

JUDGMENT SHEET

IN THE HIGH COURT OF BALOCHISTAN, QUETTA

Civil Revision Petition No.489 of 2023
(ID-100107604389)

Abdul Shakoor

VERSUS

Saeed Khan & others

Under section 115, C.P.C

ORDER

Date of hearing: 22.12.2023

Announced on: 28.12.2023

Petitioner by: M/s Syed Ayaz Zahoor, Amanullah Battezai, Bakhtiar Sherani & Aster Mehak, Advocates

Respondent Nos. 1 to 3 by: Mr. Qurban Ali Tareen, Advocate

Respondent Nos. 4 to 6 by: Mr. Allauddin Kakar, Assistant Advocate General

NAZEER AHMED LANGOVE, This petition is directed against the orders dated 20th June 2023 and 30th September 2023, passed by the learned Senior Civil Judge, Kuchlak, and the Additional District Judge, Kuchlak with the prayer to set aside the impugned orders passed by the courts below and dismiss the respondents' (plaintiffs') application under Order XXXIX Rule (2B), C.P.C.

2. Heard the learned counsel for the parties and gone through the record with their assistance.

3. Facts of the case are that respondents Nos.1 to 3 (plaintiffs) filed a civil suit (No.76/2021) for declaration, partition, and permanent injunction against the petitioner and respondents Nos. 4 to 6 (defendants) with averments that they are recorded owners of the property situated at Mahal Karez Garanjawi, Mouza Khaizi, Tappa Baleli, Tehsil Saddar, District Quetta (detail is mentioned in the plaint).

An application accompanied the main suit under Order XXXIX, Rule 1 & 2, read with section 151, C.P.C for temporary injunction.

4. On service of notice, the petitioner (defendant No.1) filed his written statement and rejoinder to the application. He raised various legal objections regarding the suit's maintainability and contested the same on merits.

5. After hearing the arguments, vide order dated 30th April 2022, passed by the learned trial court (Civil Judge, Kuchlak), allowed the application under Order XXXIX, Rule 1 & 2, C.P.C. The parties were directed to maintain status quo. Assailed in civil appeal No.32/2022, but up-held, vide order dated 26th July 2022, passed by the learned appellate Court (Additional District Judge, Kuchlak); challenged in civil revision petition No.483/2022; vide order dated 2nd November 2022, passed by this Court, the petition was disposed of with the following observations:

"7. Because of the above legal proposition, and with the consent of the parties' learned counsel, the petition on having become infructuous stands disposed of. However, until the filing of the application under Order XXXIX Rule 2B, C.P.C, and its disposal by the trial court, the order dated 23rd August 2022, passed by this Court shall remain in the field to the following effect:

"For the reasons mentioned therein, the application is partly allowed, and operation of the impugned orders dated 30.04.2022 and 26.07.2022 passed by the learned Civil Judge, Kuchlak, and Additional District Judge, Kuchlak, are suspended. Both parties are directed to maintain status quo regarding the

property in dispute till the next hearing date."

The parties are directed to appear before the learned trial court and the latter to proceed with the matter and constitute a Local Commission with the mandate regarding the alleged violation of the order dated 23rd August 2022 passed by this Court in the Civil Revision petition No.483/2022, plus the excessive property allegedly occupied by the respondents, whereon they raised construction in violation of the order mentioned above."

In compliance, the learned trial court constituted a Local Commission comprised of Mr. Shams-ud-Din Achakzai, an Advocate, who visited the site and submitted a comprehensive report, objected by the respondents (plaintiffs). Meanwhile, vide order dated 20th June 2023, the learned trial court allowed the respondents' (plaintiffs') application under Order XXXIX Rule (2B), C.P.C, and extended the stay order for six months. Assailed in civil appeal (No.55/2023), but dismissed, vide order dated 30th September 2023, passed by the appellate Court (Additional District Judge, Kuchlak). Hence, this petition with the prayer mentioned above.

6. During arguments, it has come on record that the order dated 20th June 2023, passed by the trial court after the expiry of six months, also ceased to exist, as provided under Order XXXIX Rule (2B), C.P.C. Therefore, the orders impugned assailed before this Court are not in the field.

However, the petitioner's learned counsel urged with vehemence that the very suit for declaration, partition, and permanent injunction filed by the respondents was not maintainable and should have been rejected by the Court even before filing any application

under Order-VII, Rule 11, C.P.C. They added that the parties in lis are not relatives, nor is the property inherited; therefore, no suit for partition could have been filed and entertained. The learned counsel pointed out various contradictions regarding the self-contradictory claim in the plaint.

On the other hand, the respondents (plaintiffs) learned counsel argued that the respondents are legal and lawful owners of the property with peaceful possession, which is evident from the institution of a complaint by the petitioner under the Illegal Dispossession Act 2005 provisions. He questioned the Local Commission's report to some extent with the view that the Local Commissioner exceeded his mandate by making unnecessary observations regarding ownership of the property-in-dispute.

7. Although the Local Commission, after taking pains, prepared a comprehensive report, it lacks the identification of the actual property owned by the parties in lis and occupied by the respondents, as alleged by the petitioner.

To resolve this fundamental issue, it would be necessary to get the property inspected afresh through a Commission in the light of the revenue record, with the help and assistance of revenue authorities, to address the root cause.

8. In such view of the facts, the instant petition on having become infructuous is disposed of. However, the respondents (plaintiffs) can apply to the learned trial court as provided under Order XXXIX Rule (2B), C.P.C for extension of injunction; on filing, the same shall be noticed to the other side and decided strictly following the law.

The learned trial court is directed to constitute a Commission with the consent of the parties with the mandate to visit the site with the help and assistance of some responsible revenue officer(s)/official(s) with the relevant revenue record to identify the exact location of the property claimed, possessed and disputed between the parties in lis and proceed with the matter following the law.

Quetta,
Announced today on:
28th December 2023

JUDGE

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