

**IN THE COURT OF MANZAR HAYAT KHOKHAR**  
SENIOR CIVIL JUDGE (CIVIL DIVISION), JHELUM

Civil suit.....457/2011-19  
Date of institution.....08.09.2011  
Date of decision.....04.05.2023

1. Shafqaat Ahmad son of Abdul Rahim:
2. Yousaf Rahim son of Abdul Rahim:
3. Barkat Ahmad son of Abdul Rahim:  
son of Safooran Begum deceased, Khokhar by caste,  
resident of Baigpur, Tehsil & Distt. Jhelum. (Plaintiffs)

**Versus:**

- 1-A. Tahir Mehmood son of Muhammad Latif:
- 1-B. Tariq Mehmood son of Muhammad Latif:
- 1-C. Farrukh Mehmood son of Muhammad Latif:
- 1-D. Qaiser Mehmood son of Muhammad Latif:
- 1-E. Mehmood Ul Hasan son of Muhammad Latif:
- 1-F. Farzana Kouser daughter of Muhammad Latif:
- 1-G. Musarrat Nasreen daughter of Muhammad Latif:
2. Safooran Begum widow of Abdul Aziz:
3. Babar Aziz son of Abdul Aziz:
4. Zahid Mehmood son of Abdul Aziz:
5. Sajid Mehmood son of Abdul Aziz:
6. Amir Shahzad minor son of Abdul Aziz through  
defendant No.1:
7. Ms. Nazia daughter of Abdul Aziz:
8. Ms. Maria daughter of Abdul Aziz
9. Ms. Shazia daughter of Abdul Aziz:
10. Ms. Iffat daughter of Abdul Aziz:
11. Sub Registrar, Jhelum:
12. Zubaida Bibi wife of Bashir Ahmad, r/o House  
No.22, Street No.70 Sector G8/5, Islamabad:
13. Zahida Bibi wife of Nisar Ahmad, resident of  
Sanghoi, Tehsil & Distt. Jhelum:
14. Nadia Shafqat wife of Muhammad Younas, r/o 54  
Roy craft Ave Barking 1G11 London, UK:

Manzar Hayat Khokhar  
Senior Civil Judge  
(Civil Division) Jhelum  
04.05.23

15. Imtiaz Ahmad son of Safooran Begum, resident of Baigpur, Tehsil & Distt. Jhelum:
16. Mst. Nusrat Iftikhar widow:
17. Omair Ahmad son of Iftikhar Ahmad:
18. Waqas Ahmad son of Iftikhar Ahmad:
19. Mohsin Ahmad son of Iftikhar Ahmad:
20. Ms. Shawana Iftikhar daughter of Iftikhar Ahmad:
21. Ms. Tayyaba Iftikhar daughter of Iftikhar Ahmad:
22. Ms. Rehana Iftikhar daughter of Iftikhar Ahmad, residents of 12 Mont eagle Ave Barking Essey 1GII 8 PQ UK.

**SUIT FOR DECLARATION ALONG WITH PERMANENT & MANDATORY INJUNCTION.**

**JUDGMENT:**

It is discernible to mention here that instant suit was received by way of remand order dated 03.10.2019 passed by the court of Mr. Muhammad Akmal Khan, the then learned District & Sessions Judge, Jhelum.

2. Concisely, necessary for disposal of the instant case, are that Mst. Safooran Bibi breathed her last and plaintiffs along with defendants No.12 to 15 are her legal heirs who have joint interest; that Mst. Safooran Begum is resident of Baigpur, Tehsil & Distt. Jhelum and had been residing in England for the last 34 years; that Abdul Aziz father of defendants No.2 to 10 had died and his legal heirs have been impleaded as party to this suit; that deceased Safooran Begum was owner of property measuring 33 Kanals 17 Marlas situated in village Badu; that Safooran Begum purchased the property through mutation No.309 dated 14.05.1968, from defendant No.1 against consideration a mount of Rs.7000/-; that later on Mst. Safooran Begum went abroad and defendants fraudulently and

