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**IN THE COURT OF MISBAH HUSSAIN,
CIVIL JUDGE CLASS-I,
JHELUM**

Civil Suit No.	1261/2022
Date of Institution:	28.10.2021
Date of Decision:	01.11.2023

Saghir Ahmed S/o Muhammad Sharif, resident of Baig Pur, Tehsil &
District Jhelum-

..... (Plaintiff)

Versus

1. Shafqaat Ahmed S/o Abdul Raheem through Special Attorney
Irfan Rasheed S/o Muhammad Rasheed
2. Muhammad Khan S/o Khair-Ullah, residents of Miyana Kotha,
Tehsil Dina & District Jhelum.

..... (Defendants)

**SUIT FOR DECLARATION ALONGWITH PERMANENT AND
MANDATORY INJUNCTION**

Present: Raja Shahid Mehmood Advocate, learned counsel for
plaintiff.
Raja Muhammad Waseem Afzal Advocate, learned counsel
for defendants.

JUDGMENT

Brief facts necessitating the filing of instant suit are that
father of plaintiff namely Muhammad Sharif was residing in house No.1
measuring 09 marla with abuttals as house of Muhammad Ashraf
towards easter side, house of Muhammad Saddique towards western
side, street as well as house of Mian Ahsan Iqbal etc and haveli
measuring 4 marla towards northern side and house of Muhammad
Afzal etc towards southern side; that there is haveli measuring 4 marla
on northern side of house No.1 and 5 marla land towards eastern side
of said haveli which is owned and possessed by plaintiff; that

defendant No.1 who is son of his aunt Safooran Bibi and hiba in his favour by grandfather of plaintiff is without possession which was challenged in Civil Court by plaintiff's father Muhammad Sharif and same was decreed in favour of defendant No.1; that defendants have prepared a false and frivolous rent deed on 12.06.2021 regarding house No.1 and haveli measuring 4 marla which is liable to be cancelled being based on fraud and misrepresentation; that defendants have been asked time and again to get cancelled rent deed and accept the claim of plaintiff but they are adamant to do so, hence this suit.

2. The defendants have contested the suit by filing his written statement wherein he raised preliminary as well as factual objections like maintainability of suit, plaintiff having no cause of action, suit being liable to be dismissed under Order VII Rule 11 CPC and liable to be dismissed with special cost u/s 35-A CPC. On facts, defendants contended that originally the suit property was owned and possessed by Muhammad Yaqoob deceased who vide hiba No.170, gifted the property to his daughter Mst. Safoora Bi Bi, the predecessor of defendant No.1. After the death of Muhammad Yaqoob in 1988, father of the plaintiff namely Muhammad Sharif filed a civil suit challenging the gift deed No.170 dated 24.07.1956. Said suit was dismissed by the civil court vide order dated 16.07.2009 and said order was upheld upto August Supreme Court of Pakistan and late Safoora was declared the owner of property No.1 and property No.2 as mentioned in the headnote of the plaint measuring 9 marlas and second property measuring 4-marlas; that the defendant No.1 rented out this property through registered rent deed dated 12.06.2021 to defendant No.2 being owner

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83 and the plaintiff has no concern whatsoever with the property defendant No.1 and property as mentioned in the registered rent deed. The abuttals as mentioned by the plaintiff regarding this property are altogether different from the property mentioned in the rent deed. Rest of the averments of the plaint were also contested with the request to dismiss the suit of the plaintiff.

3. In order to resolve the controversy between the parties, out of divergent pleadings, following issues were framed vide order dated 03.02.2022 by learned Administrative Court:-

ISSUES

1. Whether the plaintiff is entitled to get a decree for cancellation of rent deed as prayed for? OPP
2. Whether the plaintiff is entitled to get a decree for and permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable and liable to be rejected? OPD
4. Relief.

