

**COURT OF SHEIKH RASHID MAJEED,
DISTRICT JUDGE, MUZAFFARABAD, AJ&K**
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File No: 25 - Revision Petition
Date of Institution: 17.05.2017
Date of Decision: **30.10.2017**

Iftikhar Hussain Shah S/O Akbar Shah, R/O Dherian Syedan, Tehsil & District Muzaffarabad.

(PETITIONER)

VERSUS

(1) Ghulab Khan S/O Fazal Din, (2) Shabbir S/O Gul Zaman, R/O Village Ranjata, Tehsil & District Muzaffarabad.

(REAL RESPONDENTS)

(3) Abdul Ghani S/O Abdullah, (4) Abdul Qayyum S/O Fazal Din, R/O Ranjata, Tehsil & District Muzaffarabad, (5) Senior Member Board of Revenue, Muzaffarabad, (6) Commissioner, Revenue Department, Muzaffarabad, (7) Collector District Muzaffarabad, (8) Tehsildar Revenue Department, Muzaffarabad, (9) Patwari Circle Ranjata, Tehsil & District Muzaffarabad.

(PRO-FORMA RESPONDENTS)

REVISION PETITION

PRESENT:

1. Syed Ahsan Ali Kazmi, Advocate for the Petitioner.
2. Muhammad Azad Khan Tareen, Advocate for the Private Respondents

JUDGMENT:

The captioned revision petition has been preferred against the order dated 30.03.2017 of learned Senior Civil Judge, Muzaffarabad, whereby application filed by the defendant/ petitioner herein for rejection of plaint has been dismissed.

2. BRIEF FACTS of the case necessary for the disposal of instant revision petition are that plaintiff/ respondents herein filed a suit for permanent injunction. It

was stated in the plaint that suit land survey number old 19, new 21, 22 & 23, measuring 2 Kanal 9 Marla, situated at village Ranjata, Tehsil & District Muzaffarabad is allotted in favour of plaintiffs through "تہہ زمینی". Plaintiffs have made improvement of millions in the suit land. Plaintiffs are resident of village Ranjata. Suit land is also situated in village Ranjata, whereas defendant is resident of village Tariaqabad. Defendant No. 1 with the convenience of other defendants wants to occupy the suit land. Lastly, it was prayed that a decree for permanent injunction be granted to the effect that defendant No. 1 be prohibited to interfere in the suit land or to change the entries in the revenue record.

3. After institution of said suit, trial Court initiated necessary proceedings in the case. Meanwhile, defendant No. 1 filed an application under Order VII, Rule 11 clause (a) & (d) for rejection of plaint.

4. Trial Court after obtaining objections from the plaintiff through impugned order dated 30.03.2017, rejected the application filed for rejection of plaint declaring it premature.

5. Feeling himself aggrieved from the impugned order dated 30.03.2017, defendant/ petitioner herein has filed instant revision petition.

6. Arguments heard.

Syed Ahsan Ali Kazmi Advocate, learned Counsel for the petitioner repeated the contents of the revision petition. It was further argued by him that plaintiff has filed the suit before the trial Court on the basis of mutation No. 637. Said

mutation was challenged by petitioner herein before Commissioner Muzaffarabad Division. Commissioner Muzaffarabad Division through judgment dated 16.04.2016 has cancelled the mutation No. 637. So, plaintiff has no *locus standi* to file the suit in hand. Trial Court on the one hand has vacated the stay order on 30.06.2016 and on the other hand has refused to reject the plaint. Revenue authorities could not be stopped to perform their official duties. Suit land is خالصہ which is in possession of defendant/ petitioner herein. Civil Court has no jurisdiction to entertain any case about Khalsa land. Lastly, it was prayed that by accepting this revision petition, plaint filed by the plaintiffs/ respondents herein may kindly be rejected under Order VII, Rule 11 of CPC.

Mr. Azad Khan Tareen Advocate, learned Counsel for the respondents fully defended the impugned order. It was argued by him that trial Court has passed the impugned order according to law. Plaintiffs have approached the trial Court for decree of permanent injunction. Only Civil Court is competent to pass a decree of permanent injunction. Suit land is in possession of plaintiff and plaintiff has legal right to protect his possession. Plaintiff can only be dispossessed within due course of law. Controversy involved in the case in hand can only be resolved after recording of the evidence of the parties. Lastly, it was prayed that instant

revision petition may kindly be dismissed.

Reliance was placed on:

- (i) *PLJ 1997 SC AJ&K 314*
- (ii) *PLD 2000 Quetta 61*
- (iii) *PLJ 2003 SC AJ&K 100*
- (iv) *2012 SCR 135*

7. I have heard the learned Counsel for the parties. Record of the case is also examined with due care. Perusal of record reveals that application filed by the petitioner for rejection of plaint has been dismissed by the trial Court. The controversy involved in the case is about applicability of Order VII, Rule 11 of CPC.

It is well established that to determine the cause of action or to apply Order VII, Rule 11 of CPC, only the plain reading of the plaint is required. In this regard, defense version cannot be considered, as has been held in cases *PLJ 2003 SC AJ&K 100* and *PLD 2000 Quetta 61*.

Now, coming towards the contents of the plaint, it reveals that plaintiffs/ respondents herein have filed a suit for permanent injunction before the trial Court. It is the claim of the plaintiffs that they are in possession of the suit land and defendants are trying to interfere in suit land. Although, the nature of suit land is stated as Khalsa land. However, irrespective of the nature of land, only Civil Court is competent to grant a decree of permanent injunction.

(b) AJ&K Grant of Khalsa Waste Land as Shamlat deh Act, 1966 --- S. 9 --- The jurisdiction of Civil Court has been barred only in those matters in which the Government or

Revenue Officers have jurisdiction under the Act --- Question emerges whether Revenue Officer or the Government can pass an decree for permanent injunction under the Act ---
Held: neither the Government nor the Revenue Officers have powers to pass a decree for permanent injunction --- A decree for perpetual injunction can only be passed by Civil Court under Specific Relief Act --- *The jurisdiction of Civil Court was not barred by Section 9 of the Act.*

(2009 SCR 382)

It is pertinent to mention here that revenue authorities cannot be stopped to perform their legal duties. In the case in hand, relief claimed by the plaintiffs/respondents herein against revenue authorities, is not maintainable. However, to the extent of remaining relief claimed against private respondents this case is maintainable. In this situation, plaint could not be rejected because there is no concept of piecemeal rejection of plaint. 2012 SCR 135

As far as the pointes raised by learned counsel for the petitioners are concerned, it is established principle that while considering applicability of Order VII, Rule 11 of CPC, no defense plea or objection raised by the defendants can be considered. The factum of cause of action can only be determined in light of plain reading of the plaint.

I am of the view that plaint filed by the plaintiffs/respondents herein discloses cause of action and also

within the jurisdiction of Civil Court. Moreover, Order VII, Rule 11 of CPC is not attracted in the case in hand. Trial Court after due application of judicial mind has passed the impugned order leaving no room for interference of this Court. There is no patent or latent illegality in impugned order of Trial Court.

HENCE, this revision petition is hereby dismissed for the reasons indicated above. A copy of this judgment be sent to trial Court. File be consigned to record room after its due completion.

ORDER ANNOUNCED.

(Sheikh Rashid Majeed)
District Judge, Muzaffarabad