Form No: HCJD/C-121.

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Civil Revision No. **178-2013**
Muhammad Ilyas etc
Versus
Shahid Abbas, Etc.

Date of Hearing: 17th February, 2014.
PETITIONERS BY: - Mr.Ajmal Raza Bhatti, Advocate,
RESPONDENTS BY: Mr.Zulfiqar Ali Abbasi, Advocate.

MUHAMMAD ANWAR KHAN KASI, CJ:

This revision petition is directed against the Judgments & Decrees dated 30.9.2010 & 20.2.2013, passed by learned Civil Judge & learned ADJ Islamabad respectively, whereby the suit of the petitioners was directed to be dismissed.

2- Brief facts of the petition are that the petitioners/plaintiffs are owners of house and land in Mauza Ghagrri Tehsil & District Islamabad. According to their version, the house and adjoining open land is Abadi Deh bearing Khasra No.1285, constructed portion is being used for residential purpose, whereas open space is for keeping the cattles. The agricultural land owned by them is also adjoining to above said house and open place, which is being cultivated by petitioners/plaintiffs. They have constructed four rooms alongwith verandah in Khasra No.1280 & 1283. It is stated that land which is being used for cattles is an agricultural land which is in possession for so many decades whereas agricultural land was acquired by them through pre-emption decree. They have also stated that pre-emption suit was filed by the petitioners/plaintiffs against defendantôs son and his nephew which was ultimately decreed in their favour, therefore, defendants have developed a grudge against them. It is also stated that few days ago, the predecessor of defendants tried to take the possession of land forcibly, however, on resistance of petitioners/plaintiffs, they could not succeed and left the place with threats to take possession from them. It is stated that plaintiffs are owners in possession of suitland as well as house and agricultural land and are enjoying all possessory and proprietary rights, whereas defendants have no right or interest over it, hence, this suit with the prayer that defendants be restrained from interfering into possession of

the petitioners/plaintiffs over suit property and land or from dispossessing them from any portion of it.

3- The respondents/defendants vehemently contested the suit through their written-statements and out of the pleadings of the parties, following issues were framed:-

1- Whether the plaintiffs are owners in possession of the suitland ? OPP

2- Whether the plaintiffs have got no cause of action locus standi to bring this suit? OPD

3- Whether the suit is not maintainable in its present form? OPD

4. Whether the plaintiffs have not approached the Court with clean hands? OPD

5. Whether the plaintiffs are estopped by their words and conduct to bring this suit? OPD

6. Whether the suit is not properly valued for the purpose of Court fee & jurisdiction? OPD

7. Whether the suit is false, frivolous and vexatious and the defendants are entitled to get special costs? OPD

8- Relief.

4- After framing of issues, case was fixed for petitioners / plaintiffôs evidence and in support of their contention they got examined two PWs, while the defendants/respondents also got examined 2 DWs. The parties also produced documents in support of their contentions.

5- Learned counsel for the petitioner emphatically stressed that the plaintiffs had successfully established their case but the learned Trial as well as Appellate Court failed to appreciate law & facts of the case.

6. It is next submitted that the learned Trial Court did not appreciate the report of learned local Commissioner in accordance with parameters set in Order XVI, Rules IX, X, XVI, XVII & XVIII. The learned local commission properly issued the notices and it did not exceed its mandate, whereas there was no order of Court respecting presence of revenue officials, therefore, their absence does not vitiate the credibility of proceedings. He added that in case the learned Trial Court felt the need, it could have re-appointed the local commission instead of discarding the same on the basis of technicalities. On this point, learned counsel relied upon case

law titled as ñMst.Nomail Zia .vs. Adnan Riazò [2014 CLC 87.].

7. It is further submitted that respondent categorically admitted the possession of petitioner in its written statement as well as during ocular evidence and in abadi deh, possession is valid proof of title and the property in question was included in abadi deh during bandobast of 1860. In this respect, he relied on pedigree table and aks musawai.

8. It is also argued that according to the record of rights, petitioner is owner in Khasra number 1285, whereas respondent is not owner and to the sale-deed bearing number 8303 dated 19.8.1976, vendor sold his entire holding in Mauza Ghagri, yet the learned Courts relied on subsequent sale-deed No.8321 dated 19.8.1976 which could not have been made basis as nothing was left for the seller to sale out.

