

Order of this Court dated 17.3.2010 passed in Civil Petition No.103-P of 2010, as per report of Tehsildar, stands executed in presence of the parties including petitioner Ms. Sajida Sultan, who acknowledged and accepted the same as correct and to her satisfaction, she made statement to such effect under her signatures and thumb mark, therefore, no action is contemplated pursuant to the application directly sent to the Hon'ble Chief justice of Pakistan.

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

Civil Petition No.103-P/2010

Mst. Saedaq Sultan ... Petitioner(s)

Versus

Liaquat Khan Orakzai & others ... Respondent(s)

For the petitioner(s): Mian Muhibullah Kakakhel, Sr. ASC
Mr. Mir Adam Khan, AOR

For the respondent(s): All in person.

Date of hearing: 8.3.2010

ORDER

The concise statement filed by the petitioner is misleading. Let him file a complete and correct statement. The respondents may also file concise statements if they wish to do so. Re-list on 16.3.2010.

Peshawar
8.3.2010
M. Azhar Malik*



IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAJA FAYYAZ AHMED

MR. JUSTICE JAWWAD S. KHAWAJA

CIVIL PETITION NO.103-P OF 2010

Mst. Saedaq Sultan

Petitioner(s)

Versus

Liaqat Ali Khan Orakzai and others

Respondent(s)

For the petitioner(s):

Mian Muhibullah Kakakhel, Sr. ASC
Mr. Mir Adam Khan, AOR

Respondents Nos.1-22:

In person

Date of hearing:

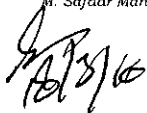
16.3.2010

ORDER

Court time is over. It is 2.05 p.m now. The matter is postponed for tomorrow (17.3.2010). To be taken up at 1.00 p.m.

Peshawar,
16th March, 2010

M. Safdar Mahmood/



IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J.
MR. JUSTICE CH. IJAZ AHMED

Civil Petition No. 103-P/2010.

Mst. Saeeda Sultan. Petitioner (s)

VERSUS

Liaqat Ali Khan Orakzai etc. Respondent (s)

For the petitioner (s) Mian Muhibullah Kakakhel, Sr. ASC
M~~u~~ Adam Khan, AOR with petitioner.

For the respondent (s) N.R.

Date of hearing 4.3.2010

ORDER

Learned counsel, inter alia, contended that as per the judgment/decree dated 31st October, 2006, petitioner has been found entitled for the property, boundaries of which have been mentioned therein. For convenience, same is reproduced as under:-

“In sequel to the above findings on all the issues a decree for declaration up to Part-Alif in favour of the plaintiff is granted alongwith the preliminary decree for possession through partition of ¼ share as prayed in Part-Jeem and Dal of the headings of the plaint against the defendants with the cost of Rs.10,000/- which is levied against the newly impleaded party as the case has been delayed for their late approach for impleadment and later on they did not contest it“

2. The above description has also been incorporated in the decree sheet. According to the learned counsel ~~although~~ the High Court while making observation in para 9 and 10 had widening the scope of allowing the partition of whole of the property and on account of such observation petitioner shall be deprived from ~~her~~^{the} property description of which is mentioned hereinabove and according to him, this will give rise to another round of litigation between the parties, therefore, he prayed for leave to appeal.

3. We have heard the learned counsel and have also gone through the judgments of learned High Court as well as of the Civil Judge, relevant para therefrom has been reproduced hereinabove. In our opinion, it is a short point which can be disposed of conveniently by issuing notice to the respondents and after providing opportunity of hearing to the ^{learn} ~~the~~ other side. Even otherwise this matter has to be disposed of expeditiously as the same is lingering on before the courts from 1970 to onward. Therefore, issue notice to the respondents alongwith copy of this order for 8.3.2010. Notice be issued today positively. Learned counsel for the petitioner is directed to assist the office in effecting the service upon the respondents.

Peshawar
04-03-2010

A. Rehman

24/3/10

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Filed on 18-2-2010
By Mr. Malik Adam Khan
With 3 P.Bs.

103 P
C.P.L.A. No. _____/2010

Mst. Saeeda Sultan
Wife of Dost Muhammad Khan
Resident of Qazi Street Saddar Kala
Bari, Peshawar.....

Officer Incharge (Peshawar) 18/110

Petitioner

Versus

1. Liaqat Ali Khan Orakzai Son of Malik Inayatullah Orakzai, Resident of Lala Zar Colony Near Dehri Baghbanan, Tehsil & District, Peshawar.
2. Mst. Malika Parveen D/o Malik Inayatullah Khan Orakzai, Wife of Aziz Khan R/o Sheikh Muhammadai, Kandi Haji Khel, Tehsil & District, Peshawar.
3. Haroon.
4. Adnan.
5. Shahzad sons.
6. Mst. Kashmala.
7. Mst. Rohi Daughters of Dost Muhammad Khan Resident of Qazi Street Saddar Kala Barri, Peshawar.
8. Sikandar Hayat Khan.
9. Mst. Malika Shaheen D/o Malika Inayatullah Khan Orakzai W/o Akbar Khan R/o Village Kookar, Near Bukhshoo Pul, Tehsil & District, Peshawar.
10. Hidayatullah.
11. Kifayatullah Sons.
12. Mst. Fouzia Bibi D/o Attaullah Khan.
13. Sadiqullah Khan.
14. Ikramullah Khan sons of Inamullah Khan, Resident of Ghari Maaz Khan, Bana Mari, Tehsil & District, Peshawar.

