

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.**

(Judicial Department)

WP No. 589^{A (2025)} -A/2016

Mehfooz ur Rehman.....(Petitioner)

VS

Jehangir Khan.....(Respondent)

Present: Hafiz Iftikhar Ahmed Khan, Advocate for the petitioner.

MR. Sajjad Ahmed Abbasi, Advocate for the respondent.

Date of hearing: 19.05.2025

JUDGMENT

SADIQ ALI, J.- This order is directed to dispose of instant Civil Revision petition (converted into writ petition) filed by the petitioners against Judgment and decree dated 18.01.2016, whereby learned appellate Court dismissed appeal of the petitioner against judgment and decree dated 29.01.2011, passed by the learned Civil Judge-XI, Abbottabad.

2. Respondent filed a suit under Section 9 of the Specific Relief Act, 1877 for recovery of possession in respect of two shops and a service

station, comprised in Khasra Nos. 600, 603, 604, 605 and 606, on the ground that the suit shops were owned and possessed by him, which have illegally and unlawfully been occupied by the petitioner/defendant, by dispossessing him. The suit was contested by the petitioner/defendant by filing his written statement, wherein he claimed that the suit shops and service station were constructed in Khasra No. 602 and 453 which are owned and possessed by him. After recording pro and contra evidence, the learned trial Court dismissed the suit vide judgment and decree dated 29.04.2005. The respondent/plaintiff assailed the judgment and decree of the learned trial Court through Civil Revision, which was accepted by learned Additional District Judge-III, Abbottabad, decreeing the suit of respondent/plaintiff. Said judgment of the learned Revisional Court was challenged before this Court in Writ Petition No. 162/2006, which was allowed and the case was remanded back to the learned trial Court. The learned trial Court, after remand of the case, record further evidence of the parties and vide judgment and decree dated 29.01.2011, decreed the

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suit of the respondent/plaintiff. The petitioner assailed the judgment and decree of the learned trial Court through appeal which was also dismissed by the learned Additional District Judge-II, Abbottabad vide judgment dated 18.01.2016, hence, the instant petition.

3. I have heard arguments of learned counsel for the parties and perused the record.

4. The earlier round of litigation would show that when the suit of the respondent was dismissed vide order/judgment dated 29.04.2025, then the plaintiff/respondent filed revision petition as the suit had been filed under Section 9 of the Specific Relief Act. But in second round of litigation, when the case was decreed in favour of the respondent/plaintiff, thereafter, the petitioner/defendant preferred appeal to the learned District Judge, Abbottabad, which was not competent within the meaning of Section 9 of the Specific Relief Act and the order of learned District Judge has been challenged through present revision petition. It is well settled law that under Section 9 of the Specific Relief

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Act, the Court has to see that whether the suing party has been wrongly dispossessed from the immovable property without due course of law and consent and the suit has been brought within six months from the date of his/her dispossession and the party is required to allege and prove these facts through positive and cogent evidence. In addition to the aforesaid requirements, another important aspect of the case under Section 9 of the Specific Relief Act is that the above said provision does not rest upon any title document. It is totally an independent remedy under the law, where no question of title either of plaintiff or defendant can be raised or gone into. Superior Courts in numerous judgments have laid down some important principles which would help us in understanding the gist of Section 9 of the Specific Relief Act. In the case of "***Late Mst. Majeedan through Legal Heirs and another Vs. Late Muhammad Naseem through Legal Heirs and another***" (2001 S C M R 345) wherein it was held that;

"We have minutely perused the judgment passed by learned trial Court on 17-12-1998

and impugned order. The entire evidence has been thrashed out with the eminent assistance of learned counsel of the parties. We are not persuaded to agree with the main contention as agitated on behalf of the petitioners that suit was not maintainable under section 9 of the Specific Relief Act as twofold relief was sought by the respondents for the reasons that at later stage the suit was got amended with permission of trial Court and only possession was prayed for. It is worth mentioning here that "A suit under section 9 of the Specific Relief Act is however, and entirely different kind of action. That section gives a specific privilege to person in possession who takes action promptly. In case they are dispossessed, it entitles them to succeed simply by proving (1) that they were in possession, (2) that they have been dispossessed by the defendant, (3) that the dispossession is not in accordance with law, and (4) that the dispossession took place within six months of the suit. No question of title either of the plaintiff or of the defendant can be raised or gone into in that case". (1989 CLC 318 (DB) + 1987 Dhaka LR 8 + 1985 CLC 2309 + 1983 CLC 507 + 1981 CLC 654 + PLD 1970 Lah. 560 + 18 DLR (DB) + PLD 1969 Kar. 78 + AIR 1959 All. 1 (DB) + AIR 1956 Hyd. 170 + AIR 1927 All. 669 (DB). All that is necessary is that it must be proved that the plaintiff was in possession, that he was dispossessed and that the suit has been brought within 6 months from the date of the dispossession. It is immaterial if the plaintiff was in possession and that such possession was