4. During pendency of the suit, learned counsel for defendants filed application for reframing of issued which was accepted vide order dated 28.05.2022 after which following issues were framed:-

REFRAMED ISSUES:

- 1) Whether the suit is barred by law and is liable to be dismissed u/o VII Rule 11 CPC? OPD
- 2) Whether the plaintiff is entailed to a decree for declaration, permanent and mandatory injunction regarding the suit properties as prayed for? OPP
- 3) Whether the impugned rent agreement dated 12.06.2021 is liable to be cancelled being based on fraud, mala-fide, concealment of

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facts, against law and without having possession over the suit properties? OPP

4) Whether the suit property was gifted by maternal grandfather of defendant No.1 to his mother vide gift deed No.170 in year 1956 and since then she was owner in possession of the suit property and after her death, the defendant No.1 alongwith his siblings aer owner in possession of the suit property being legal heirs? OPD-1

5) Whether father of the plaintiff filed suit challenging gift mutation No.170 dated 24.07.1956 in year 2007 in civil court which was dismissed and its appeals till August Supreme Court of Pakistan were also dismissed? OPD-1

6) Whether brother of defendant No.1 permitted the plaintiff to use the suit house to store his luggage and other articles due to rains etc and later plaintiff lingered on to vacate the suit house on which brother of defendant No.1 has filed suit against the plaintiff? OPD-1

7) Whether plaintiff has filed suit in hand by concealment of real facts, previous round of litigation and decisions by Civil Court, learned appellate court, Honorable High Court and August Supreme Court of Pakistan and as such suit of the plaintiff is liable to be dismissed with special of Rs.50,000,000/- (five crore rupees) cost u/s 35-A of CPC? OPD-1

8) Relief.

5. After framing of issues, parties were directed to produce their respective evidence. In order to prove his case, plaintiff himself appeared before the court as P.W.1 and got recorded his statement on oath. He produced witnesses Allah Rakha S/o Fazal Elahi as P.W.2 and Tanveer Ahmed S/o Shabbir Ahmed as P.W.3. In statement of learned counsel for plaintiff, certified copy of case No.86 titled "Muhammad Sharif Vs Safooran Bibi" alongwith written statement, order sheet and last order was tendered as Exh.P1, certified copy of

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civil appeal as Exh.P2, certified copy of hiba nama as Exh.P3, certified copy of suit titled "Imtiaz Ahmed Vs Saghir Ahmed etc" as Exh.P4, certified copy of suit titled "Muhammad Hanif etc Vs Safooran Bi etc" as Exh.P5, copy of inheritance mutation No.1930 dated 12.06.1980 of Abdul Raheem as Exh.P6, copy of report application No.13154-09 as Mark.A, copy of FIR No.5 dated 06.01.2011 alongwith challan, order of Hon'ble High Court, Lahore Rawalpindi Bench, FIR No.281/21, 239/21 as Mark.B, demarcation report of Commissioner Rawalpindi alongwith report map of suit property as Mark.C, copy of attestation deed alongwith map of house of plaintiff as Mark.D, receipts of construction material of house of plaintiff as Mark.E and closed evidence of plaintiff.

6. On the other hand, in order to rebut the claim of plaintiff, defendant No.1 appeared through his special attorney Ishtiaq Baig S/o Mirza Intizar Baig as D.W.1 and got recorded his statement on oath wherein he tendered copies of orders of previous litigation as Exh.D1 to Ech.D4, copy of appeal as Exh.D5, rent deed as Exh.D6 and cancellation report as Exh.D7. Learned counsel for defendants recorded his statement in which he tendered FIR No.539/21 dated 23.09.2021 as Exh.D8, FIR No.281/21 as Exh.D9, general power of attorney as Exh.D10 and closed evidence of defendants.

