JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.101 of 2016
Haji Muhammad Miskeen
Versus
Muhammad Ilyas and others

Date of Hearing: 21.06.2017
Petitioner by: Raja Mazhar Hussain Bhatti, Advocate.
Respondents by: Mr. Ghulam Farid Chaudhry, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide C.R.No.101/2016 titled "Haji Muhammad Miskeen Vs. Muhammad Ilyas etc" and C.R.No.213/2016 titled "Bashir Ahmed Vs. Haji Abdul Rehman etc". These petitions involved common questions of law and fact.

2. On 23.10.2012, Bashir Ahmed instituted a suit titled "Bashir Ahmed Vs. Haji Abdul Rehman etc", for declaration and permanent injunction before the Court of learned Civil Judge, Islamabad. In this suit, the said plaintiff prayed for *inter alia* a declaration to the effect that he is the owner of land measuring one Kanal in Khasra No.412, in Mauza Chattha Bakhtawar ("suit property"). Haji Muhammad Maskeen was defendant No.3 in the said suit.

3. On 11.12.2012, Haji Muhammad Maskeen instituted a suit titled "Haji Muhammad Maskin Vs. Muhammad Ilyas etc" for restoration of possession under Section 9 of the Specific Relief Act, 1877. In this suit, it was pleaded *inter-alia* that Bashir Ahmed etc., had forcibly dispossessed Muhammad Maskeen from the suit property. A decree for restoration of possession of the suit property was sought in the said suit. Bashir Ahmed was defendant No.4 in the said suit.

4. The abovementioned suits were consolidated. Vide order dated 29.09.2015, the learned trial Court framed the following issues in the suit titled "Bashir Ahmed Vs. Haji Abdul Rehman":-

> *"1) Whether the suit property is ownership in possession of the plaintiff (Bashir Ahmed)?*

2) Whether the defendant tried to take over possession of the suit property by use of force on 22nd day of October 2012?
3). Whether suit property was leased out by the plaintiff to one Amanullah?
4). Whether suit property was in possession of defendant and he was forcibly dispossessed on 21.10.2012?
5). Whether the plaintiff is entitled to the decree as prayed for?
6). Whether the defendant is entitled for restoration of possession of the suit property?
7). Relief."

5. Since Bashir Ahmed was in possession of the suit property, the learned civil Court, vide order dated 29.09.2015, directed status *quo* to be maintained. After the framing of issues and recording of evidence, the suit instituted by Bashir Ahmed was decreed, whereas the suit instituted by Haji Muhammad Miskeen was dismissed by the learned civil Court, vide consolidated judgment and decree dated 27.01.2016. Against the said judgment and decree (to the extent of decreeing Bashir Ahmed's suit for declaration and permanent injunction), Haji Muhammad Maskeen filed an appeal before the Court of the learned Additional District Judge, Islamabad. Vide judgment dated 20.02.2016, the said appeal was allowed by the learned appellate Court, and the judgment and decree dated 27.01.2016 was set aside to the said extent, and the matter was remanded to the learned civil Court with certain directions. The said judgment dated 20.02.2016 has been impugned by Bashir Ahmad in civil revision petition No. 213/2016 before this Court.

6. Through C.R.No.101/2016, the petitioner, Haji Muhammad Maskeen, impugns the consolidated judgment and decree dated 27.01.2016, passed by the Court of the learned Civil Judge, Islamabad, to the extent of dismissing his suit for restoration of possession under Section 9 of the Specific Relief Act, 1877.

7. In this judgment, Haji Muhammad Maskeen (the petitioner in C.R.No.101/2016, and respondent No.3 in C.R.No.213/2016) shall hereinafter be referred to as "Maskeen", whereas Bashir Ahmed (the petitioner in C.R.No.213/2016, and respondent No.4 in C.R.No.101/2016) shall be referred to as "Bashir".

