

**2007 M L D 2012**

**[Peshawar]**

**Before Muhammad Raza Khan, J**

**Malik MANZOOR ELAHI---Petitioner**

**Versus**

**ZULFIQAR ALI and 2 others---Respondents**

Civil Revision No. 270 of 2007, decided on 18th September, 2007.

**Civil Procedure Code (V of 1908)---**

---O.VII, R.11---Rejection of plaint---Counsel for defendants had stated at the bar that they had no concern whatsoever with the suit property and that their activity was: restricted to their own Khasra numbers wherein plaintiff. had no concern---Defendants having clearly declared that they had neither interfered in the suit property nor they intended to do so, such a bald and unreserved statement of defendants should have pacified the plaintiff---Petitioner could proceed against defendants if any encroachment in the suit property was ever made by them---No cause of action there having accrued to plaintiff to institute suit, both courts below had rightly .applied their mind to reject the plaint.

Muhammad Younas Khan Tanoli for Petitioner.

Khalid Rehman Qureshi for Respondent.

Date of hearing: 18th September, 2007.

## **JUDGMENT**

**MUHAMMAD RAZA KHAN, J.**---This revision petition is directed against the judgment and decree, dated 6-6-2007 of the learned Additional District Judge-IV, Haripur whereby the appeal of the plaintiff-petitioner against the judgment under Order VII Rule, 11, C.P.C. for rejection of plaint, dated 13-3-2007 was dismissed.

2. The plaintiff/petitioner has sought a declaration to the effect that he, along with others, are the exclusive owners in possession of the suit property measuring 87 kanals, 9 marlas comprising of six Khasra Numbers stated in the head note of the plaint and that the defendants had no right or interest therein acid consequently the attempt to change the nature of the land by construction of a road etc., was illegal and ineffective on the rights of the plaintiff. As a consequential relief a prayer for injunction .was made and, in the alternative, the .prayer for possession of the property

by demolition of road and construction was also made if' any construction was raised during the pendency of the suit.

3. The defendants while appearing in response to the summons categorically stated that they were the owners in possession of Khasra Nos. 4729/2842 and 4730/2842 measuring 206 kanals 9, marlas and that they were making improvement in their own property having no concern whatsoever- with the suit Khasra numbers or the ownership of the plaintiff. An application under Order VII Rule 11 was also moved. After getting the reply from the plaintiff the learned trial Court rejected the plaint under Order VII, Rule 11, C.P.C. on 13-3-2007 which was maintained through the impugned appellate judgment, dated 6-6-2007.

4. I have listened to the arguments of the learned counsel for the parties. The learned counsel representing respondents/defendants has again reiterated at the Bar that the respondents/defendants have no concern whatsoever with the suit property and that their activity was restricted to their own' Khasra numbers wherein the plaintiff/petitioner has no concern. In such a situation there is no force in the contention of the learned counsel for the petitioner that he should have been allowed to produce evidence or that the Court should have appointed a local commissioner for the demarcation of the property for determining the specific area where the defendants/respondents were raising construction and making improvements. It is not the responsibility of the Court to make up the deficiency in the case of any of the parties to litigation. It was for the plaintiff to have established a prima facie case that certain activity for the change of the nature of the suit property was being undertaken by the defendant. He should have moved the Revenue officials for the demarcation of the property as, being agricultural property, the jurisdiction exclusively vests in the Revenue Authorities alone. Even otherwise the plaintiff/petitioner has not been able to produce any other documentary evidence to show the encroachment in his area and the urgency of the matter. Neither a photograph nor even the extract from 'Shajara Kishtwar' is placed in support of the contention of the plaintiff. The commission can certainly be directed to determine the boundary disputes but this can be done if the plaintiff prima facie 'supports that certain construction was being raised in his property. The trial Court cannot create evidence in favour of the plaintiff by the appointment of a local commissioner when the plaintiff himself has not made any efforts to prove his case beyond verbal contentions.

5. Since the defendants-respondents have clearly declared (which has again been reiterated by the learned counsel for the respondents) that the respondents have neither interfered in the suit property nor they intend to do so. Such a bold and unreserved statement should have pacified the plaintiff/petitioner and he can certainly proceed against defendants/respondents if any encroachment in the suit property was ever found.

5-A. In such a situation there does not appear to be any cause of action vested in the plaintiff/petitioner to institute the suit and both the Courts have rightly applied the mind to reject the plaint. The Revision Petition is accordingly dismissed with costs.