9. It is averred that the suit before learned Trial Court was of permanent injunction restraining the respondents from interfering into the admitted possession of petitioner, but the learned Court dismissed the suit without framing necessary issues respecting the value of sale-deed relied upon by the respondent.

10. It is submitted that the evidence of petitionerôs yielded lengthy examination and remained unshaken, but respondent has changed its position several times by taking the stance beyond the ambit of their written defence.

11. It is lastly contended that the learned Appellate Court did not give issue-wise findings and even the learned Trial Court did not decide the issues separately in accordance with requirement of Order XX, Rule 5 CPC. Learned counsel relied on case laws titled as ñJan Muhammad Khan vs. Shah Mir Hussain etcò [1985 SCMR 2029] & ñMuhammad Sain. Vs. Muhammad Dinò [1996 SCMR 1918].

12. Conversely, learned counsel for respondent contested the petition by arguing that the petitioners/plaintiffs have no cause of action and locus standi to file this petition and said house is situated in Abadi Deh of Village Gagari, which respondent purchased from one Allah Ditta s/o Kallo through registered sale-deed No.8321 dated 19.8.1976. The house is built on 10-marlas of land consisting of four rooms including courtyard, whereas the petitioner neither purchased nor it was assailed through suit for pre-emption. He added that in the record of rights petitioner has no concern with Khasra number 1285 and both title & possession of petitioners are disputed.

Learned counsel relied on case law titled as ñ Mst.Fatima Khanum . Vs. Ashiq Aliò [PLD 1988 Karachi 433] which is on the point that where title and possession of property was in dispute between the parties, proper and efficacious remedy in such case would be a suit for declaration, possession & injunction and not for injunction alone.

13. Heard & record perused.

14. The gist of dispute is that petitioners claimed to be owners in possession of landed property situated in adjacent to Khasra number 1280,1279, & 1283. According to them the suitland is abadi deh and they acquired its title through pre-emption decree following the registered sale-deed No.8303 dated 19.8.1976 whereby the vendor Allah Ditta s/o Kalu Khan sold his complete holding in revenue estate Ghagri.

15. On the contrary, respondent also claimed the title and possession of suitland relying on the registered sale-deed No.8321 dated 19.8.1976 (Pertinent to note that it is the same date when registered deed No.8303 was executed.) It is their set of claim that the suit property is different from the property which was under adjudication in the suit of pre-emption, decreed in favour of petitioners.

16. The key to dispute, therefore, lies in determination of the scope of registered sale deed No.8303 which was assailed by the petitioners through a successful suit for pre-emption. It was to be ascertained that what was the total property of said vendor in the vicinity? If he had any property left after alienation through deed number 8303 only then the question of title under the subsequent registered deed number 8321 comes into play. This view is fortified by the admitted position that petitioners are owner of the adjacent land even prior to becoming owner of land sold by Allah Ditta s/o kalu, whereas the respondent does not have any other property in the said immediate vicinity.

17. Moreover, the property is situated within abadi deh, the element of possession cannot be out rightly ignored and the length of the period of possession is of vital importance which was required to be determined, but was not done by either learned Trial Court or the Appellate Court.

18. Apart from above, the physical location of the property in dispute has not been determined viz a viz the boundaries given in registered-deed No.8321. This aspect again skip the advertence of both the learned Courts.

19. The Judgments impugned are not only flurry, but also are superficial without diving deep into the factual dispute prevailing between the parties. The depositions of defence were prominently inconsistent with the averments contained in written statement, but yet again the learned Trial Court as well as the learned Appellate Court misread this aspect of evidence. In addition to this, the report of local commission was discarded without appointing a local commission afresh which was necessary for the spot inspection and that would have given better understanding of ground position to the learned Trial Court.

20. In view of above, instant Revision Petition is allowed and in consequence thereof, impugned Judgments & decrees dated 30.9.2010 & 20.2.2013 are set aside and the case is remanded to the learned Trial Court for re-trial in view of observations contained hereinabove . No order as to costs.

(CHIEF JUSTICE)

Announced
in Open Court, on this 15th day of April, 2014

(CHIEF JUSTICE)

Saeed Akhtar
15.4.2014