7. I have heard the final arguments advanced by learned counsels for the parties and perused the available record with their able assistance. My issue wise findings are as follows:-

ISSUE NO.1

Whether the suit is barred by law and is liable to be dismissed u/o VII Rule 11 CPC? OPD

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8. Onus to prove this issue was placed on shoulders of defendants. Defendants in their written statement have taken plea of maintainability of suit and consequently during the pendency of suit this preliminary issue was framed and after hearing the arguments from both sides instant suit was rejected Under Order VII Rule 11 CPC. Plaintiff feeling aggrieved filed an appeal before learned Appellate Court against the said order which was accepted and judgment and decree dated 18.07.2022 was set-aside with the direction to trial Court to decide the case afresh after recording evidence of the parties in accordance with law. As this issue was framed as preliminary issue and same has already been decided therefor, same is redundant.

ISSUES NO.2 AND 3.

Whether the plaintiff is entitled to a decree for declaration and mandatory injunction regarding the suit properties as prayed for? OPP

Whether the impugned rent agreement dated 12.06.2021 is liable to be cancelled being based on fraud, mala-fide, concealment of facts, against law and without having possession over the suit properties? OPP

9. Onus to prove these issues was on the shoulders of plaintiff. The plaintiff has alleged that he is in possession of house No.1 measuring 9 marla with abuttals as house of Muhammad Ashraf towards easter side, house of Muhammad Saddique towards western side, street as well as house of Mian Ahsan Iqbal etc and haveli measuring 4 marla towards northern side and house of Muhammad Afzal etc towards southern side and haveli measuring 4 marla and house measuring 5 marla and the defendants have prepared a false

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and frivolous rent deed regarding the house measuring 9 marla and haveli measuring 4 marla despite of the fact that neither the defendant nor his tenants is in possession of the property. Infact he is in possession of the property and just to create their possession over the property for the purpose of registration of criminal cases against the plaintiff they have got registered the disputed rent deed therefore said rent deed may kindly be declared null and void. On the other side, the defendants in their written statement said that they are the owners of the property in dispute and defendant No.1 has rightly rented out the property to the defendant No.2 through registered rent deed and plaintiff has no concern with the property therefore he has no locus standi to challenge said rent deed.

10. The plaintiff has assailed the rent deed on the ground that the defendant is not in possession of the property. Admittedly, the original owner of the property was the grandfather of the plaintiff who transferred the properties house No.1 measuring 9 marla and haveli measuring 4 marla through hiba deed to his daughter and mother of the defendant No.1, father of the plaintiff namely Muhammad Sharif assailed said hiba through civil suit but he remained fail up to the August Supreme Court of Pakistan and the mother of defendant No.1 namely Safoora Bi Bi was declared the lawful owner of the property on the basis of said hiba. After completion of that round of litigation up to the August Supreme Court of Pakistan, the plaintiff has filed this suit. As per law a suit for declaration can only be filed when there is any denial to any vested legal right but in case in hand the plaintiff has failed to brought on record his any right or title over the property in

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dispute. The contentions of the plaintiff that on the basis registered rent deed the defendants who are not in possession of the property are trying to create their possession is not tenable because nowhere in the plaint or evidence plaintiff has alleged that the defendants have tried to illegally dispossessed him from his property on the basis of said registered rent deed. The plaint of the case is very vague and ambiguous as in the headnote of the plaint, the plaintiff has tried to show that he is in possession of the property measuring 9 marla and 4 marla haveli and he is constructing another house measuring 5 marla however in the contents of the plaint he tried to create that the rent deed is regarding the 5 marla house of the plaintiff which is under construction and the defendants have mentioned the wrong abuttals in the rent deed but perusal of the rent deed reveals that this rent deed was regarding house No.2 belonging to defendant No.1 namely Shafqaat Ahmed with the following abuttals:-

یہ کہ فریق اول اگر وہ دوائے ایک مکان نمبر 2 / حویلی سو من (مکتبہ مقبولہ فریق دوم) مشتمل برتین کمرے، دو ٹنک ہال، کچن، باغچہ روم، صحن محدود و محدود شمال
گلی مکان سڑکیہ ٹیم، مسماہ آباد ٹیم، ٹوب مکان سڑکیہ، مشرق مکان فتح غنور اور مغرب مکان میاں محمد حسین واقع موضع ٹیک پاراندر آبادی دیہہ تحصیل
ضلع جہلم