8. Raja Mazhar Hussain Bhatti, Advocate, learned counsel for Maskeen submitted that Maskeen was in possession of the suit property between 1991 to 2012; that during September, 2012, the petitioner along with his spouse proceeded for the performance of Hajj, and deployed one Amanullah Khan as a watchman to guard the suit property; that on or about 21.10.2012, respondents No.1 to 6 alongwith other people occupied the suit property and demolished the construction raised thereon; that the said respondents also took away material like bricks, girders, windows and doors from the site; that on 21.10.2012, Amanullah the watchman informed the petitioner's brother-in-law (Haji Abdul Rehman) about the said incident; that Haji Abdul Rehman rushed to the Police Station and reported the incident, but the Police did not take any action against the said respondents; that Haji Abdul Rehman approached the Ex-Officio Justice of Peace/Sessions Court by filing an application under Sections 22-A and B Cr.P.C.; that the learned Justice of Peace/ Sessions Court directed the concerned S.H.O. to register an F.I.R. against the respondents; that since Amanullah was bought over by Bashir, he did not come forward to Maskeen's aid; that on 23.10.2012, Bashir filed a suit for declaration and permanent injunction against Maskeen etc in order to justify his illegal acts; that upon Maskeen's return from Hajj, he, on 11.12.2012, filed a civil suit under Section 9 of the Specific Relief Act, 1877, praying for a decree for restoration of possession of the suit property; that both the above mentioned suits were consolidated, and the learned civil Court framed consolidated issues; that after the recording of the evidence, the learned trial Court, vide consolidated judgment and decree dated 27.01.2016, decreed Bashir's suit, and dismissed Maskeen's suit; that as regards the decree in Bashir's civil suit, Maskeen etc., preferred an appeal before the learned Additional District Judge, Islamabad; that during the pendency of the appeal, Maskeen etc., filed an application for permission to adduce additional evidence; that the learned appellate Court, vide judgment dated 20.02.2016, accepted Maskeen's appeal

and remanded the matter to the learned civil Court for a decision afresh after recording the additional evidence; and that as regards the dismissal of Maskeen's suit under Section 9 of the Specific Relief Act, 1877, Maskeen preferred C.R.No.101/2016 before this Court.

9. Learned counsel further submitted that the impugned judgment dated 20.02.2016, to the extent of upholding the dismissal of the petitioner's suit, suffers from misreading and non-reading of evidence; that the learned Courts below erred by not appreciating that Bashir did not produce any document to establish his ownership or possession of the suit property; that the learned Courts below erred by not appreciating that Maskeen was forcibly dispossessed from the suit property while he was in Saudi Arabia; that Bashir etc had their eyes on the suit property since very long, and moved in while Maskeen was abroad; that in 2004 a suit for possession of the suit property was instituted against Maskeen which shows that Maskeen was in possession of the suit property; that in a suit for repossession under Section 9 of the Specific Relief Act, 1877, a plaintiff has to establish that he was in possession of the property in question prior to his dispossession; and that the concurrent findings against the petitioner are very harsh. Learned counsel prayed for C.R.No.101/2016 to be allowed, and for the Maskeen's suit under Section 9 of the Specific Relief Act, 1877, to be decreed.

10. Chaudhry Ghualm Farid, Advocate, learned counsel for Bashir etc submitted that Maskeen had not been able to establish his ownership or possession of the suit property; that the concurrent findings of the learned Courts below as regards Maskeen's suit for possession do not suffer from any jurisdictional infirmity; that this Court did not have the jurisdiction to interfere in the concurrent findings of fact of the learned Courts below unless there is misreading or non-reading of evidence; and that the petitioner had not pointed out any evidence on the record which had not been read or misread by the learned Courts below while giving their findings.

11. Learned counsel for Bashir etc further submitted that the suit property was owned by Bashir, who vide lease agreement dated 04.12.2007, leased it to one Amanullah; that Bashir had instituted a suit for eviction against Amanullah; that in April, 2011, (during the pendency of the said suit), Amanullah gave vacant possession of the suit property to Bashir; that on 22.10.2012, Maskeen etc tried to take possession of the suit property, but due to Bashir's resistance, they were not successful; that the said incident caused Bashir to file a suit for declaration and permanent injunction on 23.10.2012, before the learned civil Court; that in the said suit, Bashir prayed for a declaration to the effect that he is the owner in possession of the suit property; that the Halqa Patwari (PW-5) had produced a *fard*, which showed Bashir's name in the column of ownership; that on the basis of evidence available on the record, it was established that Bashir was the owner of the suit property; that there was no reason for the learned appellate Court to have remanded the case to the learned civil Court. Learned counsel prayed for C.R.No.101/2016 to be dismissed, and for C.R.No.213/2016 to be allowed, and for the consolidated judgment and decree dated 27.01.2016, passed by the learned civil Court to be restored in its entirety.