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14. Mst.Pano Bibi widow
15. Sikandar Khan,
16. Naseem Khan sons of Munawar Khan deceased
17. Mst.Mah Jabeen Qazalbash widow
18. Shahid
19. Hammad sons
20. Mst.Huma d/o Hakimullah deceased, resident of Mouza Bana Mari, Peshawar.
21. Saeedullah Khan son of Ilyas Khan, resident of Mohallah Qazian Peshawar City.
22. Iqbal Hussain son of Ghulam Mustafa r/o Naseer Abad, Bana Mari, Peshawar.

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.....Respondents

CIVIL PETITION UNDER ARTICLE 185(3) OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN AGAINST THE JUDGMENT DATED 18.12.2009 OF THE PESHAWAR HIGH COURT, PESHAWAR, IN CIVIL REVISION NO:119/2008.

RESPECTFULLY SHEWETH:

Part-A

The points of law of great general public importance for consideration of this august court are as under:-

- I. Whether the appraisal of evidence and the findings of the Hon'ble Peshawar High Court, as well as of the learned Appellate Court are arbitrary, suffers from misreading and nonreading of evidence, misconstruction of materials available o record, misconception of law and legal infirmity?

- II. Whether Hon'ble Judge of the Peshawar High Court, was not legally required to pass directions in Para No.10 & 11 of the judgment to the Trial Court regarding the method for passing a final decree of partition, which was not in issue between the parties in the Revision Petition nor the same was agitated by the defendant/Respondent?

- III. Whether when the mode of partition was not yet drawn and finalized by the Trial Court, nor the same has not yet been in controversy between the parties, such like directions given by the Hon'ble Peshawar High Court, were not legally required?

- IV. Whether when the plaintiff/petitioner is in possession of certain portion of the suit property, her possession is to be respected in proceedings of passing of final decree?

- V. Whether by passing directions in Para Nos.10 and 11 of the judgment, the Hon'ble Peshawar High Court, has practically pre-decided the mode of partition before its decision by the learned Trial Court, which is altogether without jurisdiction having not binding effect upon the plaintiff/petitioner?

- VI. Whether the Hon'ble Judge of the Peshawar High Court, has gone out of the pleadings of the parties not in issue in the Revision Petition nor agitated by the department/Respondents nor in existence at all?

- VII. Whether passing of such directions are prohibited under the law by which the rights and interests of one of the party are badly effected?

VIII. Whether the Trial Court would become prejudice from the said directions of Hon'ble Peshawar High Court, even before passing the final decree for mode of partition?

IX. Whether the directions contained in Para Nos.10 and 11 of the judgment of Hon'ble Peshawar High Court, are liable to be expunged/quashed set aside?

Part-B

FACTS OF THE CASE

1. That Mst.Saeeda Sultan plaintiff/petitioner filed a suit in the year, 1970 against the defendants/Respondent for declaration and possession through partition of 1/4th share in the suit property which was gifted to her in lieu of dower by her husband Dost Mohammad Khan.
2. That the preliminary decree for partition was granted on 12.12.1972 by the learned Trial Court which remained unchallenged.
3. That during the final decree one Munawar Khan intervened posing himself a bonafide purchaser of some share in the whole property but his application was dismissed on 4.9.1994.
4. That the legal heirs of Said Munawar Khan filed Revision Petition which was accepted without any just cause as held by the Hon'ble Judge of the Peshawar High Court, and the decree was set aside on 4.5.1995 and the case was remanded to the Trial Court for impleadment of legal heirs of Munawar Khan.

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5. That when the legal heirs of deceased Munawar Khan impleaded they did not opt to that and abandoned their claim however the present defendants/Respondents who had not challenged the preliminary decree and had accepted the same, contested the suit by filing an amended written statement wherein altogether new pleas were taken. Their objection about framing of wrong issues was dismissed up-to the Hon'ble Peshawar High Court, in writ petition NO.1163/2003 vide judgment dated 17.12.2003.
6. That the learned Trial Court again granted the preliminary decree of partition in favour of plaintiff/petitioner vide judgment and decree dated 31.10.2006.
7. That the Revision petition of defendants/Respondent was also dismissed by the Hon'ble Judge of Peshawar High Court, Peshawar, vide judgment and decree dated 18.12.2009 but in Paras No.10 and 11 of the impugned judgment by passing directions to the Trial Court for placing each co-sharer on equal pedestal and that no one should be given too much preference over the other which principle has to be followed in this case too while drawing the mode of partition and that the property is not to be divided into small parcels rendering it of less value for each co-sharers, have adversely effected the rights of the plaintiffs-petitioners.
8. That the petitioner is only aggrieved from Para Nos.10 and 11 of the judgment of Hon'ble Peshawar High Court, against which the petitioner seeks leave to appeal to this august court on the law points and grounds mentioned in Part-A of this petition.

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It is, therefore, respectfully prayed that Para Nos. 10 and 11 of the judgment of Hon'ble Peshawar High Court, may please be set aside/quashed expunged and the learned Trial Court may be directed to pass a final decree of partition in accordance with law.

Drawn and filed by

Mir Adam Khan
(MIR ADAM KHAN)
ADVOCATE ON RECORD

CERTIFICATE.

Certified that no such Petition has earlier been filed by the petitioner against the impugned judgment and order.

Mir Adam Khan
ADVOCATE ON RECORD