

1996 M L D 362

[Peshawar]

Before Mahbub Ali Khan, J

MISRI and 2 others---Petitioners

Versus

MUHAMMAD SHARIF and 49 others---Respondents

Civil Revision No.190 of 1992, decided on 28th September, 1995.

(a) North-West Frontier Province Tenancy Act (XXV of 1950)---

---SsA, 4-A & 83---Plaintiffs claim to be full owners on basis of being occupancy tenants of land in question---Mode to become owners by operation of law---Plaintiffs admittedly were not recorded occupancy tenants of land in question, in revenue papers at the commencement of North-West Frontier Province Tenancy Act, 1950, therefore, legally they could not be deemed to have become full owners of land in question, by operation of law in terms of Ss.4 & 4-A of the Act---Provisions of Ss.4 & 4-A of the Act would have come into play only if plaintiffs had been occupancy tenants of land in question, at the commencement of the Act and yielded to all those conditions which are contained therein---Plaintiffs case was, thus, governed by S.83, North-West Frontier Province Tenancy Act, 1950 and they were required to have obtained within three years after the commencement of the Act, declaration of their occupancy rights in land in order to avail themselves of benefits conferred by Ss.4 & 4-A of the Act, and until the time, such declaration was obtained they could not be deemed to have become owners of land by operation of law on commencement of North-West Frontier Province Tenancy Act, 1950---Such relief could not be granted to plaintiffs at such belated time and over and above the mode prescribed for claiming such relief.

Akram and others v. Sakeria Khan and others PLD 1962 (W.P.) Pesh. 7 rel.

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

---ONI, R.2, O.XIV, R.1 & S.115---Finding of Trial Court on question of partition of suit land---Such question was neither raised by parties in pleadings nor issue relating thereto was framed---Finding given by Trial Court in relation to such question, was thus, not warranted.

Qureshi Industries v. Karachi Development Authority PLD 1993 Kar.553 ref.

Fida Muhammad Khan for Petitioners.

Khalid Rehman Qureshi for Respondents.

Date of hearing: 28th September, 1995.

JUDGMENT

Misri, Sarwar and Madda sons of one Fateh Ali in the year 1984 instituted a suit before the Civil Court, Haripur and sought declaration that they are owners in possession of 1/3rd share in a certain land measuring 101 Kanals, 3 Marlas and contrary Revenue entries made in the names of Muhammad Sharif etc. the defendants-respondents being wrong and incorrect are ineffective against their rights and they are entitled to receive proportionate share of money out of the sale of 'Chic' trees allegedly made by the Forest Department from the joint land. The defendants-respondents Nos.1 to 10, 13 to 14 and 16 to 39 resisted the suit and claimed, inter alia, that their predecessors-in-interest being occupancy tenants of the suit land had acquired ownership rights in the property on the enforcement of N.-W.F.P. Act XXV of 1950 and the respondents since thereafter are in exclusive possession of this land as full owners. It was further stated that the plaintiffs-petitioners having claimed no such rights in the suit land at the time of the commencement of the Act ibid and having failed to make payment of any compensation to the landlords as required by section 4, clauses (b) and (c) of the Act cannot now claim any right of occupancy in the land in view of the bar laid down by section 3 of the Act aforesaid. The learned trial Judge after settling as many as 8 issues arising out of the pleadings between the parties recorded evidence pro and contra and ultimately finding no favour with the claim of the plaintiffs dismissed their suit on 8-11-1989. An appeal was although lodged by the plaintiffs before the District Judge, Haripur but the same has been also dismissed on 11-10-1992. Hence this revision petition under section 115, C.P.C.

2. I have heard the learned counsel on both sides. Mr. Fida Muhammad Khan Tahir Kheli, Advocate on behalf of the petitioners vehemently argued, that the trial Court in the case before it did not frame proper issues arising out of the pleadings and so much so, that no specific issue with regard to the alleged occupancy rights held by the petitioners in the suit land had been struck but in spite of that the Appellate Court passed a judgment pertaining to such plea and in support thereof placed reliance on the case of 'Oureshi Industries v. Karachi Development Authority' PLD 1993 Kar. 553. He stated further, that the Appellate Court instead of writing a judgment as required by Order 41, Rule 31, C.P.C. by stating the points for determination in the appeal, the decision thereon and the reasons for the decision on the issues on which trial in the suit proceeded and which formed part of the impugned judgment of the subordinate Court, it embarked upon the question relating to the occupancy rights of the petitioners in the land and dismissed their appeal on the ground that they did not within the prescribed period of limitation agitate upon these rights before the proper forum on the commencement of the N.-W.F.P. Act XXV of 1950 as required by sections 4 and 4-A of the Act. He similarly stated that although no issue with regard to the partition of the land was either raised in the pleadings or framed but despite that the learned trial Court delivered a finding that the respondents had become exclusive owners of the suit land on account of partition allegedly taken place between the joint owners in the year 1905.