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

13. The suit property is one Kanal of land in Khasra No.412, Mauza Chattha Bakhtawaar, District Islamabad. Khasra No.412 is an un-partitioned *Shamlati* land.

14. Miskeen claims that while he and his wife were in Saudi Arabia for the performance of Hajj, Bashir etc took forcible possession of the suit property. He further claims that his watchman, Amanullah was present on the spot when the said dispossession took place, and he informed Abdul Rehman (who is Maskeen's brother-in-law) about the incident. Abdul Rehman is said to have reported the matter to the local police. Upon Maskeen's return from Saudi Arabia, he filed a suit for

repossession of the suit property before the learned civil Court under Section 9 of the Specific Releif Act. 1877.

15. Bashir claims to be the owner in possession of the suit property. He asserts that Maskeen etc tried to dispossess him from the suit property. He asserts that Amanullah was his tenant and that in the past a suit for eviction from the suit property had been instituted against Amanullah. The only documentary evidence that Bashir relies upon is a *fard* (Ex.P/1) produced by the Halqa Patwari (PW-5) to prove his ownership in the suit property. Ex.P/1 is the sole documentary evidence on which Bashir basis his ownership claim on the suit property. He has also produced three other witnesses, who in their oral testimony, deposed that Bashir was the owner of the suit property. The primary ground which prevailed over the learned civil Court in decreeing Bashir's suit was that in the *fard* (Ex.P/1) regarding the suit property, Bashir's name had been recorded in the column of ownership, and that the three witnesses produced by Bashir had also testified that he was the owner of the suit property. Therefore, the learned trial Court held Bashir to be the owner of the suit property.

16. Aggrieved by the judgment and decree dated 27.01.2016, passed by the learned civil Court (to the extent of decreeing Bashir Ahmed's suit for declaration and permanent injunction), Maskeen etc filed an appeal before the Court of the learned Additional District Judge, Islamabad. Vide judgment dated 20.02.2016, the said appeal was allowed and the matter was remanded to the learned civil Court with the direction to call the Halqa Patwari along with the custodian of the revenue record regarding the suit property. Furthermore, it was directed that Amanullah be called as a Court Witness so as to bring the actual facts on the record. The view taken by the learned appellate Court in the said judgment was that the revenue record was required to be placed on the file so that it could be gathered as to who was in exclusive possession of the suit property. This, the learned appellate Court observed that could be done only if the Halqa Patwari and the custodian of record at the Tehsildar's

office along with the up-to-date record for the last 40 years, was called. The learned appellate Court also observed that neither Maskeen nor Bashir attempted to produce Amanullah. Maskeen had asserted that Amanullah was in possession of the suit property on his behalf when the alleged dispossession occurred, whereas Bashir had assered that he had leased the suit property to Amanullah. Therefore, Amanullah's presence before the learned civil Court was considered necessary for Bashir to succeed in his suit.

17. A lot in this litigation centers around Amanullah. He was defendant No.4 in the suit for declaration and permanent injunction instituted by Bashir. In the said suit, it was *inter-alia* pleaded that the suit property had been leased to Amanullah by Bashir Ahmed on 04.12.2007, and that Bashir Ahmed had instituted a suit for possession through eviction from suit property against Amanullah. It was also pleaded that Amanullah had, in April, 2011, recorded a statement regarding handing over of the vacant possession of the suit property to Bashir Ahmed. The learned appellate Court in paragraph-6 of the judgment dated 20.02.2016, has recorded that the contesting parties claim that Amanullah was in possession of the suit property on their behalf. Therefore, I share the view of the learned appellate Court that Amanullah be called as a Court witness so as to bring the actual facts on the record.

18. I have visited and studied the *fard* (Ex.P/1). This document does not show that Bashir is an owner of one Kanal of land in Khasra No.412. There is no mention of Khasra No.412 in Ex.P/1. For Bashir to succeed in his suit, he will have to produce copies of the revenue record showing that he is the owner of one Kanal of land in Khasra No.412. Therefore, I find the judgment dated 20.02.2016, passed by the learned appellate Court remanding the matter to the learned civil Court with the directions mentioned above to be in order. In the case of Muhammad Ijaz Ahmad Chaudhry Vs. Mumtaz Ahmad Tarar (2016 SCMR 1), it has been held *inter-alia* that *"any document that is genuine and relevant to the determination of a factual controversy may be*

admitted on record at any stage of the proceedings, whether original or appellate, so that justice may be done." It is my view that documentary evidence available on the record was not sufficient to sustain a decree in Bashir's favour. It is my view that the appellate Court has shown magnanimity to Bashir by giving him an opportunity to produce reliable evidence as to his ownership of one Kanal of land in Khasra No.412, even though Maskeen had filed an application for production of additional evidence.

