JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.2043 of 2021

Mrs. Anjum Malik and others
Vs.
Mst. Neelofer Malik and others

Petitioners by:	Mr. Abdur Rashid Awan, Advocate.
Respondents 1A & 1B by:	Ch. Sajid Abdullah Sraa, Mr. Ehsan Ullah Sial and Mr. Imran Khan Jadoon, Advocates.
Respondent No.5 by:	Mr. Khurram Mahmood Qureshi, Advocate.
Respondent No.7 by:	Mr. Zulfiqar Ali Abbasi and Mr. Shahid Munir, Advocates.
Respondent No.8-A by:	Mirza Jameel Baig, Advocate.
Respondents No.2 to 6, 8-B to 8-D & 9 to 11	Ex-parte.
Date of Hearing:	**04.03.2025.**

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INAAM ANEEN MINHAS, J:- Through the instant petition, the petitioners have challenged the order dated 28.05.2021 **("Impugned Order")**, passed by the learned Civil Judge 1st Class Islamabad-West **("Trial Court")**, whereby application for calling record of the gift deed of House No.299-A, 299-B or 299 and 300, Peshawar Road, Rawalpindi **("Suit Property")** from Cantonment Board, Rawalpindi/respondent No.5, filed by respondent No.1 was allowed.

2. The essential facts of the case are that on 08.06.2004, respondent No.1/plaintiff filed a suit against the petitioners and respondents No.2

to 11 seeking administration, rendition of accounts, partition by metes and bounds, declaration, and a permanent injunction concerning the estates and properties of the late Sohail Ahmed Malik, the late Malik Imdad Ali and the late Mst. Munawar Sultana. After filing of the suit, notices were issued to the defendants/the petitioners and respondents No.2 to 12. In response, the petitioners/defendants No.1 and 4 contested the claim by filing their written statement, while respondents No.2, 3, 5, 7, 8 and 9/defendants No.2, 3, 6, 8, 9, and 10 also submitted their written statements separately, challenging the assertion made by the respondent No.1/plaintiff. During the proceedings, respondent No.1/plaintiff filed an application seeking the summoning of the record pertaining to the Suit Property from Cantonment Board Rawalpindi/respondent No.5, which was allowed by the learned Trial Court through the impugned order, on the premise that access to the relevant record would assist in reaching a fair and just adjudication of the matter, hence, this petition.

3. Learned counsel for the petitioners contended that before filing of the application for summoning of the record from Cantonment Board, Rawalpindi/respondent No.5, respondent No.1 already filed an application for the withdrawal of claim of the properties on 12.10.2019, wherein she mentioned that object of partition and possession of property can only be achieved successfully by initiating the legal proceedings before the Court having territorial jurisdiction, where the property situates; that the Suit Property is situated within the territorial jurisdiction of district Rawalpindi, hence, the learned Trial Court has no territorial jurisdiction to try and adjudicate upon this matter. The

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learned counsel for the petitioners further contended that respondent No.1 had already moved an application for summoning of record of some other properties but she did not mention the record of the Suit Property in the previous application, hence in the light of Order II, Rule 2, CPC, second application was not maintainable; that section 16, CPC is applicable in the instant matter as the Suit Property is situated outside the territorial jurisdiction of the learned Trial Court, therefore, the Impugned Order is illegal and unlawful.

4. On the other side learned counsels for the respondents contended that the Suit Property is allegedly gifted in favour of petitioner No. 1 and respondent No.2, while respondent No.1 challenged the said gift deed through the civil suit; that Cantonment Board Rawalpindi/respondent No.5, which is the custodian of the record of the Suit Property was also arrayed as a defendant No.6 in the suit, did not produce the required record of the Suit Property, hence, respondent No.1 filed an application for calling of record of the Suit Property; that the record, which is required to be produced is mentioned in the list of documents and list of reliance submitted by respondent No.1 and production of the said record will assist the learned Trial Court in reaching a just decision and if the said record is not produced then rights of respondent No.1 will be prejudiced; that the Impugned Order has been passed in accordance with the law.

5. I have heard arguments of the learned counsel for the contesting parties and perused the record with their able assistance.

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6. From the perusal of the record, it is apparent that respondent No.1 filed a suit against the petitioners and respondents No.2 to 11 for administration, rendition of account, partition by metes and bounds, declaration and permanent injunction in respect of the Suit Property. Section 16, CPC stipulates that suit for partition of immovable property can be instituted within the local limits of whose territorial jurisdiction the property is situated but in section 17, CPC it is clarified that the whispering suit to obtain relief respecting or compensation for wrong to, immovable property situated within jurisdiction of different Courts then the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situated. In the present case as the suit pertains to partition of several properties situated in the territorial jurisdiction of the different Courts including the learned Trial Court, hence, in the light of section 17, CPC the learned Trial Court has jurisdiction to entertain and adjudicate upon the suit for partition relating to all properties because these properties will be considered as a portion of the Suit Property.

7. It is also necessary to consider that the suit for partition of the Suit Property (a portion of property required to be partitioned) is based upon the cancellation of gift deed in favor of petitioner No.1 and respondent No.2 and Cantonment Board Rawalpindi/respondent No.5, which is custodian of the record of the gift deed has also been arrayed as defendant No.6, did not produce the record of the gift deed, hence, in my view, it was necessary to call the record of the gift deed so as to reach a just decision in the suit.

