

JUDGMENT SHEET

IN THE HIGH COURT OF BALOCHISTAN, QUETTA

Civil Revision No(T).07 of 2021
Muhammad Amin Vs. Haji Abdul Wahid & others.
CC#100307400052

&

Constitutional Petition No(T).34 of 2021
The Commissioner, Makran Division at Turbat and another Vs. Abdul
Wahid and others
CC No.100307400152

JUDGMENT

Date of hearing: 19.04.2022

Announced on _____

(In Civil Revision Petition No(T).7 of 2021)

Petitioner by: M/S. Kamran Murtaza & Tahir Ali Baloch, Advocates

Respondent by: Mr. Ali Ahmed Kurd, Advocate.

Official Respondents by: Mr. Saifullah Sanjrani, Additional Advocate General.

(In CP No(T).34 of 2021)

Petitioner by: Mr. Saifullah Sanjrani, Additional Advocate General.

Respondents by: Mr. Ali Ahmed Kurd, Advocate.

Muhammad Ejaz Swati, J:- The respondents No.1 to 8 (plaintiffs) filed a suit for declaration, permanent injunction and specific performance of agreement dated 23.07.2007 against the Commissioner Makran Division and Deputy Commissioner/Executive District Officer (Revenue) Ketch at Turbat (defendants/judgment debtors). The suit after contest was decreed by learned Qazi Turbat vide judgment/decreed dated 16.10.2009. On appeal filed by the defendants the learned Majlis-e-Shoora Makran at Turbat vide judgment/decreed dated 18.01.2010 dismissed the appeal. The defendants filed a civil revision petition No.184 of 2010, which was allowed by this Court vide judgment dated 02.05.2011

and judgments/decrees dated 23.07.2009 dated 18.01.2010 passed by Qazi Turbat and Majlis-e-Shoora Makran at Turbat were set-aside.

2. The respondents No.1 to 8 (plaintiffs) assailed the judgment dated 02.05.2011 of this Court in Civil Petition No.184/2010 before the Honorable Supreme Court of Pakistan, but withdrew the same vide order dated 03.04.2012 after seeking permission to file a fresh suit.

3. The respondents No.1 to 8 filed another suit for declaration permanent injunction, possession, mesne profit before the learned Additional Qazi Turbat against the defendants, which was contested by way of filing written statement and consequently suit was decreed vide judgment/decrees dated 13.02.2015. On appeal filed by the defendants/judgment debtors before the learned Majlis-e-Shoor Makran at Turbat was dismissed vide judgment dated 06.06.2017 which was assailed in Civil Petition No(T).27 of 2017 and the same was dismissed by this Court vide order dated 22.01.2018.

4. The respondents/decrees holders filed an execution application, which was allowed by learned Additional Qazi, Turbat vide order dated 02.04.2019. During the execution proceedings the concerned Civil Administration/judgment debtors on direction of court commenced realization of decree consequent whereof an application under Section 12(2) CPC was filed by the applicant Muhammad Amin S/o Razai (attorney of Majlis-e-Shoora Ijtema Gah) for setting aside judgment/decrees dated 18.11.2003 passed by Qazi Turbat, which was dismissed by Qazi Turbat vide order dated 23.01.2020 being not maintainable. The applicant assailed the order dated 23.01.2020 by way of filing Civil Revision Petition No(T).5/2020 before this Court, which was dismissed vide order dated 16.09.2020,

however, the applicants (Aman Ullah Kashani etc) were allowed to approach the competent forum with all just and legal exceptions.

5. The petitioner Muhammad Amin (arising out of Civil Revision No(T).07/2021) thereafter filed a suit for declaration and permanent injunction against the decree holders i.e. Haji Abdul Wahid etc in the court of learned Additional Qazi Turbat. The respondents/decreed holders also filed another suit for declaration and permanent injunction against Muhammad Amin etc. The suit filed by the Abdul Wahid etc was decreed vide judgment/decreed dated 08.02.2021, while suit filed by the petitioner Muhammad Amin etc was dismissed vide judgment/decreed dated 21.09.2021, which have been assailed by the petitioner Muhammad Amin by way of Civil Revision No(T).07/2021 and the same is pending adjudication.

6. The petitioner Muhammad Amin etc have also filed objection pursuant to judgment/decreed dated 13.02.2015, which was rejected vide order dated 14.02.2020 by the learned Additional Qazi Turbat. On appeal filed by the objector the learned Majlis-e-Shoora Makran at Turbat vide order dated 16.12.2020 dismissed the appeal, which have been assailed by the petitioner by way filing of Civil Revision Petition No(T).07/2021.