The registered hiba deed through which the mother of defendant No.1 became owner of the property is also available on the file having the same abuttals. On the other side, the plaintiff in the headnote of his plaint has mentioned the abuttals of his property as under:-

مکان فتح غنور اور محدود مشرق مکان سڑکیہ مغرب ہال ٹوب مکان ٹوب اور شہ ہے۔

Comparison of these abuttals reveals that they are altogether different. The defendant No.1 has rented out his own property through the disputed rent deed to defendant No.2 and the plaintiff has no locus

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standi or cause of action to challenge the fate of said registered deed when the same is not regarding his property. Furthermore, if the defendant No.1 was not in the possession, then it was defendant No.2, the party to said rent deed being tenant authorized or having locus standi to assail said rent deed. As per section 42 of Specific Relief Act, suit for declaration can only be filed by a person whose vested right or title is denied by anybody. But in case in hand, there is no denial to any vested right or title of plaintiff. So, keeping in view of above discussion, plaintiffs have failed to prove these issues through cogent, confidence and inspiring evidence and same are decided against the plaintiff and in favour of defendants.

ISSUES NO.4 TO 6

Whether the suit property was gifted by maternal grandfather of defendant No.1 to his mother vide gift deed No.170 in year 1956 and since then she was owner in possession of the suit property and after her death, the defendant No.1 alongwith his siblings are owner in possession of the suit property being legal heirs? OPD-1

Whether father of the plaintiff filed suit challenging gift mutation No.170 dated 24.07.1956 in year 2007 in civil court which was dismissed and its appeals till August Supreme Court of Pakistan were also dismissed? OPD-1

Whether brother of defendant No.1 permitted the plaintiff to use the suit house to store his luggage and other articles due to rains etc and later plaintiff lingered on to vacate the suit house on which brother of defendant No.1 has filed suit against the plaintiff? OPD-1

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11. Onus probandi of these issues was placed on the shoulders of defendants. In light of my detailed findings on issues No.2 and 3, these issues are decided against the plaintiff and in favor of defendants.

ISSUE NO.7


Whether plaintiff has filed suit in hand by concealment of real facts, previous round of litigation and decisions by Civil Court, learned appellate court, Honorable High Court and August Supreme Court of Pakistan and as such suit of the plaintiff is liable to be dismissed with special cost of Rs.50,000,000/- (five crore rupees) u/s 35-A of CPC? OPD-1

12. Onus to prove this issue was placed on shoulders of defendants. In light of my detailed findings on issues No.2 and 3, this issue is decided against the defendants and in favor of plaintiff.

RELIEF

13. As per my findings on issues No.2 and 3, the suit of the plaintiff is **dismissed**. No order as to cost. Decree sheet be drawn accordingly. File be consigned to the record room after its due and necessary completion.

Announced:
01.11.2023


(Misbah Hussain),
Civil Judge Class-I,
Jhelum

CERTIFICATE

Certified that this judgment consists of 10-pages; each page is dictated, read, corrected (where needed) and signed by me.

01.11.2023


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Civil Judge Class-I
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DECREE SHEET

**IN THE COURT OF MISBAH HUSSAIN,
CIVIL JUDGE CLASS-I,
JHELUM**

Civil Suit No.	1261/2022
Date of Institution:	28.10.2021
Date of Decision:	01.11.2023

Saghir Ahmed S/o Muhammad Sharif, resident of Baig Pur, Tehsil & District Jhelum.

..... (Plaintiff)

Versus

1. Shafqaat Ahmed S/o Abdul Raheem through Special Attorney Irfan Rasheed S/o Muhammad Rasheed
2. Muhammad Khan S/o Khair-Ullah, residents of Miyana Kotha, Tehsil Dina & District Jhelum.