deceitfully in absence of said Safooran Begum got registered sale deed No.506 dated 07.03.1978 against consideration of Rs.6000/- whereas Safooran Begum did not execute any gift deed; that Muhammad Latif, Abdul Aziz sons of Muhammad Yaqoob in connivance with Karam Dad Numberdar, Muhammad Anwar and Allah Ditta son of Taj Muhammad witnesses and Qazi Muhammad Hanif Stamp Vendor fraudulently completed the process of bogus registered sale deed which being against law is liable to be cancelled. The plaint further speaks that Safooran Begum never executed any stamp paper nor appeared before Sub Registrar for recording her statement nor gift mutation; that when Safooran Begum came to Pakistan during the year 2007, she came to know about fraudulent mutation pertaining to disputed land; that mother of plaintiffs approached Police Station concerned but in vain; that plaintiffs got registered FIR No.25/2008 u/s 420, 468, 471 PPC against defendants through petition u/s 22-A, 22-B Cr.P.C; that during this period mother of plaintiffs became seriously ill and police cancelled the case without any investigation. The plaintiffs numerously requested the defendants to get the impugned mutations cancelled but they refused to do so; hence, this suit.

3. On the other hand, defendants contested this suit by filing written statement in contrast to the pleadings of plaintiffs and raised certain preliminary as well as factual objection on the grounds of maintainability, limitation, resjudicata, estoppel, mis-joinder & non-joinder of necessary parties, dismissal of plaint under Order VII Rule 11 CPC and prayed for dismissal of suit with special cost.

4. It is pertinent to mention here that at the time of framing of issues, with typographic mistake, the issues pertaining to suit titled

04-05-23  
 04-05-23  
 04-05-23

"Shafqat Ahmad etc versus Safooran Begum etc" running parallel to this suit, have been framed in this suit and the issues to be framed in instant suit have been formulated above-said suit. The mistake is rectified accordingly and following issues are here settled in this suit:

**ISSUES:**

1. Whether plaintiffs are entitled to get decree for declaration and permanent injunction as prayed for?  
OPP
2. Whether sale deed No.560 dated 07.03.1978 was executed through fraud and ineffective to the rights of plaintiffs? OPP
3. Whether instant suit is not maintainable and is liable to be dismissed? OPD
4. Whether plaintiffs have filed instant suit just to harass the defendants and defendants are entitled to special cost of Rs.25000/- under section 35-A of CPC?  
OPD
5. Relief?
5. Evidence of the parties was invited.
6. Shafqaat Ahmad, plaintiffs No.1 himself appeared in the witness box as PW-1 and examined Khan Rasheed son of Muhammad Rasheed as PW-2. In documentary evidence, learned counsel for the plaintiffs produced registered sale deed No.560 as Exh.P1, copy of order of DOR dated 04.01.2011 as Exh.P2, copy of complete file pertaining to case FIR No.25 as Exh.P3, copy of Computerised National Identity Card of deceased Safooran Begum as Mark-PA & copy of her Passport as Mark-PB and closed the evidence.
7. Conversely, Farrukh Mehmood, defendant No.1-C appeared as Exh.D1, Babar Aziz, defendant No.3 appeared as DW-2 and examined Ch. Muhammad Anwar as DW-3. In documentary

evidence learned counsel for defendants submitted special attorney deed as Exh.D1, registered sale deed No.560 as Exh.D2, copy of record of rights for the year 2019-20 as Exh.D3, certified copy of order of DRO as Exh.D4 ( 08 leaves), certified copy challan No.5 as Exh.D5, certified copy of order of Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi as Exh.D6, certified copy of Khasra Girdawari as Exh.D7, copy of cancellation report of FIR No.25 as Mark-DA (23 leaves) and closed his evidence.

8. In rebuttal evidence, plaintiffs produced nikahnama of Shafqaat Ahmad Exh.P4, certified copy school certificate of Shafqaat Ahmad as Exh.P5, dearth certificate of Abdul Rahim as Exh.P6, copy of record of rights for the year 2009-10 as Exh.P7, certified copy of death certificate of Muhammad Yaqoob as Exh.P8, certified copy of nikahnama of plaintiffs as Exh.P9, copy of mutation No.309 as Exh.P10, copy of mutation No.313 as Exh.P11, copy of mutation No.283 as Exh.P12, certified copy of appeal titled Muhammad Hanif versus Safooran dated 21.11.2012 as Exh.P13 and certified copy of order dated 21.11.2011 of Apex Court as Exh.P14.