7. Pursuant to judgment/decreed dated 13.02.2015 during the execution proceeding the learned executing court vide impugned order dated 25.01.2021 (impugned order) issued show-cause notice to the Tehsildar to seize the official bank account of Commissioner and Deputy Commissioner Ketch, which was challenged by the petitioner arising out of C.P No(T).34 of 2021 before the Majlis-e-Shoor Makran, which was dismissed vide order dated 11.03.2021.

8. The impugned orders dated 25.01.2011 and 11.03.2021 respectively have been assailed by the petitioners by way of filing Constitutional Petition No(T).34 of 2021.

9. Since both the above petitions are arising out of judgment/decreed dated 13.02.2015 and having common facts and question of law, therefore, are being decided through this common judgment.

10. Learned counsel for the petitioner arising out of Civil Revision Petition No(T).07 of 2021 contended that the respondents/decreed holders in the garb of decreed are encroaching the property belonging to the petitioner without having any right or title over the same; that there is a serious dispute between the parties as to whether the property belonging to the petitioner is subject matter of the decreed or otherwise is required to be determined after recording evidence within the view of section 47 Civil Procedure Code (CPC), but the executing Court without framing issue and providing opportunity of leading evidence rejected the objection of the petitioner and thus deprived the petitioner from his valuable rights; that the property belonging to the petitioner has no nexus with the decretal property; that properties of the petitioner have separate Khasra numbers as well as description and is not liable for realization of decreed.

11. The learned AAG while arguing the case on behalf of the petitioner arising out of C.P No(T).34 of 2021 contended that respondents/decreed holders claimed two sets of properties one is settled having Khasra numbers and another regarding which no settlement has been taken place. The decreed holders in respect of second set of property has only given vague description without disclosing the area and now they intend to realize the decreed beyond the decreed according to their

whims and wishes which under the law is not permissible; that for realization of decree for immovable property and mesne profit, the court cannot go beyond decree and same is to be ascertained after receiving report from the Revenue Authority, as the area of the decretal property is uncertain; that the impugned order has been passed contrary to law and is liable to be set-aside.

12. We have heard the learned counsel for the parties and perused the record. First we shall deal the Civil Revision Petition No(T).07 Of 2021, wherein the petitioner is aggrieved against the impugned order dated 14.02.2020 passed by the learned Additional Qazi Turbat whereby application/objection under Order 21 Rule 101, 103 filed by the petitioner was dismissed. On appeal filed by the petitioner was also dismissed by the learned Majlis-e-Shoora Makran at Turbat vide order dated 16.12.2020.

13. The judgment/decreed dated 13.02.2015 passed by learned Additional Qazi in favour of the respondent/decreed holders and against the Commissioner Makran Division and Deputy Commissioner Kech at Turbat has been passed as under:-

"پس حکم ہوا کہ کہ مدعیان متدعوہ کے مالک ہیں اور وہ اپنی اراضی مدعا علیہم سے واپس اور قبضہ لینے کے حقدار ہیں۔ اور مدعیان مدعا علیہم سے کرایہ لینے کے حقدار ہیں اور متدعوہ اراضی پر خیمہ بستی وغیرہ مبلغ پانچ لاکھ روپے سالانہ کے حساب سے از تاریخ ماہ اگست 2009ء تا امروز مدعا علیہم مدعیان کو ادا کرے اور مدعا علیہم کو حکم دیا جاتا ہے کہ مدعوہ کا قبضہ مدعیان کو دیں۔ اور متدعوہ پر مداخلت سے بازو ممنوع رہیں۔ آج مورخہ 13 فروری 2015 کو میرے دستخط و مہر عدالت سے جاری ہوا۔"

The above judgment/decreed has been upheld by this Court in Civil Revision No(T).27 of 2017 dated 22.01.2018.

14. The execution application filed by the decree holder was decided by the executing Court vide order dated 02.04.2019 as under:-

“Keeping in view above discussion, the execution application is accepted to the extent of judgment and decree dated 13.02.2015 while the request made for mutation on the names of decree holders has not been granted by this court, so request made for mutation on their names is rejected. The decree holders are just entitled for the relief as per decree dated 13.02.2015. The judgment debtors/ respondents are directed to implement the judgment and decree dated 13.02.2015 within one month and report be sent to this court on 02.05.2019. ”

15. Besides above, the decree holder prior to above suit/decreed had also filed a suit for declaration and permanent injunction in respect of Khasra Nos.85, 86, 89, 90, 93, 94 boundaries described in the plaint, against Member Board of Revenue Balochistan, and District Coordination Officer District Kech Turbat, which was decreed by the learned Qazi Turbat vide judgment and decree dated 18.11.2003 in favour of Haji Abdul Wahid/ the present decree holder as under:-

دعویٰ مدعیان ثابت ہے ڈگری معدعویہ شرکاً کوہ مراد غرباً پسنی
روڈ شمالاً خالی زمین اڈہ جنوباً نالہ شہب بحق مدعیان بخلاف
مدعاعلیہم صادر کی جاتی ہے۔ متدعویہ مدعیان کی مقبوضہ
ملکیت ہے مدعاعلیہم مداخلت سے باز رہیں۔

16. The appeal filed by the Secretary Revenue Board of Balochistan, Quetta before Majlis-e-Shoora Makran at Turbat was also dismissed vide judgment/decreed dated 26.03.2004. This Court vide order dated 15.07.2008 in Civil Revision No.149 of 2004 also upheld the judgment/decreed dated 18.11.2003 passed by the trial Court. The relevant is reproduced herein below.

