

**Stereo. No.H C J D 38.**

**Judgment Sheet**

**IN THE LAHORE HIGH COURT, MULTAN BENCH.**

**MULTAN**

**JUDICIAL DEPARTMENT**

**Writ Petition No.9274 of 2011**

**Tahseen Asghar and another**

**Versus**

**The Additional District Judge and two others**

**J U D G M E N T**

<b>Date of Hearing</b>	8.5.2017
<b>Petitioners By:</b>	Syed Kabir Mahmood,Advocate.
<b>Respondents By:</b>	Mr.M.Bilal,Advocate.

**Muhammad Ali, J.-** This constitutional petition calls in question the judgment and decree of the trial Court and order passed in revision, whereby suit for possession filed by respondent No. 3 under Section 9 of the Specific Relief Act, 1877 (“Act”) against the petitioners was decreed and the decision was upheld in revision filed by the petitioners.

2. Concisely, the facts of the case are that the plaintiff-respondent No.3 (hereinafter referred as the “**respondent**”) filed a suit for possession under Section 9 of "the Act" contending therein; that the respondent purchased land in dispute through registered Sale Deed No.332 dated 21.02.1995 and on the basis of the sale deed Mutation No.6248 dated 13.10.2004 was attested in his favour; that the respondent was in possession of the land in dispute being its owner; that the petitioner-defendant purchased land measuring 17 marlas through Registered Sale Deed No.1653/01 and land measuring 17 Marlas through Registered

Sale Deed No.1655/01 dated 20.7.2005; that after purchasing the land in joint khewat the petitioners were contemplating to take possession of the property owned by the respondent; that the respondent apprehending some foul play, filed a suit for permanent injunction against the petitioners, titled as "*Abdul Razzaque v. Muhammad Bakhsh etc*" in which ad-interim injunctive order was passed on 02.08.2005 regarding the property in dispute; that *in spite* of this the petitioners took possession of the suit property on 04.08.2005; that consequently, the respondent filed an application for initiating contempt of Court proceedings against the petitioners and also requested the petitioners to restore the possession, the request was not acceded to, hence the suit was filed.

3. The petitioners contested the suit by filing written statement and raised factual and legal pleas, it was stated that the petitioners got possession of the land after purchasing the same from Ghulam Muhammad and Muhammad Arshad Iqbal through Registered Sale Deeds No. 1653/1, 1655/1 dated 20.07.2005 and Registered Sale Deed No. 1770/1 dated 27.07.2005 and were in peaceful possession of the property since its purchase. From divergent pleadings of the parties, the learned trial Court framed necessary issues and proceeded with trial. After recording evidence of the parties the learned trial decreed the suit vide judgment and decree dated 23.02.2007. The decision was challenged by the petitioners by filing civil revision, same was accepted and the case was remanded to the trial Court. The suit was once again decreed on 01.04.2010. Feeling aggrieved, the petitioners filed civil revision which was dismissed on 22.06.2011, hence this writ petition.

4. The learned counsel for the petitioners contends that respondent was never in possession of the property so his dispossession is out of question; that the essence of a suit under Section 9 of "the Act" is that title of the property is not to be established and it has no importance, the whole emphasis is upon physical possession of the disputed property; that the learned trial

Court decreed the suit on the basis of title only, without properly ascertaining as to who was in physical possession of the property when alleged dispossession was claimed; that the respondent based his claim on title, if at all he had some grievance the only remedy available to him was to file a regular suit under Section 8 of "the Act"; that the respondent filed a suit for recovery of possession of plots No. 49 and 50, but he failed to prove existence and exact location of plots No. 49 and 50 and also failed to prove as to how these plots were carved out and numbered; that there was no document to support plea of the respondent to prove existence of these plots like site map, revenue record or property tax receipts; that the Sale Deed No. 332 dated 21.02.1995 Exh.P7 is evident of the fact that a share 34/3880 in a joint Khewet No.73/72 was purchased by the respondent, it is for this reason that Mutation No. 6248 dated 13.10.2004 Exh.P-8 is silent about existence of plots No. 49 and 50.