9. My issues-wise findings are as under:

**ISSUE NO.2:**

10. Onus of prove this issue was placed upon the plaintiffs. This is important issue and fate of issue No.1 also depends upon the findings and decision of these issues. In support of this issue, plaintiff No.1 Shafqaat himself appeared as PW-1 and deposed that her mother Safooran Begum purchased the suit property measuring 33 Kanal 17 Marla in village Bado through mutation No.309 dated 14.05.1968 and she did not transfer the suit property to anyone/defendants through registered sale deed No.560 dated

*[Handwritten signature]*  
04.05.23

07.03.1978 and subsequent mutation No.385 dated 15.10.1980 on the basis of above said registered sale deed is a result of fraud and against the law and facts and same is ineffective upon the rights of plaintiffs and liable to be cancelled. He further alleged that his mother did not appear before any deed writer and stamp paper was not written between the parties. He further alleged that his mother did not put thumb impression on any registered sale deed and for this purpose she did not appear before any Registrar. PW-1 has contended that suit property is in their possession since their mother purchased the same on 14.05.1968. When his mother knew about this fictitious registered sale deed she went to police station and filed an application and criminal case was registered. After that, efforts were made for compromise between the parties but in vain; hence, this suit.

11. Khan Rasheed son of Muhammad Rasheed appeared as PW-2 and corroborated the version of the plaintiffs as mentioned in plaint as well as narrated by the PW-1. The plaintiffs have also produced the following documents, registered sale deed No.560 as Exh.P1, copy of order of DOR dated 04.01.2011 as Exh.P2, copy of complete file pertaining to case FIR No.25 as Exh.P3, copy of Computerised National Identity Card of deceased Safooran Begum as Mark-PA & copy of her Passport as Mark-PB. In rebuttal Farakh Mahmood/defendant No.1C who is special power of attorney of defendants No.1D to 1G appeared as DW-1 and produced power of attorney as Exh.D1. DW-1 deposed that his father Muhammad Latif and Uncle Abdul Aziz purchased the suit property from the mother of plaintiff through registered sale deed No.560 in the year 1978 against the consideration of Rs.6000/-. The registered sale deed was

executed/sanctioned in the presence of witnesses Muhammad Anwar, Allah Ditta Numberdar and Karam Dad. He further alleged that the registered sale deed was got executed/sanctioned by Safooran Bibi while appearing in person and she admitted the receiving of sale consideration and put her thumb impression over there. The DW-1 has further deposed that since that the suit property is in their possession. Safooran Bibi got registered FIR No.25 dated 22.01.2008 under Section 420,468 & 471PPC against the father and Uncle of the DW-1 and they were acquitted from the above said case. He further alleged that suit of the plaintiff is false fictitious and defendants are bona fide purchasers and the suit is liable to be dismissed. Babar Aziz/defendant No.3 appeared as DW-2 and deposed the same story as described by the DW-1. DW-2 corroborated the version of the defendants as taken in the written statement. DW-3 Ch. Muhammad Anwar who was the witness of registered sale deed No.560 got sanctioned from Safooran Bibi in favour of Muhammad Latif and Abdul Aziz. DW-3 is the witness of Exh.D2 which is registered sale deed and alleged that suit property is in possession of children of Abdul Aziz. The defendants have also produced documentary evidence in shape of Exh.D1 to Exh.D7 & Mark-DA.

12. Arguments heard; record perused.

13. Perusal of the record reveals that it is the contention of the plaintiffs that his mother purchased property measuring 33 Kanal 17 Marla through mutation No.309 dated 14.05.1968 while paying sale consideration of Rs.7000/- and same is admitted one by the defendants. The plaintiff has challenged the registered sale deed No.506 dated 07.03.1978 and subsequent mutation No.385 dated