“Admittedly; at the time of filing suit settlement was not finally attested, as such; no presumption could be drawn in favour of State about ownership of land in dispute. The respondents also brought on record copy of Khatooni issued to them during initial survey of land showing them

to be owner in possession, authenticity whereof was not denied by the representative of petitioners who recorded statement on oath on petitioners' behalf.

As neither settlement was finally attested at the time of filing of suit nor any evidence was produced by the petitioners to prove ownership of government over the land in dispute, the suit in present form was competent against who were threatening ownership and possession of the respondents. Additionally; no such objection was taken in written statement or before the appellate Court, as such; could not be allowed to be raised at revisional stage. The judgments referred to by learned Additional Advocate General in view of above discussions are distinguishable and not applicable to the peculiar facts of instant case.

For the foregoing reasons, I find no merits in the instant petition, which is dismissed accordingly.” ”

17. The learned Secretary Revenue Government of Balochistan and other assailed the above judgment by way of filing Civil Petition No.14-Q/2009 against Haji Abdul Wahid and others, the Honorable Supreme Court of Pakistan was pleased to dismiss the above petition vide order dated 24.04.2009 as under:-

“After hearing the argument of the learned ASC for the petitioner, we hardly find any sufficient convincing ground for condonation of the delay, hence this petition is dismissed being barred by 154 days”.

From the above it is obvious that there is no cloud with regard to ownership of the respondents/decreed holders in respect of properties described in the plaints in view of judgment/decreed dated 18.11.2003, besides pursuant to judgment/decreed dated 13.02.2015 passed by learned Additional Qazi Turbat, the respondents/decreed holders are also entitled to receive mesne profit and possession of the land in terms of the decreed.

18. The application/objection of the petitioner arising out of Civil Revision under Order 21 Rule 101, 103, CPC on the ground of his claim described

in the application/objection have twice been attended by the executing Court, appellate Court and this Court. The petitioner in view of Rule 101, 103 of Order 21 CPC has claimed protection/restoration of possession. These rules in its terms are analogous to Section 47 and Rule 62 of Order 21 CPC. The combined effect of Section 47, Rule 62 and 103 of Order 21 read with Section 12 (2) CPC is that all question as to title right or interest in a possession of immovable property shall be determined by the executing Court or by way of filing application/objection and a separate suit is barred.

19. This court in Civil Revision Petition No(T).05 of 2019 vide order dated 16.09.2020 while deciding objection of the petitioner in terms of Rule 101, 103 of Order 21 CPC and application under Section 12(2) CPC upheld the order of the trial Court/Executing court, which has not been further assailed by the petitioner and the same has taken finality. Besides suit on the same averments filed by the petitioner was also dismissed by the competent court of law, thus the learned counsel for the petitioner has failed to point out any material irregularity/illegality to warrant interference in the impugned order.

The petitioners arising out of C.P No(T).34 of 2021 is concerned, the petitioners have assailed the impugned order dated 25.01.2021 of the executing court whereby while issuing show-cause notice to Tehsildar also ceased the official Bank Account of Commissioner and Deputy Commissioner Kech.

The impugned judgment/decreed dated 13.02.2015 has been passed against the petitioner which has further been upheld by this Court in Civil Revision Petition No(T).27 of 2017 dated 02.04.2019 . The petitioners/judgment debtors are under legal obligation to realize the decree by meets and bond. The payment of

mesne profit and delivery of possession to the decree holder is the mandate of the decree. Section 51 to 54 of CPC described procedure in execution or mode for execution which includes delivery of property payment in case of money decree including mesne profit specifically decreed (b) By attachment or sale of judgment debtor property and by arrest and detention. The petitioners/judgment debtors are liable to realize the decree in accordance with law and cannot escape from their liability envisaged under the law, however, six months' time is granted to the petitioners arising out of C.P No(T).34 of 2021 for realization of the decree in its terms.

In view of the above, Civil Revision Petition No(T).07 of 2021 and Constitutional Petition No(T).34 of 2021 are dismissed accordingly.

Announced in open Court at Quetta
Today this _____ day of April, 2022,

JUDGE

JUDGE