

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN, CIRCUIT
BENCH SIBI

Civil Revision Petition No. (s) 10 of 2021
(CC# 100207400070)

Ali Murad Pirkani and others
Versus
Abdul Malik and others.

JUDGMENT

Date of hearing: 21 March, 2023 Announced on 27 March, 2023.

Petitioners: by Mr. Abdul Sattar Kakar, Advocate .

Respondents: by Mr. Ahsan Rafiq Rana, Advocate and Mr. Muhammad Aslam Jamali, Asst: A.G for respondent No.12.

GUL HASSAN TAREEN J.— This civil revision petition, filed under section 115, the Civil Procedure Code, 1908 (“Code”), is directed from the order and decree dated 20 January, 2021 passed by the Court of Majlis-e-Shoora, Sibi in Civil Appeal No. 13/2020, whereby the suit’s rejection order and decree dated 23 November, 2020 passed by the Court of learned Qazi, Dhadar in Civil Suit No.15/2020 was set-aside and case was remanded to the Trial Court for its adjudication on merits.

2. Facts of the case, in brief, are that the respondent Nos. 1 to 6 (“respondents”) instituted a civil suit for declaration, possession and permanent injunction with the averments that Muhammad Yaqoob, their predecessor, was Lath Band Buzgar (“tenant”) of the petitioners in land, described in para No.1 of the plaint (“suit land”). The said Muhammad Yaqoob (late) was in possession of suit land who used to pay the share of crops to the petitioners. After his demise, the

respondents, being his successors, came in possession of the suit land and were giving share of crops of the petitioners. Four years, prior to institution of the suit, the petitioners dispossessed them from the suit land without due course of law. Finally, the respondents sought declaration of their title as Lath Band Buzgars on the suit land, possession of the suit land and permanent injunction.

3. The petitioners submitted a contesting written statement and simultaneously, made an application under Order 7 Rule 11, the Code, for rejection of the plaint on the ground that, under the Balochistan Tenancy Ordinance, 1978 (“the Ordinance”), the Civil Court has no jurisdiction to try the suit. The Trial Court after hearing both sides, vide order and decree dated 23 November, 2020 rejected the suit under Order 7 Rule 11 (c) and (d), the Code. The respondents impugned the suit’s rejection order in appeal. The Appellate Court vide impugned order and decree, remanded back the case to the Trial Court by holding that since the petitioners have denied the relationship of landlord and tenant, therefore, Civil Court has jurisdiction to try the suit.

4. Mr. Abdul Sattar Kakar, Advocate, counsel for the petitioners contended that under sections 41 and 64 (3), the Ordinance, a Revenue Court has exclusive jurisdiction to try a suit for possession instituted by a tenant of an immovable property allegedly dispossessed by his landlord without due course of law and placed reliance on the case reported as Shah Muhammad and others v. Malik Abdul Rauf and others (1998 SCMR 1363).

5. Mr. Ahsan Rafiq Rana, Advocate, representing respondents, contended that the petitioners have impugned a remand order which is not a “case decided” order; therefore, civil revision petition against such an order is not competent. He next contended that relief of declaration can only be sought from a Civil Court under section 42, the Specific Relief Act, 1877 (“Act, 1877”). He finally contended that the civil revision petition should be dismissed.

6. Heard. Record perused.

7. So far as preliminary objection of respondents’ counsel that remand order is not a “case decided” order, is concerned, it is without legal substance. The Peshawar High Court in the case reported as Akbar Khan and another v. Mst. Jehan Bakhta and other (1991 MLD 1859), has held as under:

“The judgment and decree of the trial Court in favour of the petitioners herein having been set aside by the impugned order it did fall within the ambit of “case decided” and becomes questionable under section 115, C.P.C.”

In this regard, reliance is also place on the judgment of the Supreme Court of Pakistan reported as Noor Muhammad (deceased) through L.Rs and others v. Muhammad Ashraf and others (PLD 2022 SC 248).

8. The question to be determined in this civil revision petition would be, “whether a tenant of an agricultural land dispossessed by landlord without due of law, has either, to file a civil suit under section 8/9, the Act, 1877 before a Civil Court or to initiate proceedings under the provisions of the Ordinance”. For ease of

reference, the relevant provisions of the Ordinance are reproduced hereunder:-

“41. Relief for wrongful dispossession or ejectment.---(1) A tenant who has been ejected or dispossessed in an unauthorized manner may apply/complain in writing to the Revenue Officer with powers of an Assistant Collector of 1st Grade.

(2) On receipt of an application under sub-section (1) above, the Revenue Officer shall hear the complaint and also afford the defendant an opportunity of being heard; and after making such other enquiries as he may deem fit, shall pass an order.

