

From No:HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Case No. Writ Petition No.3148/2011

Mst. Bashir Begum

Member Judl., Board of Revenue etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or Counsel, where necessary.
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04.10.2016	Sheikh Istadamat Ali, Advocate for the petitioner. Mr. Muhammad Siddique Alvi, Advocate for the respondents.
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Through this petition, the petitioner has called-in-question the orders dated 07.09.2011, 07.10.2009, 11.03.2003 and 28.08.2000 passed by respondents No.1 to 4, respectively.

2. The facts relevant for disposal of this petition are that respondents No.5 to 7 filed an application for partition of the suit land being co-sharers, which was allowed by respondent No.4, against which the petitioner approached respondent No.3 on the ground that she had been condemned unheard; hence the order be set-aside and case may be remanded for re-adjudication. Failing to obtain favourable order, the petitioner approached the Additional Commissioner, Rawalpindi, who reached on the conclusion that the petitioner neither had any land in the said Khata nor had she any locus standi to challenge the orders; hence, he dismissed her revision petition and in consequence whereof, second revision before the Member Board of Revenue was also dismissed on the same lines as held by the Additional Commissioner.

3. At the very outset, learned counsel for the petitioner submits that the petitioner has been non-suited on the main ground that she has no land in the Khata and she being a landless person has no locus standi to agitate the matter before the revenue hierarchy but contrary to it, he has referred to Register Haqdaran Zameen available at Page 103 & 107 to substantiate that she was owner of land in the same khata and these documents of her ownership have not been taken into consideration, therefore, the orders passed by the respondents are unsustainable in the eye of law.

On the other hand, learned counsel for the respondents contends that the official respondents have concurrently rejected the plea of the petitioner, therefore, this Court has no jurisdiction where the question of fact has concurrently been decided by lower forums. He has placed reliance on Revenue Employees Cooperative Housing Society Limited and 8 others vs. Mst. Bachoo and others (2001 SCMR 155) and Messrs Pak Suzuki Motor Co. Ltd. Vs. Karachi Port Trust and 2 others (2001 YLR 1383).

4. I have heard the learned counsel for the parties and examined record.

5. It is established from revenue record that the petitioner had land in same khata and when confronted, learned counsel for the respondents instead of substantiating the validity of the orders passed by respondents No.1 to 4, put reliance on the judgment of Hon'ble Supreme Court and reiterated his contention that disputed question of fact in constitutional jurisdiction cannot be considered and this Court has no jurisdiction to interfere with the orders passed on revenue side. Said contention has no force. It is nowhere held by the apex Court rather laid down in case-law reported in Khalil

Ahmad vs. Abdul Jabbar Khan and others (2005 SCMR 911) that where misreading and non-reading floating on the surface of record is pointed-out by any party, the same shall be annulled without considering the decision of the authority even found concurrently. Relevant portion whereof, is reproduced hereunder:-

“Having thus, examined the entire record in some detail in the light of the submissions made by the learned counsel for the parties, we find that the impugned judgments and decrees, although consistent with each other, were not entitled to the respect which attaches to such concurrent findings because the said judgments were based on misreading and non-reading of the material evidence which was available on record and which had escaped the notice of the learned subordinate Courts and the attention of the Honourable Revisional Court.”

6. The petitioner has established from the revenue record that she was/is owner in the same khata and this un-rebutted evidence has not been taken into consideration. Even a single sentence has not been uttered in the orders impugned to discard this argument. Therefore, I am of the firm view that the case-law referred to by the learned counsel for the respondents is not applicable in this case; hence, the orders impugned, passed by respondents No.1 to 4 are hereby set-aside, in consequence whereof, the application for partition of khata shall be deemed to be pending with respondent No.4, who shall re-adjudicate the same after hearing all the parties and examining record of the case. The parties are directed to appear before respondent No.4 on 17.10.2016.

7. This writ petition is accepted and case remanded.

(MUHAMMAD AMEER BHATTI)
JUDGE.

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