3. Order 14, C.P.C. deals with the framing of issues which arise when a material proposition of fact or law is affirmed by the one party and denied by the other and it states that material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence and each material proposition affirmed by one party and denied by the other shall form the subject of a district issue which are of two kinds; (a) issues of fact, (b) issues of law. It has been made imperative that at the first hearing of the suit the Court shall after reading the plaint and the written statement, if any, and after such examination of the parties as may appear necessary,

ascertain upon what material propositions of act or law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. As a plain reading of Order 14, C.P.C. would thus show that right decision of a case shall mostly depend on the framing of correct issues arising out of the pleadings this may be desirable to have a look on the pleadings filed by the parties in this particular case. The plaint of the plaintiffs straightaway states that the petitioners are owners of 1/3rd share in the suit pasture land measuring 101 Kanals, 3 Marlas. The plaintiffs have further stated that their names have been wrongly omitted from the ownership columns of the revenue papers of which they came to know at the time of the distribution of compensation money by the Tehsildar, Haripur of the sale proceeds of `Chir' trees marked and cut from the disputed "Dhaka-Rakh" by the Forest Department which have been wrongly assessed on account of

4. incorrect revenue entries in the names of respondents-defendants Nos.1 to 39. The contesting defendants-respondents besides taking the pleas of estoppel, " competency of the suit in the present form and its valuation for the purpose of court-fee and jurisdiction pleaded further that their predecessors-in-interest had been occupancy tenants of this property before the land settlement of 1947-48 and on the enforcement of N.-W.F.P. Tenancy Act, 1950 the aforesaid occupancy rights had merged into ownership rights and the defendants since thereafter are in possession of the suit land as full owners. They next stated that as the petitioners did not on the commencement of the Act *ibid* file any suit in respect of their rights of occupancy in the land they were as such precluded by law from raising any such question at a later stage. The learned trial Judge on the basis of these pleadings framed the following issues: --

- (1) Whether the plaintiffs have got a cause of action? ,
- (2) Whether the suit is within time?
- (3) Whether the plaintiffs are estopped by their conduct to bring the present suit?
- (4) Whether the suit is competent in its present form?
- (5) Whether the suit is properly valued for purpose of court-fee and jurisdiction?
- (6) Whether the plaintiffs are co-owners in the suit property and entitled to their proportionate share in the compensation regarding trees?
- (7) Whether the plaintiffs are entitled to the relief prayed for?
- (8) Relief.

4. This is true that no issue particularly on the rights of occupancy of the plaintiffs-petitioners had been framed but this matter could be dealt with and disposed of by the Court while deciding issue No.6 which relates to the plaintiffs' claim of ownership of 1/3rd share in the suit land and their entitlement to receive this much of compensation out of the proceeds of the "Chir" trees sold by the Forest Department from the land. Both the parties being aware of their case as made in the pleadings have led evidence on each side and it cannot be stated that the petitioners were taken by surprise when the learned Appellate Court entered into discussion of the case of referring to the question of occupancy rights of the parties in relation to the land in dispute. None of the parties had original ownership of this land which initially

belonged to the Rajghan of Khanpur and was in the sole ownership of Raja Munuchair Khan son of Raja Jehandad Khan at the time of the commencement of N.-W.F.P. Act XXV of 1950. In fact the plaintiffs claim that this land was in the occupancy tenancy of three brothers named Umar, Attar and Jaffar in equal share and they being the successors-in-interest of Umar are entitled to 1/3rd share in the land whereas the remaining 2/3rd share is the ownership of the defendants-respondents Nos.1 to 39 who are successors-in-interest of Attar and Jaffar. That the name of their predecessor-in-interest had been wrongly omitted from the revenue papers during the years 1904-1905 and on the basis of wrong entries which followed after that the defendants cannot be held owners of the entire land.

5. The plaintiffs were admittedly not recorded occupancy tenants of this land in the revenue papers at the commencement of N.-W.F.P. Act XXV of 1950. Legally they cannot be deemed to have become full owners of land by the operation of law as laid down in sections 4 and 4-A of the Act which would have come into play only if they had been occupancy tenants of this land at the commencement of the Act and yielded to all those conditions which are suggested in these sections. The case of the petitioners was as such governed by section 83 and they were required to have obtained within three years after the commencement of the Act a declaration of their occupancy rights in the A land in order to avail themselves of the benefits conferred by sections 4 and 4-A of the Act *ibid*, and until such time a like declaration was obtained, they could not be deemed to have become owners of the land by operation of law on the commencement of N: W.F.P. Act XXV of 1950. The suit of the plaintiffs is in fact to the effect that they first be declared occupancy tenants of 1/3rd share of the-land and then its owners in view of the commencement of N.-W.F.P. Tenancy Act, 1950 which at this stage cannot be obviously granted. Reliance in holding this view has been placed on the case of Akram and others-petitioners v. Zakeria Khan and others-respondents as reported in PLD 1962 (W.P.) Pesh. 7.

6. The learned counsel also endeavoured to make out a case that his clients had always remained in possession of the suit land as joint owners in spite of incorrect revenue entries but we find no material on the record in support of this argument. The evidence on the contrary shows that the suit property being pasture land "Dhaka-Rakh" had been since a long time in the control and management of the Forest Department so much so that previously in the year 1974 certain 'Chir' trees were cut and sold from the disputed Khasra Nos.1291, 1334 and compensation money was exclusively paid to the respondents while the petitioners were given compensation of trees of a different land comprised in Khasra No.1290. The learned Advocate has, however, rightly pointed out that the finding given by the trial Court in relation to the question of partition of the suit land between the co-owners was unwarranted having neither raised in the pleadings nor stated in evidence by either party and I would agree with him that the trial Judge should not have embarked upon himself to have entered into the discussion of any such issue which did not form part of the pleadings. Anyhow, this objection would be of no avail in view of my discussion of the case in paras. Nos.3 and 5 of this judgment.

7. In this view of the matter which I take, I see no substance in this revision petition and dismiss it with costs,