

2013 Y L R 357

[Peshawar]

Before Khalid Mahmood, J

MIRZAMAN and 8 others---Petitioners

Versus

MUHAMMAD AJMAL HUSSAIN and 2 others---Respondents

Civil Revision No.5 of 2005, decided on 3rd September, 2012.

West Pakistan Land Revenue Act (XVII of 1967) ---

---S.39---Record of rights---Entries in such record in columns of ownership, cultivation and lagan---Preference in such columns---Scope---Entry in column of ownership would prevail over column of cultivation---Entry in column of cultivation would prevail over column of lagan---Person entered as tenant-at-will in column of cultivation, for being a tenant, could not claim adverse possession.

Dilawar Shah and others v. Jannat Gul through legal heirs PLD 2004 SC 59 rel.

Imran Younis Khan for Petitioners.

Khalid Rehman Qureshi for Respondents.

Date of hearing: 3rd September, 2012.

JUDGMENT

KHALID MAHMOOD J.---This revision petition under section 115, C.P.C. is directed against the judgment and decree dated 16-9-2004, whereby learned Additional District Judge-II, Haripur on acceptance of appeal filed by plaintiff real respondent No.1 was allowed and judgment and decree passed by Civil Judge-II, Haripur dated 6-5-2000 was set aside.

2. Muhammad Ajmal Hussain plaintiff/real respondent No.1 filed a suit for declaration, possession as well as for issuance of permanent injunction by way of a consequential relief against the petitioners regarding property fully described in the heading of plaint. Petitioners/defendants contested the suit by filing written statement and learned Civil Judge after recording pro and contra evidence and hearing the parties dismissed the suit on 6-5-2000. Feeling dissatisfied respondent No.1 preferred appeal, and learned appellate Court after hearing the parties allowed the appeal and decreed the suit of respondent No.1 vide impugned judgment and decree dated 16-9-2004. Hence, this revision petition.

3. Learned counsel for petitioners argued that it has been proved on record that petitioners are in continuous possession of suit-land as owners and there is nothing on record that plaintiff or his predecessor-in-interest was in possession of it or were dispossessed within

12 years preceding the date of institution of suit. It was argued that judgment and decree of both the courts below are against law and facts, therefore, liable to be set aside.

4. On the other hand, learned counsel for respondent No.1 opposed the contentions of petitioners and contended that respondent No.1 has purchased the suit property on the basis of sale mutations and adverse possession, if any, of petitioners has been declared un-Islamic by the august Supreme Court of Pakistan.

5. Arguments heard and record perused.

6. Admittedly, plaintiff based his claim on the basis of sale Mutations bearing Nos. 1972 dated 17-4-1994 and 1984 dated 21-9-1994 whereas petitioners asserted adverse possession over the suit property. The Revenue Record fully supported the contention of plaintiff/respondent No.1. Learned counsel for petitioners vehemently argued that as per Revenue Record petitioners from the time of their predecessor Fazal Dad are owners in possession of the suit property. The names of petitioners have wrongly been deleted from the column of owners during the consolidation proceedings carried out in 1964. As per Revenue Record in jamabandi of the year 1947-1948 name of Fazal Dad has been mentioned as owner in possession of the suit khasra number along with other khasra numbers. In the said settlement of 1947-1948 disputed khasra number was devolved from Khasra No.664 into Khasra No.739. In the subsequent jamabandi of year 1964-1965 based on consolidation proceedings old Khasra No.739 was converted into present Khasra No.737 measuring 7 kanals and 4 marlas. The name of the petitioners were deleted from the column of ownership on the basis of Mutation No.1972 attested on 17-4-1994 and Mutation No.1784 attested on 21-9-1994 in favour of respondent in jamabandi for the years 1994-1995. Petitioners have never challenged the said two mutations entered in the name of respondent No.1. Petitioners are entered in column of cultivation as tenants-at-will, however, in the column of lagan they are shown as bila lagan as owners and sublettee on payment of half share of produce. As it is settled law that column of ownership prevails over the column of cultivation. Similarly, entries in the column of cultivation prevail over the column of lagan. Petitioners are entered as tenants-at-will in column of cultivation, hence, being tenants they cannot claim adverse possession because once a tenant is always a tenant. So far question of preference of columns in Revenue Record are concerned, the principle has been settled by the apex Court in case of Dilawar Shah and others v. Jannat Gul through legal heirs reported in PLD 2004 SC 59.

7. Consequently, this revision petition being bereft of merit is hereby dismissed with no order as to costs.

SAK/313/P

Revision dismissed.