15.10.1980 on the basis of fraud and result of connivance of the defendants with revenue staff and requested the court for the cancellation of the above said registered sale deed as well as mutation. The plaintiff has produced documentary evidence to establish the fraud of the defendants with his mother Safooran Bibi. First of all, the lady plaintiff Safooran Bibi challenged the registered sale deed No.506 dated 07.03.1978 and subsequent mutation No.385 dated 15.10.1980 in her lifetime. Secondly she approached the concerned police station and got registered a criminal case under Section 420, 468 & 471 PPC against the defendants/her real brothers who got sanctioned fraudulent registered sale deed. The plaintiff has also produced the copies of criminal case along with police diaries as well as affidavits submitted by the defendants during the course of investigation. Furthermore, the plaintiff has alleged that his mother never put her thumb impression on any document in her lifetime. He further contended that she was educated lady and she always put her signatures on her National Identity Card and Passport. He also produced copy of Nation Identity Card of his mother as Mark-PA, copy of Passport of his mother as Mark-PB which clearly indicates that she always put signatures in English on all the documents. It is also important to mention here that on the impugned sale deed, National Identity Card number of Safooran Bibi as well as any of the witness has not been mentioned which is compulsory requirement of law. The same fact was admitted during the cross examination by DW-1 that:

یہ درست ہے کہ پاسپورٹ Mark-B منوراں بی بی کا ہے۔ اور اس پر منوراں بی بی کے انگلش کے دستخط موجود ہیں۔  
یہ درست ہے کہ Mark-A منوراں بی بی کا شناختی کارڈ ہے جس پر منوراں بی بی کے انگلش کے دستخط موجود ہیں۔

14. From the above discussion it is crystal clear that in this suit for declaration and permanent injunction the plaintiff has

challenged the veracity of impugned registered sale deed No.506 dated 07.03.1978 and subsequent mutation No.385 dated 15.10.1980. The plaintiff Shafqaat Ahmed while appearing as PW-1 and producing the basic documents regarding the signatures as well as writing of National Identity Card number of his mother as well as witnesses has discharged the initial onus by deposing all the relevant facts.

It is an established principle of law that where existence and execution of a document had been questioned on the plea of fraud and misrepresentation then onus to prove the transaction and execution of said document with free will and volition of would rest upon its beneficiary. In this regard respectful reliance is placed upon case titled Mubashar Hussain Versus Syed Hussain Abbas and 3 others cited as 2019 CLC 1417.

15. Being purchaser of suit property, the defendants were under legal obligation to prove the sale transaction and payment of sale consideration. The defendants did not mention any time, date and place where the registered sale was entered into and sanctioned and he did not mention the names of witnesses before whom the bargain of sale was struck and sale consideration was paid to the alleged executant. DW-1 Farrukh Mahmood who is the real son of deceased Muhammad Latif who was the alleged purchaser of the suit property from the lady plaintiff Safooran Bibi/his real sister deposed that suit property was purchased by his father and real uncle Abdul Aziz from the Safooran Bibi/their real sister measuring 33 Kanal 17 Marla in lieu of Rs.6000/- in the year 1978. He did not utter even a single word regarding time, date and place where the alleged bargain of sale transaction was done and he also not mentioned the name of

04.05.23

any person in whom presence sale consideration Rs.6000/- was paid. DW-2 who is the real son of Abdul Aziz who was also alleged purchaser with Muhammad Latif and he also deposed the same facts as the DW-1 has deposed. He was also silent regarding time, date, place and mode of payment of sale consideration. DW-2 also did not mention the name of witnesses in whom presence the sale consideration was made. Section 25 of Contract Act, 1872 provides that an agreement without consideration, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt, barred by limitation law. Law provides that there is no agreement which is made without any lawful consideration. Reliance is placed on 2004 SCMR 1102.

It has been laid down by August Supreme Court of Pakistan in above cited esteemed judgment that an agreement without consideration is nullity in the eye of law. Furthermore, if payment of sale consideration of alleged registered sale deed has not been proved, then there would be "Sale" in the eyes of law. In the instant case the defendants have vehemently failed to establish the essential element of a valid sale and if any of the ingredients of "Sale" was missing the defendants had to suffer and face the consequences of that missing essential element. The conclusion is supported by case law titled as "Muhammad Sadiq versus Muhammad Rafique" cited as 2017 YLR Note 348.

