

B.

JUDGMENT SHEET
PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT.
JUDICIAL DEPARTMENT

Civil Revision Petition No. 672-P/2006

JUDGMENT

Date of hearing.....11.12.2017.....

Petitioners: (Ahmadullah and others) through Attorney.

Respondents:(Govt of NWFP through Secretary Forest and others) by Mr. Azim Khan Advocate and Mr. Rahim Shah, Assistant A.G for official Respondents.

MUHAMMAD NASIR MAHFOOZ, J:- Through

this single Judgment I shall dispose of instant revision petition alongwith **Civil Revision No. 673-P/2006** titled "**Ahmadullah and others Vs Abdul Khaliq and others**", under section 115 of Civil Procedure Code, 1908 ("CPC") read with paragraph 10 sub paragraph 8 of Sharee Nizam-e-Adal Regulation, 2009 against the judgment and decree dated 20.02.2006, passed by the learned Additional District Judge/ Izafi Zilla Qazi, Buner, whereby, appeal of respondents was accepted and the judgment and decree dated 15.12.2004, of the learned trial court was set aside.



2. Brief and essential facts leading to the present petition are that, respondent No.1 to 4/plaintiffs filed a suit for declaration and permanent

injunction against the petitioners/defendants which was contested by the petitioners/defendants by submitting their written statements. After framing of issues evidence of both the parties were recorded and after hearing both the parties, the suit of the respondents/plaintiffs was dismissed by the learned trial court vide judgment and decree dated 15.12.2004. Aggrieved from the said order, the respondents No. 1 to 4/ plaintiffs preferred an appeal before the learned Additional District Judge/Izafi Zilla Qazi, Buner, who allowed the appeal and set aside the judgment and decree of the learned trial court and decreed the suit of the respondents/plaintiff vide judgment and order dated 20.02.2006, hence this petition.

3. Valuable arguments of the worthy counsel for the parties were heard and available record carefully perused.

4. This revision petition is pending from the year 2006 for the last 11 years. On 23.10.2017, the case was adjourned on payment of cost of Rs. 5000/- with the direction to petitioners to procure attendance of their counsel for hearing. On 09.11.2017, the payment of cost was waived off by learned counsel for respondents as the learned

counsel for petitioners was available to argue the case but having partially argued he could not conclude his arguments and the case was adjourned for today for remaining arguments, but learned counsel for petitioners is again absent without any application for adjournment, therefore, special attorney for petitioners was directed to argue the case himself but he expressed his inability and so learned Assistant A.G for the official respondents and learned counsel for private respondents argued the case in detailed length.

5. Perusal of the instant case file reveals that official respondents Forest Department filed a suit for permanent injunction regarding suit property measuring 2310 kanals and 11 marlas comprising khasra numbers as mentioned in the plaint, that consists of forest, so petitioners/defendants have no right to claim ownership of the suit property, they supported the impugned judgment and decree passed by learned appellate Court whereby the appeal of official respondents was accepted. Learned appellate Court has arrived at the final conclusion after discussing the evidence produced during trial.

6. There is no denial in this fact that the suit property consist of forest and no claim as to

ownership could be laid by any private person, as the instant suit was instituted in the year 2001, when Forest Act, 1927, was in the field and was not yet repealed by Forest Ordinance, 2002. Under section 29 of the *ibid* Act, the Provincial Government is empowered to declare any forest land or waste land which is not included in a reserve forest but which is the property of Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which is Government is entitled by notification in the Official Gazette. Under sub section 2 thereof the forest land and waste lands comprised in any such notification shall be called a protected forest. In the whole area of Swat, all the forest is protected forest and no part of it has been declared as reserved forest. Under section 29 of the Forest Ordinance, 2002, the same powers as mentioned in the *ibid* Act, vests in the Provincial Government and under section 120 of the Ordinance, the Forest Act, 1927, has been repealed.

 Schedule 1 of Sections 2(46), 26(1)(f), 30(1)(a), 33(2)(e), 36(3)(d), 44(c), 48(1), 56(3) of the Ordinance, provides list of protected trees when found in reserved forest, protected forest and protected waste lands and for levy of duty. The

Forest Act, has been extended to Provincially Administered Tribal Area (PATA) by regulation II of 1974, on 20.05.1974 and vide notification dated 20.12.1975, Provincial Government declared all forest land as state land. Section 50 of Khyber Pakhtunkhwa Land Revenue Act, 1967, provides for presumption as to ownership of forest, queries and waste land. Under sub section 3 the presumption created by sub section 1 may be rebutted and under sub section 4 until the presumption is so rebutted, the forest query, land, produce or interest shall be held to belong to Government. Forest Ordinance, 2002, is extended to PATA on 16.04.2009 vide Regulation I of 2009.

7. In the instant case, petitioners had also filed a civil suit bearing No. 130/1 instituted on 19.01.1994, which was dismissed by learned trial court on 15.12.2004 and their appeal was dismissed on 20.02.2006. The subject matter of both the civil suits are the same khasra numbers. Petitioners had  challenged the entries prepared during settlement and claim ownership of the suit property wherein evidence was recorded and finally decided. In the heading of plaint, petitioners have also challenged an exparte decree passed in favour of some private

respondents which was upheld by this court vide order dated 14.10.1987 passed in Civil Revision No. 381 of 1986. Though the question of title has not been discussed in detail by this court as the court was seized of a time barred application for setting aside exparte order and thus the exparte decree was maintained. The law expressly provides that the ownership of forest and forest land etc would vest in the Provincial Government so any claim by any private person in violation of the relevant law could not hold the field unless rebutted in any material particulars and not by mere oral evidence.

8. The quintessential law declared by the august Supreme Court of Pakistan on section 29 of the Forest Act, 1927, is **2000 SCMR page 548**, titled **“Major Azam Khan Afandi Vs. Deputy Commissioiner Swat and others”**, relevant para is reproduced below, as in case the petitioners had produced any documentary proof of their title the notification under section 29 could not have benefited the official respondents.



“On the other hand the Forest Department merely relied on a general notification issued on 12.12.1975 under section 29 of the Forest Act, 1927; whereby, all the Forests in Kalam were declared as “Protected Forest”. However, mere issuance of notification would not divest the real owners of the

Forest Land of their proprietary rights. This is admitted position that before the notification the Government was neither the owner of the property in question nor it had over claimed proprietary rights in this land. It is also admitted position that no inquiry as envisaged under sub-clause (3) of section 29 of the Forest Act, was conducted in the matter to ascertain and determine the rights of the private persons who could be the plaintiffs in this case”.

9. In view of my findings above, I hold that the judgment and decree passed by learned appellate Court do not require any interference by this court in the instant revision petitions, therefore, the judgment and decrees are maintained and the revision petitions are dismissed with no order as to costs.

Dt. 11.12.2017.


JUDGE

(Sanullah) (SB) Hon'ble Mr. Justice Muhammad Nasir Mahfooz.