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without title and therefore, the contention as agitated on behalf of the petitioners that possession was obtained on the basis of forged allotment order cannot be considered. It is well-established legal position that "Title was not material in a suit falling under section 9 and any person who had been dispossessed, otherwise than in due course of law, could, without pleading or proving title, seek to be re-inducted into possession, even though such a relief was sought against true owner of property himself". (Sobha v. Ram Phal, AIR 1957 All. 394; Azam Khan v. The State of Pakistan and another, PLD 1957 Kar. 892; Siddiq Ahmed v. Estate Officer and another PLD 1957 Kar. 887; Riaz and another v. Razi Muhammad PLD 1979 Kar. 227 and Supercon Ltd. v. Eastern Construction Ltd., 1987 CLC 1566 ref.)"

Similarly, this Court in the case of "**Zahir Hussain and four others Vs. Bashir Muhammad and five others**" (CLC 2012 Peshawar 377), has held that;

"In order to succeed in the suit filed under section 9 of Act ibid, ' the plaintiff must prove that he was in possession of the suit property and he has been dispossessed by the defendant otherwise than in due course of law, which dispossession took place within six months of filing of the suit. No question of title can be raised or looked into in a case filed under section 9 of the Act ibid."

5. The provisions of Section 9 of the Specific Relief Act, clearly indicate that same provide a quick remedy to those who have been illegally dispossessed. The provisions of Section 9 do not debar any party suing to establish his title. Besides this provision of law does not provide remedy of appeal, rather the aggrieved party has the remedy of filing revision to the next higher forum against the judgment/decreed passed by the trial Court. Reference can be made to the judgment of honourable Sindh High Court in the case of “***Abdul Hakeem Vs. Ameenuddin through legal heirs and 3 others***” reported as **2017 CLC 1406**, wherein it has been held that;

“The law has specifically barred an appeal against the dismissal of suit under Section 9 of the SRA, 1877. Since appeal was not maintainable as specifically barred by law, the revision against the impugned appellate order of dismissal of appeal is obviously not maintainable. The revisional court cannot find any jurisdictional defect in dismissal of an appeal by a Court of law when the appeal is specifically barred by law. Learned counsel for the applicant has contended that revision lies against the said order. However, he has not

elaborated his contention. In my humble view his contention is misconceived. The revision lies when "no appeal lies" but in the case of an order/decreed under Section 9 of SRA, 1877, the appeal has been specifically barred. The phrase "no appeal lies" in Section 115, C.P.C. cannot be equated with the phrase "No appeal shall lie" in Section 9 of SRA, 1877. The legislative intention of barring an appeal is re-enforced in the next sentence that "nor shall any review of any such order or decree be allowed" cannot be ignored either. This is not any injustice to a party against whom the verdict is given by the court nor it is even against the recently introduced Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 for two reasons. Firstly, the right and entitlement of the parties in suit property is not determined by the Court under Section 9 of SRA, 1877 in favour of either party. Secondly, the remedy is also provided to the lawful claimant of suit property in the same Section 9 of SRA, 1877 by allowing him to file a civil suit for his title and recovery of possession in the following terms:-

"Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof."

Similar view was taken in the case of

"Sufi and another Vs. Sain Muhammad and another (2012 CLC 520)".

6. As discussed above, the remand order dated 03.11.2006, passed in WP No. 162/2006 clearly indicate certain directions to the trial Court for further evidence and after completion of the evidence, without touching and adjudicating upon the title of the parties, decide the suit of the plaintiff/respondent, where after petitioner/defendant filed appeal which was not competent but the appellate Court had examined the evidence of the parties and thereafter, dismissed the appeal of the petitioner/ defendant. Although appeal of the petitioner/ defendant was not competent, and the present Revision of the petitioner/defendant is also not maintainable, but as stated above, appellate Court has decided the case after evaluating the entire evidence, therefore, this Court would deem it appropriate to decide the case on merits as the High Court has the power to convert one type of proceedings into another. Reliance in this respect is placed on the judgment of apex Court in the case of "Mian Asghar Ali Vs. Government of Punjab through Secretary Colonies, BOR Lahore and others" (2017 SCMR 118), wherein it was held that;