16. It is also important to mention here that DWs are at variance regarding the amount/payment of sale consideration. DW-1 and DW-2 had alleged that their parents purchased the suit property from Safooran Bibi against consideration of Rs.6000/- but the DW-3 who is the star witness of Exh.D2 and who was present at the time of

22.5.23  
04.05.23  
Shafqaat Ahmad  
(Counsel for Plaintiff)

sanction of Exh.D2 admits during the cross-examination that Rs.30000/- was paid before him. The relevant portion of cross-examination of DW-3 is reproduced as under:

میرے سامنے رقم مبلغ /- 30000 روپے کا لین دین ہوا تھا۔

17. In order to prove the genuines of registered sale deed No.506 dated 07.03.1978, the defendants were duty bound to produce very authentic and evidence of extreme credibility, however, they only produced one independent witness Ch. Muhammad Anwar/DW-3 who is also the witness of registered sale deed Exh.D2. However, during the cross-examination DW-3 admitted that his signatures are present in registry but same does not bear the signature of Safooran Bibi vendor. He also admitted it as correct that the Exh.D2 does not bear the number of national Identity Card of vendor as well as vendees and his national identity card number is also missing. The relevant portion of cross-examination is reproduced as under:

یہ درست ہے کہ رجسٹری پر میرے دستخط موجود ہیں مقررہ بی بی کے دستخط موجود نہ ہیں۔ مجھے علم نہ ہے کہ رجسٹری Exh.D2 پر میرا، عبد العزیز اور اللیف کا شناختی کارڈ نمبر درج نہ ہے۔

18. DW-2 also admitted as correct during the cross examination that Exh.D2 had not born the signatures of Abdul Aziz, Safooran Bibi, Muhammad Anwar & Allah Ditta. He also admitted as Correct that the Exh.D2 does not bear the National ID card numbers of all above said four persons. He also admitted as correct that the registered sale deed Exh.D2 does not bear the signature and thumb impression of vendee Abdul Aziz.

یہ درست ہے کہ عبد العزیز، مقررہ بی بی، محمد انور، اللیف کے Exh.D2 پر دستخط موجود نہ ہیں اور نہ ہی ان کے شناختی کارڈ نمبر درج ہیں۔ یہ درست ہے کہ رجسٹری Exh.D2 پر عبد العزیز کا دستخط و نشان انگوٹھ موجود نہ ہے۔

Shafqaat Ahmad & others  
Sole Advocates  
Court No. 405/2023

19. Another important aspect of this case is that the defendants might have produced or got summoned the concerned sub-registrar before whom lady plaintiff Safooran Bibi allegedly appeared for execution of registered sale deed. The most important entities in connection with the sanction of registered sale deed were the Sub-Registrar and regarding subsequent mutation were the Patwari Halqa who entered the mutation and revenue officer who attested the same. All the above said three functionaries have not been produced and examined by the defendants in the court to establish the genuineness of registered sale deed/Exh.D2. **Reliance is placed upon "Abdul Raheem etc versus Mrs. Janntay Bibi etc" cited as NLR 2000 CIVIL 120 Supreme Court.**

20. It is also important to mention here that the defendants were bound to establish the genuineness of alleged registered sale No.506 dated 07.03.1978. They were duty bound to prove the above said factum by leading cogent, sufficient and evidence of extreme credibility according to their written statement. However, they took the stance in the written statement as well as evidence produced as DW-1, DW-2 & DW-3 that they purchased the suit property from their real sister Safooran Bibi while paying the sale consideration. But the plaintiff rebut this version of the defendants through documentary evidence and establish that during course of criminal proceedings the defendants took a contradictory view to that view as taken in their written statement. He produced Exh.P3 which is the attested copy of criminal proceedings in which Muhammad Latif, Muhammad Hanif & Muhammad Anwar submitted their affidavits and narrated the story regarding the transfer of suit property in their name from lady plaintiff Safooran Bibi. All the above three persons took stance that

04.05.23

they transferred their own property in the name of Safooran Bibi as her husband promised to take **abroad** the Abdul Aziz real brother of Muhammad Latif and Muhammad Hanif all sons of Muhammad Yaqoob to London/England. The husband of Safooran Bibi failed to get visa of Abdul Aziz for UK/London and in consequence of that failure, the already transferred land in the name of Safooran Bibi was gifted back in the name of defendants Muhammad Latif and Abdul Aziz. The defendants adopted two different stances/versions. But unfortunately they have vehemently failed to establish anyone of their versions. They have vehemently failed to establish the sale with payment of consideration in presence of witnesses. Furthermore, they have not tried to establish gift from their real sister Safooran Bibi/plaintiff in their names.

