

1997 C L C 423

[Peshawar]

Before Mian Muhammad Ajmal, J

SHAUKAT ZAMAN KHAN and others---Petitioners

versus

KARAM DIN---Respondent

Civil Revision Nos.78 of 1991, decided on 2nd May, 1995..

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

---S.52---Civil Procedure Code (V of 1908), S.115---Right of grazing in land in question---Entitlement---Right of grazing had been persistently recorded in Wajib-ul-Arz of 1872, 1904-1905, 1946-1947 and 1965-1966, wherein it was stated that "Chiragah" was open to people of village for grazing of their cattle--Presumption of correctness was attached to such entries---Right claimed by plaintiff was embodied in all Wajib-ul-Arz and no change was made in so far as right of grazing cattle by inhabitants of village in land in question, was concerned--Entries in Wajib-ul-Arz reflected unanimous will of the community to which presumption of correctness was attached, therefore, it could be inferred that community did not wish to bring about any change in the right of grazing of cattle by the people of locality---Entries in Revenue Record that properties in question were "Khud Kasht" were not supported by other entries in the Record which were recorded as "Dhaka Rakh" and "Dhaka Chiragah" and the same had never been cultivable land---Judgment of Appellate Court to that effect being well-reasoned and well-founded was maintained in circumstances.

Syed Mehmood Hussain Shah for Petitioner.
Khalid Rehman Qureshi for Respondent.

Date of hearing: 2nd May, 1995.

JUDGMENT

Through this judgment I propose to dispose of C.R. No.78/91 (Shaukat Zaman v. Karam Din) C.R. No. 79/91 (Mst. Dure Shahwar v. Siddique Khan) and C.R. No.80/91 (Mst Sure-e-Shahwar v. Allahdad) as the question of law and facts in all the civil revisions is the same.

2. The abovementioned revision petitions are directed against the separate judgments and decrees of the learned Additional District Judge, Haripur all dated 5-3-1991 whereby the appeals of the plaintiff-respondents were accepted and they were granted decrees for declaration that they have the right to graze their cattle in the suit properties and the petitioner-defendants were restrained to interfere in the aforesaid rights of the respondents and the entries in the Revenue Record representing the suit properties as ' Khud Kasht'

were also declared to be wrong and ineffective against the rights of the plaintiff-respondents.

3. The plaintiffs filed three suits for declaration that they have the right to graze their cattle in the properties as detailed in the heading of the respective plaints according to Wajib-ul-Arz 1904-5 and Fard Jamabandi 1947-48; that the defendants have no right to interfere in the same and that, the entries in the Revenue Record showing the suit property as ' Khud Kasht.' of petitioners are wrong, ineffective and void. The petitioners-defendants contested the suit upon the pleadings of the parties 12 issues and 2 additional issues were framed. The parties led their respective evidence, on assessment whereof the learned Civil Judge, Haripur vide his judgments/decrees dated 20-3-1988 dismissed the suit. Aggrieved of the same the plaintiff-respondents filed appeals before the learned Additional District Judge, Haripur who vide his judgment/decree dated 5-3-1991 accepted their appeals. Hence the present revision petitions.

3-A. Learned counsel for the petitioners contended that the plaintiffs have based their claim on the agreement on the basis of which the Wajib-ul-Arz of 1872 and 1904-5 was prepared but failed to substantiate the alleged agreement, as such the suit was rightly dismissed by the learned trial Court. He submitted that the plaintiffs have claimed the declaration on the basis of Wajib-ul-Arz of 1872 and 1904-05 and have not referred to the subsequent Wajib-ul-Arz, therefore, they cannot refer to the later Wajib-ul-Arz as the basis of their claim. He referred to the statements of Patwari and S.O.K. who had stated that there was no agreement between the parties with regard to the allowance given to the plaintiffs for grazing their cattle in the land in dispute. He also submitted that earlier to the present suit, a suit was filed by the plaintiff-respondents which was subsequently withdrawn with permission to bring another one so as to include the question of agreement but in the later suit too, the agreement could not be proved. Hence the suit deserved dismissal.

4. Opposing the aforesaid contentions of the learned counsel for the petitioners the learned counsel for the respondents contended that the petitioners have been enjoying the right of grazing their cattle since time immemorial and this fact had been recorded in the Wajib-ul-Arz that the land being ' Chiragah' is accessible to inhabitants of the village for grazing their cattle.

5. The plaintiffs have not denied the title of the petitioners but as far the right of grazing is concerned it has been persistently recorded in the Wajib-ul-Arz of 1872, 1904-5, 1946-47 and 1965-66, that ' Chiragah' is open to the people of the village for grazing their cattle. The entries in the aforesaid Wajibul-Arz are consistent with regard to the right of grazing the cattle by the inhabitant of the village to which the presumption of correctness is attached. The right claimed by the plaintiffs is embodied in all the ' Wajib-ul-Arz' and no change as made in so far as right of grazing the cattle by the inhabitants of the village in the disputed land was concerned. The entries in the ' Wajib-ul-Arz' reflect the unanimous will of the community to which presumption of correctness is attached, therefore, it can be inferred that the community did not wish to bring about any change in the right of grazing of the cattle by the people of the locality. As far later entries in the Revenue Record are concerned that the properties are ' Khud Kasht' they are not supported by the other entries in the Record as the properties are ' Dhaka Rakh' and ' Dhaka Chiragah' and the same have never been culturable land.

6. The judgments/decrees of the learned Appellate Court are well-reasoned and well-founded, hence no exceptions' thereto are taken. Resultantly, the revision petitions being void of any force are hereby dismissed with no order as to costs.

A.A./1826/P

Revision dismissed.