

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

RFA No.38 of 2022
Bandenawaz (Private) Limited v. Federation of Pakistan through the Deputy Director
Ministry of Defense, Survey of Pakistan & others (CC-100107504805)

J U D G M E N T

Date of hearing: 06-06-2023 Announced on: June, 2023

Appellants by: Mr. Muhammad Rehan, Advocate.

Respondent No.3, 4 & 5 by: Mr. Ilahi Bakhsh Mengal, Advocate.

Official Respondent by: Mr. Abdul Zahir Kakar, DAG, Mr. Muhammad
Zubair, Assistant Director, Survey of Pakistan.
& Mr. Munir Ahmed Sikandar, AAG.

Muhammad Ejaz Swati, J: The appellants are aggrieved against order dated 20-08-2022 (impugned order) passed by learned Senior Civil Judge Hub (trial court), whereby plaint filed by the appellant was returned under Order 7 Rule 10 Civil Procedure Code (CPC).

2. The facts of the case are that respondent No.3 (Nabi Bukhsh) filed a suit No.06/2021 against the appellant on 14-01-2021 and claimed that they were owner of more than 9 acres land measuring 9-9-2 in Khasra No.69/3/3 situated Allah Abad town Sakran and the same was purchased by them from one Riaz Ahmed on 11-09-2016 in consideration of amount of Rs.95,00,000/-. It was further averred in the suit that property of appellants/defendant was situated toward western side adjacent to their property. The grievance of the respondent No.3 in his suit was that the appellant was merely attempting to encroach upon their land as the northern by pass road was constructed by the Government through their land and revenue record/report also favour them and appellate was trying to pretend that road was passing in his land. The appellant besides filing written statement also filed suit No.28

of 2021 on 05-05-2021 against the respondent No.3 and claimed that they were owner in possession of more than 101 acres of land measuring 101-2-28 vide Khasra No.413, 39, 50/1, 51, 53, 53/1 and 54/1 since 1960. It was the case of the appellant that bypass road constructed by the Government was falling within their above land, but the respondent No.3 with revenue official had tempered the record/right and has tried to manipulate passing of road under Khasra No.69/3/3 and sought relief for declaration and to restrain the respondent from interference. Both the suits were consolidated by the learned trial court vide order dated 25-11-2021. The learned trial court after making inquiries in terms of guidelines and principle provided in Punjab High Court Rules, concluded that both the suits filed by the parties are barred under Section 172 of Land Revenue Act 1967 (the Act) and returned the complaints for presentation before proper forum under Order 7 Rule 10 CPC. The appellants have challenged the impugned order while respondent No.3 supported the impugned order.

3. The learned counsel for the appellant contended that findings of the trial court with regard to bar of jurisdiction under Section 172 of West Pakistan Land Revenue Act 1967 is contrary to Section 9 of CPC that suit for declaration and injunction against the trespasser is solely lies within the jurisdiction of civil court and return of plaint under Order 7 Rule 10 CPC is patently illegal. That the learned trial court has failed to exercise his jurisdiction under Section 75 read with Order XXVI Rule 9 of the CPC to appoint a commission to investigate and provide a report regarding the demarcation of the appellant property.

4. The learned counsel for the respondent No.3 contended that the appellants have not challenged the holding of the respondent No.3, but raised a dispute with regard to uncertain portion of land belong to him without support of any existing documents. He placed on record CP No.368 of 2022 decided by this Court vide order dated 30-120-2022, wherein this Court directed the official respondents to pay the compensation amount to the rightful owner of the land consumed in the construction of road. He further supported the impugned order of the learned trial court.

5. We have heard the learned counsel for the parties and perused the record. The appellant in their suit has claimed following relief,

“it is therefore most respectfully prayed that this Honorable Court may be pleased to pass the judgment in favour of the Plaintiff and may graciously be pleased to:

A. DECLARE

(i) That the plaintiff is the owner of the following Khasra/Survey Nos. in the Hub District, Lasbela, admeasuring a total of 101-2-28 acres in Mouza Sakran, Tehsil Hub, Khatoni No.367/1 86 and Khayoot No.336/3.

	Khasra/Survey Nos.	Acres
<i>(i)</i>	<i>4/3</i>	<i>25-0-16</i>
<i>(ii)</i>	<i>39</i>	<i>18-2-19</i>
<i>(iii)</i>	<i>50</i>	<i>1-2-37</i>
<i>(iv)</i>	<i>50/1</i>	<i>5-2-38</i>
<i>(v)</i>	<i>51</i>	<i>3-2-39</i>
<i>(vi)</i>	<i>53</i>	<i>15-2-3</i>
<i>(vii)</i>	<i>53/1</i>	<i>20-3-11</i>
<i>(viii)</i>	<i>54/1</i>	<i>10-1-25</i>

(ii) That the Defendant No.3 and Defendant No.4 are trespassers and land grabbers who are illegally and maliciously encroaching upon the Subject Property.