5. Conversely, learned counsel appearing on behalf of the respondent by supporting the decisions under challenge contends that the respondent through clear and convincing evidence proved that he was in possession of the property since 1995 and was dispossessed by the petitioners; that both the Courts below taking into consideration entire evidence have rightly decreed the suit.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. Admittedly, no boundaries are mentioned in the Registered Sale Deed of the petitioner. The respondent purchased the property from joint khata as is evident from the mutation entered in favour of the respondent. The respondent on 02.08.2005 filed a suit for permanent injunction against the petitioners seeking restraining order against the petitioners from interference in his possession. The respondent on 01.09.2005 filed an application for initiating contempt of court proceedings against the petitioners, it was stated in his application that the petitioners have dispossessed the respondent from the suit property on 04.08.2005 at 04:00 P.M. and that the petitioners along with

Asghar Ali and Ghulam Muhammad armed with weapons took possession of the property and that they were shown orders of Civil Court in presence of Muhammad Ishaq and Akhlaq Ahmed for which no remorse was shown for their illegal act. Thereafter, the respondent filed a suit under Section 9 of "the Act" on 28.01.2006 in which he contended that petitioners purchased the property from same khata and they dispossessed the respondent on 04.08.2005. The suit was resisted by the petitioners, it was denied that they have dispossessed the respondent and stated that after purchasing the suit property from Ghulam Muhammad on 20.07.2005, they have been in peaceful possession of the property and there is no reference of plots No.49 & 50 in the surroundings of the boundaries mentioned in their Registered Sale Deeds.

8. The respondent in order to discharge burden of proof of issue No. 1 appeared as PW-1, in his statement he referred to dimensions of the suit property, these dimensions are not mentioned in his Registered Sale Deed. Perusal of statement of the respondent shows that most of his statement regarding the manner in which he was dispossessed was not mentioned in his plaint, rather his examination-in-chief is contradictory to the contents of his plaint as well as his application for contempt of Court proceedings. The respondent in his evidence introduced a new story regarding his dispossession. The deposition of PW-1 is also contradictory as far as time of occurrence is concerned, which was mentioned as 04:00 P.M, whereas in his cross-examination he stated that he got information from Ishaque regarding taking of possession at 07:00 A.M. The witness stated that he came to the spot with Ashfaq Ahmed, Ikhlaq Ahmed, Muhammad Ishaque, his brother Nazar Hussain and after some time other relatives also reached there. The respondent further stated that he reached at the spot at 11:00 A.M/12:00 PM in a car and at that time petitioner No.1 and his father were present at the site armed with weapons and a bag full of bullets, they were asked not to drop bricks at the property and refrain from interfering in his possession. The respondent thereafter states that

he was on a motorcycle, whereas the petitioners were on three cars and they took the key of the motorcycle and after that on the pretext of compromise took them in a car to Muhammad Talat's house and got their signatures on blank white papers, whereas in his cross-examination he stated that thumb impressions were obtained on stamp papers forcibly. These series of events narrated by the respondent in his statement are not mentioned in his plaint and contempt of Court application. In his entire statement the respondent has not stated that petitioner No.2 who happens to be a woman was accompanying petitioner No.1, whereas as it was stated so in his plaint and contempt of Court application. Interestingly, the blank papers or stamp papers on which the respondent alleged that his signatures or thumb impressions were obtained were never used at any stage of the proceedings by the petitioners.

9. The examination-in-chief of PW-2 is also contradictory to the suit filed by the respondent because in the plaint there is no reference to what has been stated by the witness that on 02.08.2005 the petitioners wanted to unload trolley of bricks at the suit property. The examination-in-chief of PW-2 completely shatters the stance taken by the respondent in his pleading and in his evidence. Relevant portion of his examination-in-chief reads as under:-

"مورخہ 02.08.2005 کو مدعا علیہم نے ایک ٹرائی اینٹ ہائے پلاٹ میں گرانا چاہی مگر میں نے ان کو منع کر دیا۔ میں نے اسی روز stay لے لیا اور کہا کہ تم اس جگہ پر کوئی تعمیرات نہ کرنا۔ اس سے دو روز بعد ہم نے اس جگہ کمر تعمیر کرنا چاہا جس پر مدعا علیہم نے ہم کو ڈرایا۔ پھر ہم کو زبردستی گاڑی میں بٹھا کر اپنے ساتھ لے گئے ہم ڈرے ہوئے تھے۔ عرضی نوٹس کو بلا کر خالی پھر کہا لکھو اس پر ہمارے دستخط کروالئے۔ کمرے کی کنڈی لگائی تھی۔ کلاشکوف لے کر بیٹھے ہوئے تھے۔ جب ہم ان کے پاس تھے پیچھے سے انہوں نے اراضی متدعوئیہ پر قبضہ کر لیا، قبضہ مدعی اراضی متدعوئیہ پر بحال کرایا جائے۔ جب مدعا علیہم نے قبضہ کیا اس وقت میں، مدعی، اخلاق و دیگر اشخاص تھے۔"

There is no reference in the respondent's statement that on the fateful day they wanted to construct a room and they were forcibly taken on gunpoint to some place. Muhammad Ikhlq PW-3 who also claimed to be witness of the occurrence stated that on 04.08.2005 the petitioners came to the suit property and

forced them to sit in cars and took them to a house where they were forced to sign documents and in the meanwhile petitioners took forcible possession of the property. The witness stated that at that time PW-1, PW-2, he himself and others were present, there is no reference in his statement about presence of respondent's brother Nazar Hussain.