(3) If the Assistant Collector of the 1st Grade or the Revenue Officer decides the case in favour of the tenant, he shall ensure that the tenancy is restored to him within 30 days of the date of order, but if an appeal or revision is preferred against that order, the Collector of the District shall ensure that it is restored within 30 days of the order of the appellate/revisional Court.

42. Bar of relief by suit under section 9, Act I of 1877.---- Possession of a tenant or of any land comprised in a tenancy shall not be recoverable under section 9 of the Specific Relief Act, 1877, by a tenant dispossessed thereof.

64. Revenue Courts and suits cognizable by them: Procedure where revenue matter is raised in a Civil Court.---(1) When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3) or with respect to

an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court.

(3) *The following suits shall be instituted in and heard and determined by Revenue Court, and no other Court shall take cognizance of any such dispute or matter with respect to which any suit might be instituted.*

Second Group

(c) *suits by a tenant to establish a claim to a right of occupancy, or by landlord to prove that a tenant has not such a right;*

(f) *suit by a tenant under section 41 for recovery of possession or occupancy for compensation, or for both;*

The afore reproduced provisions have left no room for doubt that the Revenue Court shall have exclusive jurisdiction to try a suit instituted by a tenant under section 41 for recovery of his possession under section 64 (3), Second Group, clauses (c) and (f) of the Ordinance.

9. Under section 9, the Code, a Civil Court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In the instant case, the cognizance of a suit instituted by a tenant for restoration of his possession, is expressly barred by section 64 (3) of the Ordinance. The Appellate Court has illegally reached at the conclusion that since, the petitioners have orally denied the relationship of landlord and tenant, as such, the Civil Court has jurisdiction to try the suit. The Supreme Court of Pakistan in the case reported as Shah Muhammad and others v. Malik Abdul Rauf and others (1998 SCMR 1363), has held as under:

“A perusal of the petition filed by the respondents before the Assistant Collector, Pishin, shows that it related to

matters exclusively within the jurisdiction of the Revenue Courts which were, under the Balochistan Tenancy Ordinance, 1978, kept outside the purview of the civil Courts. It follows, therefore, that the Revenue Courts in assuming the jurisdiction neither committed any illegality nor excess of jurisdiction. The claims put forward by the petitioners before the Revenue Court certainly raised a question of title but his plea neither determined the forum nor the jurisdiction. Jurisdictional facts, namely, the existence of the relationship of landlord and tenant between the parties was to be determined and decided by that Court which had the initial jurisdiction to take cognizance of the matter, namely, the Revenue Court. It is apparent that those Courts decided the matter. The only course open to the petitioners is to demonstrate that the decision of the jurisdictional facts at the hands of Revenue Courts suffered from any legal infirmity. In the background of the controversy alluded to in the earlier part of this judgment we are of the considered view that the Revenue Courts could not, on the mere assertion of the petitioners, hold that the relationship of landlord and tenant does not exist. A specific mention of this fact has been made in the order of the Revenue Courts. There is, therefore, no defect in assuming jurisdiction or in deciding a jurisdictional fact by the Revenue Courts.”

The Supreme Court of Pakistan in Civil Appeal No.1533/2009, bearing title Mst. Gul Jan and another v. Naik Muhammad and others, has held as under:

“An extract from the record of rights placed on the record would reveal that the appellants have been recorded as occupancy tenants in the land in dispute. If they have been recorded as occupancy tenants and as such have been dispossessed by the respondents otherwise than in due course of law their remedy lay through an application under Section 41 of the Tenancy Act. The learned Trial Court or for that matter any other Court functioning in the hierarchy should have returned their plaint for want of jurisdiction,

notwithstanding the respondents did not raise any exception to the jurisdiction of the Civil Court. Yes, they have also sought the cancellation of the deeds whereby the respondents have purportedly purchased the ownership of the land in dispute but the occupancy tenants unless they are declared owners under the relevant dispensation could not seek the cancellation of the so called deeds for want of locus standi or even a cause of action.”

10. The Trial Court has, however, rejected the suit under order 7 Rule 11 (c) and (d), the Code on the ground of jurisdiction. The Trial Court should have returned the suit under Order 7 Rule 10 the Code r/w section 64 (3) proviso (i), by endorsing upon the plaint, the particulars required by Order VII Rule 10, the Code and returned the plaint for presentation to the Revenue Court.

11. What has been mentioned and discussed above, I am inclined to interfere with the remand order of the Appellate Court. As such, the civil revision petition is allowed and set-aside the impugned order and decree dated 20 January, 2021 passed by the Court of Majlis-e-Shoora, Sibi and the order of the Trial Court is restored with modification that the plaint shall be returned to the respondents for its presentation to the Revenue Court having jurisdiction for decision on merits in accordance with section 64 (3) proviso (i). The parties shall bear their own costs.

Announced in open Court.
Dated: 27 March, 2023

Judge