..... (Defendants)

SUIT FOR DECLARATION ALONGWITH PERMANENT AND MANDATORY INJUNCTION

Present: Raja Shahid Mehmood Advocate, learned counsel for plaintiff.
Raja Muhammad Waseem Afzal Advocate, learned counsel for defendants.

Above titled suit presented today before me **MISBAH HUSSAIN, CIVIL JUDGE CLASS-I, JHELUM** for final disposal

It is ordered that suit of the plaintiff is **dismissed**. No order as to cost.

COSTS OF PLAINT

Plaintiff		Defendant	
1. Court fee stamp on plaint.	Rs. -	Stamp for petition.	Rs. -
2. Stamp for power.	Rs. 02	Stamp for power.	Rs. 08/-
3. Pleader's fee.	Rs. -	Pleader's fee.	Rs. -
4. Process fee.	Rs. 02/-	Process fee.	Rs. -
5. Miscellaneous.	Rs. 08/-	Miscellaneous.	Rs. 3,338/-
6. Court fee.	Rs. -		
Total: Rs.	12/-	Total: Rs.	3,346/-

Given under my hand and the seal of the court on this 01st day of November, 2023.



Misbah Hussain
(Misbah Hussain)
Civil Judge Class-I,
Jhelum
Misbah Hussain
Civil Judge 1st Class
Jhelum

HOUSE OF
SHAFQAT AHMED,
MAKAAN NO 2, BAIGPUR, JHELUM



ref to Makaan 1
مشرق سفیدہ جگہ عبد اللہ خٹاب

جنوب مکان عبد اللہ وزیرہ

مغرب مکان
محمد حسین دگل واقعہ آنا دس بیب پور

شمال مکان فتح محمد

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Supreme Cort of Pakistan CPLA 1182/2011

(Fata Mohd -> Ghafoor -> Server -> Umer)

- Appeal was filed by **Sagheer v Mst. Safoora Bibi** in Lahore High (C.R 1160)
- Appeal was dismissed by Supreme Court of Pakistan CPLA 1182/2011 (**Sagheer v Mst.Safoora Bibi**)

2nd round

- Civil Suit 944 - Mohd Hanif v Safoora Bibi
- Suit dismissed with cost Rs10000

Handwritten notes in Urdu, partially highlighted in yellow. It discusses legal proceedings and property matters. Key phrases include 'صفورہ بی بی', 'محمد شریف ولد محمد یعقوب', 'دعوی استقل حق بدین مضمون کہ مدعی کے والد نے کوئی بی بی 170', 'دو کمرے ایک کھنڈہ و ایک کمرہ و مکان فی روڈ محمد ذیل شمال مکان فتح محمد', 'جنوب مکان فتح محمد مشرق جگہ سفیدہ جگہ عبد اللہ خٹاب مکان آنا دس بیب پور', 'مکان فتح محمد جنوب مکان عبد اللہ وزیرہ', 'مکان فتح محمد شمال مکان فتح محمد', 'مکان فتح محمد جنوب مکان عبد اللہ وزیرہ', 'مکان فتح محمد مشرق جگہ سفیدہ جگہ عبد اللہ خٹاب مکان آنا دس بیب پور', 'مکان فتح محمد شمال مکان فتح محمد'.

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Handwritten text in Urdu, mostly highlighted in yellow. It appears to be a legal document or a record of a transaction. Key phrases include 'محمد حسن مشرق سفیدہ جگہ عبد اللہ خٹاب', 'مکان آنا دس بیب پور واقعہ آنا دس بیب پور', 'مکان فتح محمد جنوب مکان عبد اللہ وزیرہ', 'مشرق مکان فتح محمد عبد اللہ وزیرہ مکان', 'محمد حسین دگل واقعہ آنا دس بیب پور', 'تحصیل جہلم مائیں میلہ آنا دس بیب پور یعنی', 'ہر دو مکان مائیں ہزار سو روپے'.

Filed Nov 2007
Above suit dismissed in 2009 & appeal No 152 of 2009 dismissed on 18-09-2010