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8. The suit is primarily an administration suit concerning the estate of the deceased. It seeks the administration and partition of the estate left behind by the deceased, who was survived by the petitioners and respondents No.1 to 4 as legal heirs. Under the applicable legal provisions, a suit for administration can be instituted within the territorial jurisdiction of any Court where any part of the deceased's estate is located. This principle is well established under the law governing civil suits and succession matters. It is pertinent to clarify that an administration suit differs from a partition suit in legal scope and effect. While a partition suit primarily seeks the division of specific joint property among co-owners, an administration suit covers a broader scope, including the identification, valuation, management, distribution, and settlement of liabilities of the deceased's estate in accordance with succession laws. Given the legal distinction between these two types of suits and the jurisdictional principles governing administration suits, the suit was rightly instituted within the appropriate jurisdiction, considering the location of the deceased's assets and the learned Trial Court lawfully assumed the jurisdiction.

9. I have also perused the application dated 12.10.2019 filed by respondent No.1 for withdrawal of the claim of properties, wherein she has mentioned in paragraph 7 of the said application that she wants to withdraw the suit to the extent of the following properties:-

i. Property No. 3822, Gawalmandı, Rawalpindi
ii. Property No. 3823, Gawalmandi, Rawalpindi
iii. Property No. 3824 Gawalmandi, Rawalpindi
iv. Property No. 3802 Old Darya Abad, Gawalmandi, Rawalpindi

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v. *Property No. 3803, Old Darya Abad, Gawalmandi, Rawalpindi*
vi. *Property No. 3824, Old Darya Abad, Gawalmandi, Rawalpindi*
vii. *Property No. 3820 Old Darya Abad Gawalmandi. Rawalpindi*
viii. *Property No. 3820-A, Old Darya Abad, Gawalmandi, Rawalpindi*
ix. *Property No. 3821, Old Darya Abad, Gawalmandi, Rawalpindi.*
x. *Property known as Majestic Hotal Anar Kali, Lahore,*
xi. *A house constructed on 04 Kanal Near mini Market, Gluberg III, Lahore,*
xii. *A commercial property situated on Mecload Road Lahore.*
xiii. *The commercial and residential properties in Attock City.*
xiv. *The agricultural land and native house in Shamsabab.*
xv. *Land/commercial property in Gujarat, Gujranwala*

From the above mentioned properties, it is clear that respondent No.1 did not move that application for the withdrawal of her claim to the extent of the Suit Property, hence, based on that application, respondent No.1 cannot be deprived of her right to produce the documents relating to the Suit Property. It is also obvious from the list of documents and list of the reliance submitted by respondent No.1 that the record of the gift deed of the Suit Property and record/documents of Cantonment Board Rawalpindi is mentioned therein, hence, in the light of Order XVI, Rule 14, CPC, the learned Trial Court is empowered to summon the required record of the gift deed of the Suit Property. Moreover, the Honourable Supreme Court of Pakistan has held in ***Amjad Khan vs. Muhammad Irshad (Deceased)***, **(2020 SCMR 2155)** that when the petitioner moves an application by mentioning good cause, then he should be given a chance to prove his case by producing the entire

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evidence, therefore, it was incumbent upon the Trial Court to provide an opportunity to respondent No.1 to produce the required record to prove her claim.

10. As far as the argument of the learned counsel for the petitioners that the application was not maintainable because respondent No.1 through an earlier application applied for calling the record from CDA, in which she did not mention the record of Cantonment Board Rawalpindi, so under Order II, Rule 2, CPC, she relinquished the claim. I have perused Order II, Rule 2, CPC, which is reproduced as under:-

> *"**(2) Suit to include the whole claim**. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but the plaintiff may relinquish any portion of his claim to bring the suit within the jurisdiction of any Court."*

Order II, Rule 2, CPC contains word "suit" and word "application" is not mentioned in the same, hence in my view this Order does not apply in the case of an application. The learned counsel for the petitioners did not produce any precedent in support of his contention.

11. In the wake of the above discussion, I am of the view that allowing the application for calling of the record of the gift deed of the Suit Property from Cantonment Board Rawalpindi/respondent No.5 is justified as the same will assist the learned Trial Court in reaching a just decision in the suit.

12. Although the petitioners raised an objection regarding territorial jurisdiction in the written statements, there is no evidence on record to suggest that this objection was actively pursued or agitated by the petitioners and respondents No.2 and 3 during the proceedings before

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the learned Trial Court. Instead, following the submissions of the written statement, the Trial court proceeded to frame issues based on the divergent pleadings of the parties, after which the case was fixed for evidence.

13. During the course of evidence, respondent No.1 filed an application seeking the summoning of the record pertaining to the Suit Property from Cantonment Board, Rawalpindi/respondent No.5 further reinforcing the procedural progression of the case. This sequence of events indicates that the petitioners by actively participating in the proceedings without consistently pressing the jurisdictional objection, effectively waived and abandoned the plea of territorial jurisdiction.

14. However, before this Court, the petitioners have now raised the matter of territorial jurisdiction in a vigorous manner. In this regard, Section 21, CPC is pertinent, which is reproduced as under:-

> ***21. Objection to jurisdiction.*** *No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earlier possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice.*

A plain reading of the aforementioned section makes it evident that an objection to jurisdiction must be raised at the earliest possible stage before the learned Trial Court and pursued diligently. In the absence of such persistent agitation, a party cannot later challenge the jurisdiction of the Court after having willingly participated in the proceedings. Given the petitioners' conduct, it is apparent that the plea of territorial jurisdiction was not only raised at belatedly stage but also deemed

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waived, thereby barring the petitioners from contesting the same at this stage.

15. In view of the foregoing, I am of the view that the Impugned Order has been passed in accordance with law and no illegality or infirmity has been found therein. Consequently, the instant writ petition is **dismissed** being devoid of merits.

(INNAM AMEEN MINHAS)
JUDGE

Announced in open Court on 28.03.2025

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APPROVED FOR REPORTING

R.Anjam

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