

JUDGMENT SHEET

IN THE LAHORE HIGH COURT MULTAN BENCH,
MULTAN
(JUDICIAL DEPARTMENT)

Civil Revision No.923 of 1996.
Province of Punjab and two others
Vs.
Abdul Ghani etc

JUDGMENT

DATE OF HEARING: 28-04-2015.

PETITIONERS BY: Mr. Muhammad Aurengzaib Khan,
Assistant Advocate General Punjab.

RESPONDENTS BY: Mr. Abdul Rashid Sheikh, Advocate.

AMIN-UD-DIN KHAN, J. Through this civil revision the petitioners-defendants have challenged the judgment & decree dated 13.03.1996 passed by the learned Additional District Judge, Muzaffargarh, whereby the appeal filed by the respondents-plaintiffs was accepted, by way of which, the judgment & decree dated 06.12.1993 passed by the learned Civil Judge 1st Class, Muzaffargarh dismissing the suit for declaration filed by the respondents/plaintiffs, were set aside.

2. At the very outset learned counsel for the respondents has raised the objection that revision is barred by limitation.

3. As per report of the office revision has been filed within the prescribed period of limitation. Learned counsel for

the respondents states that initially though the revision was filed within the prescribed period of limitation but for removing the office objection the time consumed is over and above than the time given by the office. In this regard learned Assistant Advocate General has relied upon the judgments **“PLD 2012 Supreme Court 400 (Hafeez Ahmad and others Vs. Civil Judge, Lahore and others) and PLD 2014 Lahore 1 (Muhammad Boota Vs. Basharat Ali)”** to argue that when the civil revision was initially filed within the prescribed period of limitation and if there was any objection raised by the office and the time for removing the objection if consumed more than the time granted by the Court, revision cannot be dismissed as barred by time. In the light of judgments relied by the learned A.A.G. I agree that this revision cannot be said to be a barred by time.

4. The other facts are that this revision was allowed by this Court vide judgment & decree dated 10.07.2003. Subsequently the respondents filed review petition No.11-C-2003 agitating therein that actually the Court heard the arguments on the point of limitation only and the main revision petition was not heard, therefore, vide order dated 01.10.2013 passed by the learned Division Bench of this Court the review application was accepted and the judgment passed by this Court on 10.07.2003 was set aside and civil revision was ordered to be fixed for hearing as it is presumed to be pending.

5. The respondents/plaintiffs on 21.01.1985 filed a suit for declaration that they are owner in possession of suit property and the defendants have absolutely no right over the property and order passed by defendant No.4 dated 08.02.1983, whereby the property has been transferred to defendants No.2 and 3, has been challenged and mutation No.52 attested on 09.09.1984 has therefore been challenged. The case pleaded by the plaintiffs in their plaint is that the property was allotted to them by defendant No.2 under the right of return of property under Thall Development Act. Now through Patwari Halqa it came to the knowledge of plaintiffs that defendant No.2 i.e. Thall Development Authority is transferring the property to other defendants, therefore, this suit has been filed. The written statement was filed and suit was contested. Learned trial Court framed the issues and invited the parties to produce their respective evidence. Both the parties produced oral as well as documentary evidence in support of their versions. After the completion of trial while deciding issues No.5, 6 and 7 against the plaintiffs suit was dismissed by the learned trial Court vide judgment & decree dated 06.12.1993. An appeal was preferred before the learned first appellate Court, which was accepted vide judgment & decree dated 13.03.1996 on the ground that the respondents failed to produce the order of acquisition of property.

6. I have heard the learned Assistant Advocate General and the learned counsel for the respondents at full length and gone through the record.

7. The plaintiffs came forward with the prayer that they be declared owner in possession of suit property for seeking a declaration of title under section 42 of the Specific Relief Act, 1877. It was incumbent upon the plaintiffs to prove the case pleaded by them. While going through the record I have noticed that the plaintiffs produced PW-1 Muhammad Tufail, who has just stated that the property is in possession and owned by the plaintiffs. In cross-examination he stated that under the right of return the property was allotted to the plaintiffs and in the next paragraph he stated that the plaintiffs have purchased the property from the local owners, Abdul Ghani purchased the property in the year 1964-65, whereas stated that Mushtaq Ahmad purchased the property in the year 1970-71. Stated that I have learnt that the property has been purchased by the plaintiffs but he was not present at that time. PW-2 is Abdul Aziz, his statement is also very short one. The plaintiffs opted to produce documentary evidence from Ex.P-1 to Ex.P-10 and opted to appear as their own witness after the recording of evidence of defendants and one of the plaintiffs Mushtaq Ahmad appeared as PW-3 after the recording of evidence of the defendants. The stance taken by the plaintiffs is contrary one. They claim the property under the right of return and simultaneously their case is

that they have purchased the property from local owners to whom the same was allotted under the right of return of property. When the plaintiffs opted not to appear as their own witness at the time of affirmative evidence, his statement when one of the plaintiffs appeared as PW-3 after the recording of evidence of defendants, can only be read as rebuttal evidence and not in affirmative evidence. The findings recorded by the learned trial Court are based on the evidence available on the file, whereas the learned first appellate Court has fell in error while finding that the defendants failed to prove on record that the property was ever acquired when it was the case of plaintiffs that under the right of return under Thall Development Authority the property has been allotted to them or allotted to the local owner from whom they have purchased, there was no question in issue with regard to acquisition of property by the defendants/Thall Development Authority and further the defect of appearance of one of the plaintiffs as PW-3 has not been noted by the learned first appellate Court. Furthermore, the findings recorded by the learned first appellate Court are in clear violation of the procedure provided under Order XLI Rule 31 of the CPC. Learned first appellate Court was required under the law to record issue wise findings or to frame point for determination. Neither the findings have been recorded issue wise nor the point for determination has been framed. On this score also the

judgment passed by the learned first appellate Court is defective one.

8. From Ex.D-1 the notification dated 03.02.1971 it was proved that in the year 1971 when Thall Development Authority placed the entire land including the land in question under the administrative control and disposal of Communication and Works Department (Housing & Physical Planning Department), therefore, there was no question of allotment/adjustment of suit land against the rights of return by the TDA. Neither in the plaint nor in the evidence it was disclosed by the plaintiffs as to when the suit land was allotted/adjusted in their favour and no evidence has been produced on record by the plaintiffs to prove that the impugned order passed by defendant No.2 or mutation of land in favour of defendant No.3 was against the facts and was illegal. As I have noted supra the judgment passed by the learned first appellate court is result of confusion in the mind of learned Additional District Judge, at one place it has been recorded that the property could have been acquired under the Land Acquisition Act after paying the compensation, it was nobody's case and under the Thall Development Act the property was acquired, therefore, the findings of learned first appellate Court are absolutely not sustainable under the law. When the plaintiffs/respondents miserably failed to prove their case pleaded by them, I disagree with the findings recorded by the learned first appellate Court.

9. For what has been discussed above, this civil revision is allowed and the impugned judgment & decree dated 13.03.1996 passed by the learned Additional District Judge, Muzaffargarh, are set aside and that of the trial Court are restored.

(Amin-ud-Din Khan)
Judge

Qurban*

Approved for Reporting

Judge