19. In order to eliminate any element of doubt, this Court vide order dated 29.09.2016, with the consent of the learned counsel for the contesting parties called for the report from the Revenue Officer/Patwari of Mouza Chatha Bakhtawar, District Islamabad, on *inter alia* the question whether Bashir Ahmaed son of Muhammad Aslam was the owner of one Kanal of land in Khasra No.412 in Mauza Chattha Bakhtawar. As per the report dated 25.10.2016 of the Revenue Officer, Khasra No.412 is *Shamlati* land, and that it is essential for a person in possession of any part of *Shamlati* land to also own such land. It was also reported that Bashir is in possession of one Kanal of land in Khasra No.412, and that such land was bounded by a four foot high wall. It has also not been stated with clarity as to whether Bashir is the owner of one Kanal in Khasra No.412. Although it is mentioned that Bashir is in possession of one Kanal in the said Khasra, and that a person who is in possession of land in a Shamlati Khasra has to have ownership of the same, this by itself does not establish that Bashir is the owner of one Kanal in Khasra No.412. It may be mentioned that it has been stated in the said report that as per the *jamabandi* of 2006-07, in Khewat No.183/182 to 184, Qitat 3, Bashir Ahmed has a share, but it is not mentioned whether Bashir has a share in Khasra No.412. Infact as per the report, Khasra No.412 measuring 24 Kanals, 12 Marlas is in Khewat No.240/45-B. These anomalies make this case fit for remand to the learned civil Court. I would echo the direction of the learned appellate Court given in the judgment dated 20.02.2016 that Amanullah be summoned as a court witness so

that he may depose as to whether he has remained Bashir's lessee, and on whose behalf was he in possession of the suit property.

20. Now as regards Maskeen's suit for repossession, he entered the witness box as DW-1 and in his cross-examination, he has deposed *inter-alia* that there was no proof in the revenue record regarding his ownership of the suit property. He has also deposed that there was no proof regarding his possession of the suit property. Maskeen claimed that the suit property was given to him by Abdul Rehman in 1991, but he also deposed that there was no document executed between him and Abdul Rehman. Abdul Rehman, who is Maskeen's brother-in-law, entered the witness box as DW-2. He, in his cross-examination, deposed that he had no proof regarding the ownership of the suit property by the petitioner or his wife. He also deposed that he was not in a position to prove Maskeen's possession of the suit property; and that he had no proof regarding Amanullah Khan being deputed as a watchman to guard the suit property.

21. For Maskeen to succeed in this suit for re-possession under Section 9 of the Specific Relief Act, 1877, he was under no obligation to prove the he was the owner of the land from which he was allegedly dispossessed. All that he has to establish was that he was in possession of the land prior to his dispossession. At this stage, reference to the following case law is necessary:

(i) In the case of Canal View Cooperative Housing Society Vs. Javed Iqbal (PLD 2004 SC 20), it has been held *inter-alia* as follows:-

> ***"6. In a suit for possession under section 9 of the Specific Relief Act essential ingredients to be established at the trial are "(i) that the plaintiff was in possession of the immovable property; (ii) that he was dispossessed by the defendant, (iii) that he was dispossessed against his consent and not in accordance with law, (iv) that such dispossession took place within a period of six months of the suit.***
>
> ***7. Legally speaking object of this provision is clearly to discourage I forcible dispossession and to provide a quicker remedy for recovery of possession where a person is dispossessed from immovable property otherwise then in due course of law. The plaintiff under this section is not required to establish his title to the property and he can succeed by merely showing his previous possession and wrongful dispossession.***

However. proceedings under this provision of law do not constitute a bar against any of the parties suing to establish his title to the property to recover possession thereof."