10. The respondent claimed to be in possession of the property and PW-2 stated that respondent was cultivating the suit property; however there is no entry in the name of respondent in *Khasra Girdawari* Ex.D5, rather possession of Ghulam Muhammad is mentioned from whom the petitioners had purchased the property. Relief under Section 9 of "the Act" is discretionary in nature and could not be granted to a person who has approached the Court with unclean hands or has fabricated a story. The respondent miserably failed to prove that he was dispossessed from the property, the stance taken by him in his suit is completely contradicted by the evidence he led. It is settled principle of law that none of the party in a civil suit could be allowed to adduce evidence which was never pleaded and decision of the case could not rest on such evidence. Reference could be made to the case of COMBINED INVESTMENT (PVT.) LTD v. WALI BHAI (PLD 2016 S.C 730). When any evidence beyond the pleadings is adduced, no party on the basis of such evidence could be allowed to set up altogether new case at his caprice and press the same for getting a decree. Reliance could be made on the case of ESSA ENGINEERING COMPANY PVT. LTD. v. PAKISTAN TELECOMMUNICATION COMPANY LIMITED (2014 SCMR 922). It was held in the case of MUHAMMAD NAWAZ alias NAWAZA v. MEMBER JUDICIAL BOARD OF REVENUE (2014 SCMR 914) that anything stated outside the scope of pleadings could not be looked into and no decision could be based on such evidence.

11. The two Courts below have based their findings on the title documents of the respondent, whereas in a suit under Section 9 of "the Act" the Court is only required to see if the plaintiff was in possession of the property and was he dispossessed by the

defendant. The fundamentals to be proved by the plaintiff in order to succeed in getting relief in such suit would be his possession of the immoveable property and that he was dispossessed from the property without his consent and such dispossession was otherwise than due course of law. The object of Section 9 of "the Act" was to discourage people from forcibly occupying immoveable property by taking law in their own hands and further to safeguard the possession of a person to the immoveable property, irrespective of his title. Such remedy could not be used as a tool to dispossess a person already in possession of the property. Keeping in view the discrepant and contradictory evidence of the respondent it is safe to conclude that he was never in possession of the property and made up a story. The Courts below have failed to exercise jurisdiction in a proper manner and have failed to consider that they were not deciding a suit under Section 8 of "the Act" rather the matter before them was a suit under Section 9 of "the Act" which has its own limitations and requirements. The Court in a suit under Section 9 of "the Act" could decide only the claim of possession and is not required to decide title, right or legal character of claimant of the property. The question of title was ancillary to the proceedings under Section 9 of "the Act" which could not be looked into for restoring the possession. The version of the respondent was not supported by any evidence. The august Supreme Court of Pakistan in the case of CANAL VIEW COOPERATIVE HOUSING SOCIETY v. JAVED IQBAL and another (PLD 2004 S.C 20) has laid down essential ingredients to be established in a suit under Section 9 of "the Act". The relevant portion reads as under:

*"6. In a suit for possession under Section 9 of Specific Relief Act essential ingredients to be established at the trial are "(i) that the plaintiff was in possession of the immoveable property; (ii) that he was dispossessed by the defendant, (iii) that he was dispossessed against his consent and not in accordance with law, (iv) that such dispossession took place within a period of six months of the suit."*

12. The decisions of the two Courts are found to be illegal, the order passed by Revisional Court is patently illegal and

violative of law and the decisions if allowed to stay intact would cause serious prejudice to rights of the petitioners. The interference in the order passed by Revisional Court is warranted in the circumstances. Reference in this context is made to the case of MUHAMMAD ANWAR v. Mst. ILLYAS BEGUM and others (PLD 2013 SC 255).

13. The suit under no circumstance could have been decreed in the light of discussion made above. This Court ordinarily in its constitutional jurisdiction, does not undertake to re-appraise evidence in the matter to disturb the findings of fact but would certainly interfere where such findings are found to be based on non-reading or misreading of evidence, erroneous assumption of facts, mis-application of law, excess or abuse of jurisdiction and arbitrary exercise of powers. Such findings can be interfered with by issuing writ of certiorari to correct the wrong decision of subordinate Courts. Reliance is placed on the case of MUHAMMAD LEHRASAB KHAN v. Mst. AQEEL-UN-NISA and 5 other (2001 SCMR 338).

For what has been discussed above, this writ petition is **allowed**. The judgment and decree dated 01.04.2010 and order of Revisional Court dated 22.06.2011 are found to be illegal and without lawful authority, same are hereby set-aside. The result would be that suit filed by the respondent shall deemed to be dismissed.

(MUHAMMAD ALI)  
JUDGE

**Approved for reporting.**

JUDGE