing:	**24.02.2025.**

UNCERTIFIED

INAAM AMEEN MINHAS, J:- Through the instant civil revision petition, the petitioners have impugned the judgment and decree dated 18.11.2019, passed by the learned Additional District Judge-IX, Islamabad **("Appellate Court")** in appeal and the judgment and decree dated 30.07.2019, passed by learned Civil Judge 1st Class, Islamabad-West **("Trial Court")**, whereby the Suit for Declaration and Permanent Injunction filed by petitioners was dismissed concurrently.

2. The facts relevant for the adjudication of the present revision petition are that the petitioners instituted a suit for Declaration and Permanent Injunction against the respondents in respect of land measuring 21 Marlas, situated in Khewet No. 465, Khatooni No. 967, Khasra No. 1857-12 Marlas Maira and Khasra No. 1858-1K-11M Maira Qita 2, total 2K-3M with a 12/43 share, which come to 12 Marlas. Additionally, the property includes land under Khewet No. 520, Khatooni No. 1026, Khasra Nos. 1644-11K-13M, 1879-2K-MIN, 1879 East-2K-MIN, 1879-3K-10M-MIN, 1679-1K-8M-MIN, 1598-4K-7M,

1679=1K-18M-MIN (Central), 1879-2K-MIN, and 1536-5K-19M, total measuring 34K-5M, with a 6/685 share, which come to 6M. Furthermore, Khewet No. 493, Khatooni No. 989, Khasra No. 1856/1-15M includes a 3/15 share total 3M, thereby aggregating the total land to 12M-6M+3M-1K-1M**('Suit Property").** The Suit Property is located within the Revenue Estate of Village Maira Sunbal Akku, Tehsil and District Islamabad, as per the Fard Arazi for the year 1994-1995, recorded under Mutation No. 17931 by the Halqa Patwari. The sale deeds were duly registered under No. 1423 dated 24.05.2002, No. 1432 dated 21.03.2005, and No. 5135 dated 25.07.2008 before the Joint Sub-Registrar, Islamabad. Upon execution of these sale deeds, the owners/sellers handed over peaceful and vacant possession of the Suit Property to the petitioners, thereby establishing them as the lawful owners thereof. That after clearance from all the corners, the petitioners raised construction over the Suit Property spending huge amount. That the respondents No.2 & 3 in the garb of direction of the Honourable Supreme Court of Pakistan started demolishing the construction of the petitioners over the Suit Property with false and frivolous claim that the Suit Property belongs to them. After a few days, a large contingent of manpower claiming to be the staff of respondent No.2 and 3 came at the Suit Property and demolished a portion of construction on the Suit Property.

3. The respondents appeared before Trial Court and contested the suit by filing a written statement. Trial Court framed the issues, recorded the evidence and after hearing the arguments from both parties dismissed the suit vide impugned judgment and decree dated

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30.07.2019. Feeling aggrieved, the petitioners filed an appeal before the Appellate Court, which was also dismissed vide impugned judgment and decree dated 18.11.2019, hence this petition.

4. Learned counsel for the petitioners contended that the impugned judgments and decrees are contrary to law and the facts on record. It is further submitted that the petitioners successfully proved their case through cogent and confidence-inspiring documentary evidence, however, both the Courts below have dismissed the suit of the petitioners arbitrarily and unjustly.

5. Conversely, learned counsel for respondents No. 1, 2 & 3 has strongly opposed the instant petition and prayed for its dismissal.

6. From the perusal of record, it appears that the petitioners had filed a Suit for declaration and permanent injunction seeking the following prayer(s):

> *i. A decree for declaration to the effect that the plaintiffs are lawful owners of the suit land as demarcated by the revenue authorities, which has been purchased by them for valuable consideration and raised construction over there. Further declaration to the effect that the proposed act of the defendants No.2&3 to demolish the lawful construction and then forcibly occupy the suit land are illegal, unlawful, unjust, unauthorized, malafide and constitute an invasion over the rights of the plaintiffs.*
>
> *ii. As a consequential relief, a decree for permanent injunction permanently restraining the defendants from demolishing the plaintiffs' construction over the suit land, forcibly occupying the suit land, interfering in the lawful possession of the plaintiffs over the suit land, encroaching, taking any adverse action against the plaintiffs in respect of the suit property, imposing any kind of penalty in any manner whatsoever, issuing any notice, initiating any kind of proceedings against the plaintiffs or doing any other act, which is prejudicial or*

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constitute an invasion over the rights of the plaintiff in any manner whatsoever.

7. While rendering its findings on issue No.1, learned Trial Court explicitly held that the Suit Property was acquired by the Capital Development Authority (CDA) through an award dated 22.08.2008, whereas the suit was instituted in the year 2012. Consequently, upon the issuance of the award, the petitioners' ownership rights stood vested in the CDA. As a result, the petitioners have lost their title to the Suit Property, rendering their possession legally untenable. Therefore, no decree for declaration affirming their ownership can be granted. The remaining issues No. 2 & 3 were also decided in the light of findings on issue No.1 and consequently suit was dismissed.

8. It is an admitted fact that the Suit Property belongs to CDA by virtue of Award dated 22.08.2008 but surprisingly neither the CDA nor any official of CDA was made party in the suit. This fact came on record, when learned Trial Court sought a report from the Tehsildar vide order dated 16.07.2019 and despite this the petitioners neither sought impleadment of the CDA as party to the suit nor filed objection on report of Naib Tehsildar dated 26.07.2019.

9. It is a prerequisite for filing a suit for declaration under section 42 of Specific Relief Act, 1877, that the relief sought must pertains to a pre-existing right and no fresh right can be created. Any suit for declaration with non-existent right is not maintainable. Reference may be made to the case of ***Muhammad Siddique (Deceased) through LRs and others vs. Mst. Noor Bibi ('Deceased) through LRs and others*** **(2020 SCMR 483)** and ***Abdul Razaq vs. Abdul Ghaffar and others*** **(2020 SCMR 202).**

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10. It is an admitted fact that the petitioners lost their title to the Suit Property in the year 2008, when the CDA acquired the land pursuant to award dated 22.08.2008. Consequently, at the time of filing of the suit in the year 2012, the petitioners no longer possessed any legal ownership or title over the Suit Property. Therefore, the suit was inherently not maintainable from its very inception.

11. It is a well-established principle of law that no declaration of title can be passed without impleading the rightful owners and that no individual can transfer a title better than what he himself lawfully possesses. Reference may be made to ***the Province of Punjab through Collector, Sialkot vs. Feroz Din and others*** **(2015 SCMR 909)** and ***Abdul Hameed vs. Shamasuddin*** **(PLD 2008 SC 140).**

12. In view of the above discussion, no illegality, misreading or non-reading of evidence has been found in the impugned judgments and decrees of the Courts below. This revision petition bears no merit, therefore, **dismissed**.

(INNAM AMEEN MINHAS)
JUDGE

Announced in open Court on 27.02.2025.

JUDGE

R.Anjam

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