

1994 C L C 1698

[Peshawar]

Before Abdul Karen Khan Kundi, CJ.

MADRASSA ISLAMIA REHMANIA HARIPUR---Petitioner

versus

MUHAMMAD IQBAL---Respondent

Civil Revision No. 2 of 1990, decided on 8th March, 1994.

Specific Relief Act (I of 1877)---

---S. 42---Civil Procedure Code (V of 1908), S. 115---Suit for declaration---Revisional jurisdiction, exercise of---Plaintiff claiming to be owner in possession of suit shop situated in specific Khasra No., filed suit for declaration in that respect---Defendant on the other hand claimed that suit shop was an evacuee property which had been allotted to him and P.T.O. had been issued to him in respect thereof---Evidence on record had established that plaintiff was owner of specific Khasra No. but it was not sufficient to ascertain if shop in dispute was situated in that Khasra No. and P.T.O. issued in favour of defendant pertained to suit shop---High Court, in exercise of revisional jurisdiction after setting aside finding of Courts below remanded case for further trial with direction .to depute a well conversant Revenue Officer as Commissioner to ascertain on spot after measurement if suit shop in occupation of defendant was situated in specific Khasra Number belonging to plaintiff or outside the limits of said Khasra Number. [p. 1699] A

Khalid Rehman Oureshi for Petitioner.

Saleh Mehmood Awan for Respondent.

Date of hearing: 8th March, 1994.

JUDGMENT

This revision is directed as against the judgments and orders of the Courts below having non-suited the plaintiff-petitioner who brought a suit for declaration and in the alternative for possession claiming to be the owner in possession of the suit shop situate in Khasra No. 131 of his ownership and on the other side the defendant-respondent claimed that the suit shop was an evacuee property which was allotted to him by a P.T.O. and that the plaintiff-petitioner did not bear any concern with the suit shop.

2. After hearing the learned counsel for the parties and going through the pleadings and the evidence on the record this thing is established that the plaintiff-petitioner is the owner of Khasra No. 131. The P.T.O. issued in favour of the defendant-respondent does not bespeak of the locale of the suit shop to ascertain if the said P.T.O. pertains to the suit shop. This Court, therefore, finds the case deficient in evidence to ascertain if the suit shop is situated in Khasra No. 131 of the ownership of the plaintiff-petitioner as claimed by him or that the suit shop is situated outside Khasra No. 131 to which the plaintiff- petitioner prefers no claim. This Court would therefore, up set the findings of the Courts below and remand the case for further trial with the direction to depute a well-conversant Revenue Officer as a Commissioner to ascertain on spot after measurement if the suit shop in occupation of the defendant-respondent is situate in Khasra No. 131 or outside the pale of the said Khasra number and to decide the case afresh. Parties are left to bear their own costs.

H.B.T./1556/P

Order accordingly.