(ii) In the case of Mst. Majeedan Vs. Muhammad Naseem (2001 SCMR 345), it has been held *inter-alia* as follows:-

"6. ... A suit under section 9 of the Specific Relief Act is however, and entirely different kind of action. That section gives a specific privilege to person in possession who takes action promptly. In case they are dispossessed, it entitles them to succeed simply by proving (1) that they were in possession, (2) that they have been dispossessed by the defendant, (3) that the dispossession is not in accordance with law, and (4) that the dispossession took place with six months of the suit. No question of title either of the plaintiff or of the defendant can be raised or gone into in that case. ... All that is necessary is that it must be proved that the plaintiff was in possession, that he was dispossessed and that the suit has been brought within 6 months from the date of the dispossession. It is immaterial if the plaintiff was in possession and that such possession was without title and therefore, the contention as agitated on behalf of the petitioners that possession was obtained on the basis of forged allotment order cannot be considered. It is well-established legal position that "Title was not material in a suit falling under section 9 and any person who had been dispossessed, otherwise than in due course of law, could, without pleading or proving title, seek to be re-inducted into possession, even though such a relief was sought against true owner of property himself."

(iii) In the case of Irfan Javaid Vs. Surraya Sultana (2015 CLC 473), it has been held *inter alia* as follows:-

"8. When there is a general rule that in the suit under section 9 of the Specific Relief Act the ordinary rule for decision of lis is of possession, therefore it should be followed in deciding whether a person has been dispossessed within six months of the date of suit. In order to bring this section into operation it is not necessary that the possession should be the actual physical occupation of the property. Constructive possession which goes with title would suffice for the purposes of this section."

(iv) In the case of Maqbool Hussain Vs. Muhammad Ashraf (1991 MLD 1134), Saleem Akhtar J. had the occasion to held as follows:-

"Section 9 provided a procedure to persons who are dispossessed from immovable property without their consent or without lawful authority and except in due course of law. Under this provision the Court is not competent to decide the title of the property. It only relates to possession of immovable property. If the plaintiff has been illegally dispossessed then section 9 can be invoked. The plaintiff should established that he was actually in physical possession of his immovable property from which he has been illegally dispossessed without his consent."

22. Law to the said effect has also been laid down in the cases of A.R. Muhammad Siddique Vs. Saifee High School Board (1983 CLC 507), Abid Ali Vs. Bazar-e-Faisal Builders and Developers (2015 CLC 1074), and Muhammad Arshad Vs. Muhammad Hanif (2006 YLR 1257).

23. Learned counsel for Maskeen made reference to a civil suit for declaration, possession, permanent and mandatory injunction instituted by Saghir Ahmed etc against Maskeen during 2004, before the Court of learned Civil Judge, Islamabad, to show that Bashir Ahmed was one of the plaintiffs in the said suit, and since relief of possession was prayed for in the said suit, it stood establish that Maskeen was in possession of the suit property. He had also submitted that the said suit was with respect to Khasra No.412. Now, an attested copy of the said suit was produced as Ex.DW-2/1 by DW-2 during his examination-in-chief. In his cross-examination, DW-2 deposed that *"it is incorrect that the document Ex.DW-2/1 in respect of suit property"*. Therefore, since the said suit was not with respect to the suit property, the petitioner cannot place reliance on the same in order to prove his possession over the suit property. Furthermore, one of the plaintiffs in the said suit was Bashir Ahmad son of Muhammad Riaz, whereas Maskeen in his suit had alleged that he had been dispossessed by Bashir Ahmed son of Muhammad Aslam.

24. Since Maskeen (DW-1), and his brother-in-law (DW-2) deposed during evidence that there was no proof regarding Maskeen's possession of the suit property, I cannot fault the finding of the learned civil Court that Maskeen was unable to prove his possession of the suit property before his alleged dispossession. Hence, the learned civil Court was correct in dismissing Maskeen's suit for possession under Section 9 of the Specific Relief Act, 1877. In the case of Irfan Javaid Vs. Surraya Sultana (2015 CLC 473), it has been held *inter-alia* that revisional powers should be rarely exercised in cases arising from proceedings under Section 9 of the Specific Relief Act, 1877.

25. In view of the above, civil revision petition No.101/2016 is dismissed. As regards civil revision petition No.213/2016, the same is also dismissed as I have found no jurisdictional infirmity in the judgment dated 20.02.2016, passed by the learned appellate Court. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham

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