“Power to convert and or treat one kind of proceeding into another is derived from authority to do ex debito justitiae, which always existed and have always been exercised by the Court not only to advance the cause of justice but also to prevent the injustice. No fetters or bar could be placed on the High Court and or this Court to convert and treat one type of proceeding into another and proceed to decide the matter either itself provided it has jurisdiction over the lis that has fallen on its lap for adjudication in exercise of another jurisdiction vested in the very Court or may remit the lis to the court/forum/authority of competent jurisdiction for decision of the lis on its own merits. Courts have been treating and or converting appeal into revisions and vice versa and Constitution Petitions into appeal or revision and vice versa. In the case of Jane Margrete William v. Abdul Hamid Mian (1994 SCMR 1555), C.M.A. under section 151, C.P.C. filed in the High Court, was treated as cross objection. In the case of Capital Development Authority v. Khuda Bakhsh and 5 others (1994 SCMR 771), where the High Court converted the C.M.A. filed in a disposed off Writ Petition as a separate Writ Petition and decided the same accordingly, this Court held if the High Court was satisfied that circumstances of the case justified conversion of Miscellaneous Application filed by the Respondent in a disposed off case into proceedings under Article 199 of the Constitution of Pakistan, there is no

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legal bar to such conversion of proceedings. Even objection as to non-issuance of notice before such conversion, was not considered fatal by this Court. Even time consumed pursuing remedy before a wrong forum or jurisdiction in appropriate cases is condoned (see Shamsul Haq and others v. Mst. Ghoti and 8 others (1991 SCMR 1135). In a case cited as Muhammad Anis and others v. Abdul Haseeb and others (PLD 1994 Supreme Court 539); eligibility for consideration of promotion; was successfully challenged in writ jurisdiction of the High Court. On appeal, this Court came to a conclusion that such question falls within the competence of Service Tribunal, therefore, writ is not maintainable. Consequently impugned judgment passed by the High Court in exercise of writ jurisdiction was set aside and in paragraph 16 of the judgment supra this Court treated the Writ Petition as Service Appeal pending before the Service Tribunal with direction to decide the same after notice to the parties concerned in accordance with law. In similar circumstances in a judgment recently reported as Province of Sindh and another v. Muhammad Ilyas and others (2016 SCMR 189) dismissal from service order was challenged before the learned Sindh High Court through Constitutional Petition. The Constitutional Petition was treated by the High Court as service appeal and sent to the Service Tribunal; which was decided by the Service Tribunal on merit and this Court declined leave in the matter. Similar course was followed by the

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learned Division Bench of Peshawar High Court in a case reported as Engineer Musharaf Shah v. Government of Khyber Pakhtunkhwa through Chief Secretary and 2 others (2015 PLC (C.S.) 215). In the cases reported as The Thal Engineering Industries. Ltd. v. The Bank of Bahawalpur Ltd. and another (1979 SCMR 32), Karamat Hussain and others v. Muhammad Zaman and others (PLD 1987 Supreme Court 139) and Capital Development Authority (Supra) similar course was followed."

Being an old case, having previous history of remand, in the interest of justice, it would be appropriate that appeal decided by the appellate Court is deemed to be a revision petition while the instant Civil Revision is converted into writ petition. Accordingly, this revision petition is converted into writ petition. Office is directed to do the needful.

7. Now coming to the merits of the case. Perusal of record reveals that the case of the respondent is with respect to his dispossession from Khasra Nos. 600, 603, 604, 605 and 606 and he sought restoration of possession under Section 9 of the Specific Relief Act, 1877. It was contended in the plaint that in the suit Khasra numbers, shops and a

service station, were constructed. The petitioner/defendant came up with a counter claim that the shops and service station are constructed in Khasra No. 602 and 453. In earlier round of litigation, the matter came up to this Court and was remanded back to the learned trial Court for further evidence. The learned trial Court provided ample opportunity to the parties to lead their respective evidence.

8. In order to prove the fact that the respondent/plaintiff was owner and in possession of the suit property, tenancy agreements Ex PW-3/1 to Ex PW-3/3 and Ex PW-6/1 were produced during course of evidence. The stance of the respondent/plaintiff further gets support from the revenue record exhibited as Ex PW1/1, which shows that the Khasra numbers 600, 603, 604, 605 and 606 are constructed. While as per ExPW-1/4, Khasra No. 602 and 453 is path. The petitioner/defendant claims that Khasra Nos. 602 and 453 are owned and possessed by him whereupon shops and service station is constructed, whereas the revenue record negates his stance

regarding construction. Statement of PW-3 and PW-6 fully support the stance of plaintiff/respondent.

9. In light of the above factual and evidentiary background, both the learned Courts below have rightly decreed the suit filed by the respondents/ plaintiffs. No illegality or material irregularity could be pointed out by the learned counsel for the petitioners, warranting interference by this Court in its constitutional jurisdiction. Resultantly, this petition stands dismissed.

Announced
Dt: 19.05.2025

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JUDGE