

Stereo.HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

....

CIVIL REVISION NO.891 of 2012

MUHAMMAD EJAZ and 18 others

Versus

NOOR KHAN and 3 others

JUDGMENT

Dates of hearing: 19.05.2017

Petitioners by: Mr. Omer Farooq Malik, Advocate.

Respondents by: Mr. Ashiq Ali, Advocate.

MIRZA VIQAS RAUF, J. This civil revision questions the *vires* of judgment and decree dated 18th of July, 2012, whereby the learned Additional District Judge, Talagang while dismissing the appeal preferred by the petitioners affirmed the order dated 15th of May, 2012 passed by the learned Civil Judge, Talagang, resulting into withdrawal of suit instituted by the petitioners.

2. Precisely the facts necessary for adjudication of instant petition are that the petitioners/plaintiffs instituted a suit for possession of *Hevali* measuring 01 Kanal 05 Marlas, averring therein that initially the said *Hevali* was in possession of predecessor-in-interest of petitioners namely Atta Muhammad but after his death the same came under the control of petitioners. As per contents of the plaint, the petitioners shifted to Bhakhar and handed over the possession of said *Hevali* on temporary basis to Yar Muhammad, predecessor-in-interest of respondents but now the respondents have

refused to vacate the same. The respondents, being the defendants contested the suit by filing their written statement wherein the assertions contained in the plaint were controverted. The respondents also instituted a suit for permanent injunction seeking protection of their possession. As both the suits were relating to the same subject matter, so both were consolidated. The divergent stance of the parties resulted into framing of multiple consolidated issues to the following effect :-

Consolidated Issues

1. Whether the plaintiffs Hayat Muhammad etc. are entitled to the decree for possession as prayed for? OPP
2. Whether the suit of plaintiffs Hayat Muhammad etc. is not maintainable in its present form? OPD
3. Whether the plaintiffs Hayat Muhammad etc. have no cause of action or locus-standi to file the suit? OPD
4. Whether the defendants Noor Khan etc. are entitled to the decree for permanent injunction as prayed for in their respective suit? OPD
5. Whether the suit of defendants Noor Khan etc. is false, frivolous and is liable to be dismissed with costs? OPP
6. Whether the defendants have no cause of action or locus-standi to file the suit? OPP
7. Whether the description of suit property of defendants Noor Khan etc. is not correct if so, its effect? OPP
8. Relief.

After framing of above referred issues the proceedings started in the suits and petitioners were treated as plaintiffs whereas respondents were treated as defendants. During pendency of suit learned counsel for the petitioners/plaintiffs got recorded his statement, as a result thereof, suit was dismissed as withdrawn vide order dated 15th of May, 2012. The petitioners feeling aggrieved from the said order

preferred an appeal before the learned Additional District Judge, Talagang, however, same was dismissed vide judgment and decree dated 18th of July, 2012, hence this petition.

3. Learned counsel for the petitioners submitted that the petitioners had duly contested the case by producing their oral as well as documentary evidence. He added that learned counsel for the petitioners/plaintiffs without any authority and permission of the petitioners recorded his statement regarding withdrawal of suit on the basis of special oath. Learned counsel further maintained that none of the petitioners were present on the eventful day i.e. 15th of May, 2012 and tempering as well as overwriting is evident from the record. Learned counsel argued that learned lower Appellate Court has committed an illegality, while dismissing the appeal filed by the petitioners.

4. Conversely, learned counsel appearing on behalf of the respondents, while defending the impugned judgment as well as order under challenge, submitted that presumption of truth is attached to the judicial record. Learned counsel maintained that learned Additional District Judge has rightly exercised his appellate jurisdiction, while dismissing the appeal filed by the petitioners.

5. I have heard learned counsels for both the sides at some length and also perused the record.

6. Record is indicative of the fact that petitioners instituted a suit for possession by impleading the respondents as defendants in the same which was contested by them through filing their joint written statement. A separate suit for injunction was also instituted by the respondents, seeking protection of their possessory rights. After framing of above referred issues from the divergent stances of the parties, the learned trial court proceeded to record evidence of both the sides. When the case was in progress, learned counsel

representing the petitioners got recorded his statement on 15th of May, 2012 to the following effect :-

”15-05-12 نورخان مدعا علیہ حاضر۔“
 کوسل فریقین حاضر۔ کوسل مدعا ملک فتح خان ایڈ وکیٹ۔
 یکہ از مدعا حاضر۔
 بیانی ہے کہ مدعا علیہ نے قسم نیاں دے دیا ہے۔ بیان قلمبند ہو۔
 بیان ازاں ملک فتح خان ایڈ وکیٹ (بالاحف)
 بیان کیا کہ دعویٰ میں مزید پیروی مطلوب نہ ہے قسم بیان کے بعد ہم قضائیہ مانگتے
 ہیں دعویٰ بصیرہ واپسی خارج کیا جاوے۔
 ”سن کر درست تسلیم کیا“

It is manifestly clear from the proceedings of the above referred date that at the time of recording of statement by the counsel of the petitioners, one of the petitioners/plaintiffs was also present. The fact regarding presence of one of the petitioners/plaintiffs is also admitted by the petitioners in their appeal before the learned Additional District Judge, Talagang in Para No.2 to the following effect :-

”یہ کہ یکہ از مدعا ملک مدعا نمبر B1 نے رپارٹنگ میں سے نورخان سے
 نیاں پر بلا اجازت دیگران تصفیہ کر لیا اور چونکہ مدعا نمبر B1 پیروی مقدمہ کر رہا
 تھا نے کوسل مدعا کو کہکر دعویٰ مدعا بصیرہ واپسی خارج کرنے کا بیان دلوالا۔
 جبکہ دیگر مدعا نے کوسل مدعا کو ایسی کوئی اجازت نہ دی تھی۔“

Order sheet of the learned trial court further shows that on the eventful day i.e. 15th of May, 2012 learned counsel for the petitioners/plaintiffs (Malik Fateh Khan, Advocate) also appended his signature in token of correctness of his statement.