21. It is pertinent to mention here that allegedly defendants purchased the suit property in 1978 but astonishingly, despite lapse of period of 45 years, they could not produce any proof of their possession over suit land. Even a single document has not been produced to establish their possession. Furthermore, the defendants did not approach to any competent forum or authority to get the possession of their land.

22. Moreover, as per assertion of the plaintiffs the suit land was purchased in 1968 for consideration of Rs.7000/- from defendant No.1 and was sold out again in 1978 in lieu of Rs.6000/- . This assertion of the plaintiffs cannot be believed by any prudent mind that after period of 10 years, the consideration price of the same land decreased instead of increase.

23. In the light of all above discussion I am of the considered view that the defendants being beneficiaries have failed to establish

the veracity of registered sale deed No.560 dated 07.03.1978 and subsequent mutation 385 dated 15.10.1980 with any plausible and mind inspiring evidence. They did not produce a single witness of bargain of sale and in whose presence sale consideration was paid. The witnesses produced by the defendants to establish the factum of payment of sale consideration are admittedly at variance. Missing of necessary requirement of law regarding presence of numbers of national identity cards on registered sale deed/Exh.D2 of all the vendor and vendees as well as witnesses is also a question mark on the sanctity of impugned registered sale deed. If the truthfulness of basic document/registered sale deed has not been established by the defendants, then subsequent mutation 385 dated 15.10.1980 also stands on the same footings. Hence, the registered sale deed No.560 dated 07.03.1978 and subsequent mutation 385 dated 15.10.1980 were executed through fraud and ineffective to the rights of plaintiffs and this issue is decided in favour of the plaintiff and against the defendants.

**ISSUE NO.1.**

24. Onus to prove this issue was placed upon the plaintiff. As detailed discussion has been made under issue No.2, the plaintiffs have established by leading oral as well as documentary evidence of extreme credibility that the registered sale deed No.560 dated 07.03.1978 and subsequent mutation No.385 dated 15.10.1980 was the result of fraud and misrepresentation and on the other hand defendants being beneficiary of the above sale deed as well as mutation was duty bound to prove the execution of registered sale deed after payment of full sale consideration but they have vehemently failed to prove the same, hence, the plaintiffs are entitled

Shafquat Ahmad  
 22.5.2017

to get the decree for declaration and permanent injunction as prayed for.

**ISSUE No.3:**

25. Onus to prove this issue was placed on the defendants. Contention of defendants is that suit of the plaintiffs is not maintainable in its present form. Examination of file reveals that plaintiffs instituted the instant suit for declaration. Suit for declaration in term of Section 42 of the Specific Relief Act, 1877 can be filed. Consequently, there is no defect as to the form of this suit. Hence, this issue is decided in negative.

**ISSUE NO.4:**

26. Onus to prove this issue was placed on the defendants. In this case, the contesting defendants have prayed for compensatory cost in term of Section 35-A of CPC. In order to enable a court to award compensatory cost under Section 35-A of CPC, the following conditions have to be fulfilled:-

1. The claim or defence should be false or vexatious to the knowledge of the party asserting it,
2. Objections to such claim or defence should have been taken at the earliest possible opportunity,
3. Such claim or defence should have been disallowed, withdrawn or abandoned, wholly or in part.

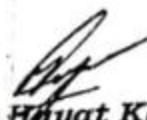
However, the awarding of compensatory cost is discretionary with the court and is depend upon the circumstances of each case and the court is not bound to award the same even if the above referred requirement has been fulfilled by a party praying for compensatory cost. In this case, the defendants have not submitted any evidence to prove the above referred requirement of law. Therefore, issue in hand is answered in negative

Handwritten signature and number 0523

**RELIEF:**


27. For what has been discussed above, suit of the plaintiffs is hereby **decreed** as prayed for with observation that registered sale deed No.560 dated 07.03.1978 and mutation No.385 dated 15.10.1980 shall be deemed to have been cancelled. Cost shall follow the event. Decree sheet be drawn up. File be consigned to the record room after its due completion.

Announced  
04.05.2023

  
**Manzar Hayat Khokhar**  
Senior Civil Judge (Civil Division)  
Jhelum

Certified that this judgment consists of 16 pages, each of which has been dictated, read, corrected and signed by me.

04.05.2023

  
**Manzar Hayat Khokhar**  
Senior Civil Judge (Civil Division)  
Jhelum