B. RESTRAIN

(i) The Defendants jointly and severally from carrying out any construction work and/or

allowing any construction work whatsoever at the Subject Property and from creating any third party interests in respect of the Subject Property and from taking any action whatsoever which adversely affects the right, title and interest of the Plaintiff in the Subject Property.

C. DIRECT.

- (i) The Defendant No.1 to forthwith carry out a survey and demarcate the Subject Property.*

D. GRANT

- (i) Costs.*
(ii) Any other relief that this Honorable Court may deem fit in the facts and circumstances of the Subject Suit."

6. From the divergent pleadings of the parties, it appears that there is no dispute between the parties with regard to their owned properties/Khasra number and area mentioned in the pleadings. Land of both the parties were adjacent to each other and construction of road by the Government resulted dispute between the parties. The appellant in their plaint has nowhere pleaded the area of their property encroached or intended to be encroached by the respondent No.3. The pleadings of both the parties reveals that they had not challenged the property recorded on their respective names in the revenue record, but their main claim hinges on the controversy that some portion of their property falls in the construction of the road, therefore, appellants through declaration under Section 42 of the Specific Relief Act 1877 have sought relief of new right of demarcation and the trial court vide impugned order returned the plaint under Order 7 Rule 10 CPC of both the parties for want of jurisdiction under Section 172 of the Act.

7. Section 3 of the West Pakistan Land Revenue Act 1967 (the Act) exclude land not accessed to land revenue from operation of the Act.

Under Punjab Tenancy Act 1887 and under Land Reform Regulation 1972, the term “Land” has been defined as under,

“Land means land which is not occupied as the site of a town, village, factory or industrial establishment, and is occupied or has been or can be let for agricultural purpose allied or subservient to agriculture and include the site of building and other structure on such land (PLD 1972 Central Statute 288”

8. Section 2 (3) of the West Punjab Alienation of Land Act defines “land” as under,

“the expression ‘land’ means land which is not occupied as the site of any building in a town or village and is occupied or let for agriculture purposes or for purposes subservient to agriculture or for pasture etc.”

9. The subject of partition, demarcation and eviction of unauthorized land owner is regulated by Section 135 of the Act read with Rules 67-A, 67-B of the West Pakistan Land Revenue Rules 1968. The provision of Section 117 of the Act authorizes revenue officer to define the limit of any estate or any land on application of any interested person and proceed to define limit of boundaries for ascertaining whether or not any outsider has encroached the property of the applicant and as a result of such proceedings, a land owner, if found in wrongful possession of land can be evicted on an application. Rule 67-B of the West Pakistan Land Revenue Rules 1968, provides a specific procedure for seeking eviction of an encroacher.

10. Undoubtedly in a matter of demarcation of boundaries of agriculture land jurisdiction of civil court is barred under Section 172 (2) (XIII) of the Act, but in case where a claim is laid for declaration,

permanent injunction and possession of area demarcated by the revenue authorities and found encroached by someone, a suit must lie before civil court. Reliance in this respect is made to case title Mehram Khan and others versus Fateh Khan and others (1983 SCMR 366).

11. From the above it appears that in case of controversies between the parties with regard to demarcation of boundaries of agricultural land civil court has no jurisdiction under the provision *ibid*, unless possession of area demarcated by the revenue authorities under the provision of Section 117 of the Act read with Rule 67 (A) and 67 (B) of the West Pakistan Land Revenue Rules, 1968. It is well settled that through a declaration in civil matter claimed under Section 42 of the Specific Relief Act 1877, a pre-existing right can be declared, but a new right cannot be created by grant of a decree by the civil court. Reliance in this respect is placed on case title Director Military Lands & Cantonment Quetta Cantt Quetta and others versus Aziz Ahmed and others (2023 SCMR 860).

12. A claim of encroachment made by a person in his property by the adjacent owner, his remedy lies before the Revenue authorities for demarcation of land under Rule 67-A of West Pakistan Land Revenue Rules, 1968 and in this respect, the Revenue Officer has ample power under Section 117 of the Act, 1967 to define the boundaries.

13. In the instant case, neither any demarcation took place prior to institution of the suit nor appellants have taken any step to this effect. There is no cloud between the parties with regard to title of the properties recorded in the revenue record. Both properties are adjacent

to each other and both parties have raised claim that portion of their property falls in the construction of road made by the Government without specifying the encroached area. As per sale deed (title documents) dated 19th February 1966 relied upon by the appellant. They are owner of a plot of agriculture land measuring 100 acres at Deh Sakran, Sub Tehsil Hub Nadi, District Lasbella and this right of the appellants had not been denied by the respondent No.3. As stated above, the pleading of the parties make it clear that matter of demarcation of boundaries of the agricultural land have been raised by the appellants which fall in the domain of revenue authority and jurisdiction of civil court was explicitly barred under Section 172 (2) (XIII) of the Act. Thus, the impugned order warrants no interference by this Court.

In view of above, RFA No.38 of 2022 is dismissed. Parties are left to bear their own costs.

Quetta:
Announced in open Court.
Dated, Quetta June, 2023

JUDGE

JUDGE