7. There is no denial on the part of petitioners that Malik Fateh Khan, Advocate was not their duly appointed counsel in the suit before the learned trial court. The petitioners are rather resisting the

consequences of said statement on the ground that statement was recorded by their counsel without any authority from all the petitioners. The power of attorney executed by the petitioners in the name of Malik Fateh Khan, Advocate clearly reflects that he was vested with the authority to do any act on behalf of petitioners in the following manner :-

”.....مجھ کو کل ساختہ پر دا خ صاحب موصوف مل کر وہ ذات منظور و مقبول ہو گا اور صاحب موصوف کو عرضی دعویٰ یا جواب دعویٰ درخواست اجرائے ڈگری و نظر ثانی اپیل نگرانی ہر قسم درخواست پر مستخط و تصدیق کرنیکا بھی اختیار ہو گا اور کسی حکم یا ڈگری کرانے اور ہر قسم کار و پیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے کا بھی اختیار ہو گا۔۔۔۔۔“

This leaves no ambiguity that Malik Fateh Khan Awan, Advocate was a duly appointed counsel and his statement was binding upon the petitioners.

8. Order III of The Code of Civil Procedure (V of 1908) (hereinafter referred as “CPC”) deals with the matter of appearance by a person or his recognized agent or pleader in the proceedings before the court and any such appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent or by a pleader on his behalf. The appointment of pleader is governed by Rule 4 of Order III of “CPC” which reads as under :-

“4. Appointment of pleader.—(1)No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person

duly authorized by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

(3) For the purposes of sub-rule (2) an application of review of judgment, an application under S. 144 or S. 152 of this Code, any appeal from any decree or order in the suit and any application or act, for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into the Court in connection with the suit shall be deemed to be proceedings in the suit.

(4) -----

(5) -----

(a) -----

(b) -----

(c) -----”

It is manifestly clear from the above that authority of a pleader duly appointed by a person(s) to act on his/her behalf in a court shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client(s) or the pleader, as the case may be, and filed in Court or until the client(s) or the pleader dies, or until all proceedings in the suit are ended so far as regards the client(s).

9. In view of above, the stance of the petitioners that the statement was recorded by their counsel without any authority loses its efficacy and is highly ill-founded. The petitioners are precluded to wriggle out of statement recorded by their duly appointed counsel before the court. A party is always bound by the statement of his counsel, unless there is anything contrary in the power of attorney places restriction on the authority of the counsel to compromise or

abandon the claim on behalf of his client. In the case of "*HASSAN AKHTAR and others versus AZHAR HAMEED and others*" (*PLD 2010 Supreme Court 657*) the Hon'ble Supreme Court of Pakistan, while dealing with the issue akin to issue in hand held as under :-

“13. It is by now well-settled that an Advocate has authority to make statement on behalf of his client, which is binding upon the client, unless there is any thing contrary in the Vakaltnma putting restriction on the authority of the Advocate to compromise or abandon claim on behalf of the client. The Advocate’s power in the conduct of a suit allows him to abandon the issue, which in his discretion, advisable in the general interest of his client.”

The above view was previously affirmed in the case of "*AFZAL and others versus ABDUL GHANI*" (*2005 SCMR 946*).

10. Record is indicative of the fact that suit was decided with consent of the parties on the basis of statement of learned counsel for the petitioners. Such a consenting order/decrees was not appealable in terms of Section 96 of “CPC” and the appeal before the learned Additional District Judge, Talagang was not competent in view thereof.

11. This Court is cognizant of the fact that now a days such a tendency on the part of litigants is increasing day by day that after having appointed a counsel of their choice, bestowing an authority to act on their behalf before the court, after settlement of the issue on the basis of bilateral compromise between the parties and recording of statements before the courts to that effect, move applications on the false pretext in order to wriggle out of the consequences pursuant to such statements for achieving their illegal designs. This practice cannot be appreciated and if such a trend is allowed to flourish that will completely destroy the confidence and trust attached to the relationship of counsel and client on the one hand and on the other will diminish the sanctity attached to the judicial proceedings. It is thus high time to curb such tendency on the part of chronic litigants.

There is nothing on the record to suggest that statement recorded by the counsel was lacking any authority by his clients i.e. the petitioners. Even otherwise presumption of truth is attached to the judicial proceedings in terms of Article 129(e) of The Qanun-e-Shahadat Order, 1984, which cannot be allowed to be altered or swayed at the whims of the parties.

12. After having examined the record, I am of the considered opinion that after withdrawal of the suit, the petitioners malafidely approached the court and their act of accusing their duly appointed counsel not only gives a bad taste to the legal profession but also undermines the sanctity attached to the judicial proceedings. This was the reason that learned Additional District Judge has rightly dismissed the appeal filed by the petitioners. There is no illegality or material irregularity in the impugned judgment rather the petitioners by way of this petition have tried to thwart the process of law. Resultantly this petition is **dismissed** with costs of **Rs.50,000/-** which shall be deposited by the petitioners with the Deputy Registrar (Judicial) of this Court within fortnight, failing which the same shall be recovered from them as arrears of land revenue in accordance with law.

**(MIRZA VIQAS RAUF)
JUDGE**

*Shahbaz Ali**

APPROVED FOR REPORTING