

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Suit NO. 1567 of 2005**

Plaintiff : Nauman Ahmed,  
through: Mr. Khalid Pervez Cheema, Advocate.

Defendant No.1 : Col. (R) Salman Ahmed,  
through MirzaSarfraz Ahmed, Advocate.

Defendant No.2 : Faizan Ahmed (Since deceased through his legal  
heirs Mrs. Zehra Anjum and others.  
through Ms. SeemaWaseem, Advocate.

Date of hearing: 06.04.2015.

Date of announcement: 21.04.2015

**ORDER**

**SALAHUDDIN PANHWAR, J.** Through CMA No. 7787 of 2011,  
defendant No. 5 seeks modification preliminary decree in following  
terms:-

*“..... to modify the preliminary decree passed on 12.02.2007 by this Honorable Court Under Order 20 Rule 13 CPC only to the extent of agricultural land measuring 120 Kanals and 13 Marlas (Khata No.396, Khatooni 612 to 618) in Village sarhaliKalan situated in Tehsil and District Kasur as the said agricultural land is situated beyond the territorial jurisdiction of this Honorable court and the relief regarding partition of said agricultural land is beyond the jurisdiction of this Honorable Court as the jurisdiction is vested to the Revenue court situated in District Kasur as per section 172 of Land Revenue Act ”*

2. Whereas, CMA No. 11351 of 2009, the Defendant No.5(c) seeks return of plaint on the plea that sub clause (ii) Schedule 'A' of the prayer i.e. the agricultural land situated in District Kasur, Punjab is beyond the territorial jurisdiction of this Court, therefore, to that extent, plaint may be returned back.

3. Precisely, relevant facts of this suit are that Plaintiff and Defendants are legal heirs of deceased Brig. Muhammad Ahmed; this suit relates to the partition, possession, cancellation of documents, declaration and injunction. Plaintiff being son of the deceased is claiming his share. After institution of suit, by order dated 17.02.2009, CMA No. 6702 of 2008 was allowed, order is as under:-

*“Heard learned counsel for the parties.*

*By consent, the Application CMA 6702/08 is allowed and the Nazir is empowered to contact the concerned Revenue Officer in all or any appropriate manner or any appropriate manner, with regard to taking information in respect of the land in question, mentioned in the application. Paragraph 3 of the application, is reproduced hereunder:*

*“3. That out of the above, at Serial No.(ii) is agricultural land which according to clear admission of the defendant is about 473 Kanal and 17 Marlas and not 120 Kanal and 13 Marlas which is located in Village SIRHALI KALAN TEHSIL AND DISTRICT KASUR (Khata-396, Khatooni- 612 to 618), which is in the Province of Punjab. **Therefore, it would be difficult and practically impossible for the Nazir to conduct inquiry as directed by this Hon'ble Court, unless powers are given to the Nazir/directions are given to meet the ends of justice.***

*(1) The Nazir of this Court to approach District Officer Revenue Kasur, for taking in possession complete record of the above said agricultural land;*

*(2) The Nazir of this Court to approach District Officer Revenue to given report*

*after enquiry as to standing crops, out houses, on the said land, its condition, average income per annum from the above said land, market value and average value ( □□□سط و) of the said land collectively;*

*(3) The Nazir of this Court to approach District Officer Revenue to give report after enquiry as to average income obtained by the defendant Col ® Salman Ahmad, who is in exclusive possession, control and management of the said land, since the date of opening of succession i.e. 20<sup>th</sup> April 1977 which is the date of death of deceased Brig. Muhammad Ahmad, and , till date average income received by the defendant Col ® Salman Ahmad and is liable to be distributed amongst the legal heirs.”*

*(underlining is provided for emphasis)*

It appears that order dated 12.02.2007 reflects as under:-

*“This is a suit for partition and distribution of the property left behind by the deceased Brig. Muhammad Ahmed and his widow Tahira Ahmed. Parties to the suit are legal heirs of the deceased, in the fitness of the matter I proposed to pass preliminary decree in terms of Order 20 rule 13 CPC. Nazir is appointed as receiver/commissioner in respect of the state (estate) and assets left behind by the deceased. Nazir to conduct inquiry as to what are the assets and property which have been left behind by the deceased that have fallen into the hands of any legal heirs Nazir to (so) also ascertain as to the legal heirs is accountably to other and if so to what amount. Nazir to also inquire as to the amount collected received by any of the legal heirs out of the state of the property rented or otherwise that may from part of the estate and capable of distribution amongst all the legal heirs. All the parties may place list of all the assets and property that are in their possession or control or in possession or of any other legal heirs or any person including receivable and collectable. Parties may lead evidence in support of their claim, right and title by filing affidavit-in-evidence.*

*Tentatively Nazir fee in the sum of Rs.15000/- to be paid by the legal heirs in accordance with their respective share in the state. Any party desiring to lead*

*evidence shall further be liable to pay Rs.5000/- per witness. Let inquiry and investigation in terms of Order 20 rule 13 be carried out and concluded preferably within a period of three months.”*

4. At the outset, learned counsel for the defendants contends that albeit, this is suit for administration of properties left by the deceased but prayer with regard to agricultural land, which is situated out of the territorial jurisdiction of this Court, is not maintainable, therefore, on this account, plaint may be returned back and preliminary decree may be modified.

5. To properly respond the above question, It would be conducive to *firstrefer* relevant provisions which deals with issue of **‘jurisdiction of Civil Court’**. The jurisdiction of the Civil Court is explained and controlled by the provisions provided by Sections 16 to 20 of the Code. The section 16 of the Code, being primary limits or defines the territorial jurisdiction while the following sections, being explanatory, provides the explanation thereof with reference to different situations, within limits of Section 16 of the Code, lined titling different suits as (a) to (f) in Section 16 of the Code. To make the point clear, let’s refer the Section 16 of the Code which reads as:-

16. Subject to the **pecuniary or other limitations** prescribed by any law, suits;

(a) for the recovery of immovable property- with or without rent or profits;

(b) for the partition of Immovable property;

(c) for foreclosure, sale or redemption In the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or Interest in immovable property;

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment;

shall be instituted in the Court within the local limits of whose jurisdiction the property is situated '[, or, in the case of suits referred to in- clause (c), at, at the place where the cause of action has wholly or partly arisen: -

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate 1[or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen) or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.- In this section "**property**" means property situate in 2[Pakistan].

6. At this juncture, it is germane to mention that the term '**property**' has deliberately been explained by the legislature as '**property situated in Pakistan**'. This has not been '**limited**' to territorial jurisdiction of towns, districts or even provinces. The '**wisdom**' for such deliberation if the situation explained in Section 17 of the Code (dealing with immovable property) is read keeping in view the above explanation. Thus, section 17 of the Code be reproduced hereunder:-

"Where a suit is to obtain relief respecting, or compensation for wrong to immovable property situate within the jurisdiction of **different Courts,** the suit may be instituted in any Court within the local limits of whose jurisdiction **any portion of the property** is situate: -

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court”.

The phrase, ‘ ***within jurisdiction of different courts***’ and that ‘**any portion of property**’ used in the above section, if are read with reference to meaning of ‘**property**’, explained by Section 16 of the Code would show that the suit can competently be filed in any of the ‘**different Courts**’ where ‘**any portion of property**’ is situated. This choice is however subject to ‘**accrual of cause of action**’ for ‘**property**’ portions whereof falling within jurisdiction of ‘**different Courts**’. This is with an object to avoid conflicting judgments by ‘**different but competent courts**’ since, jurisdiction of Courts is always subject to ‘**pecuniary & other limitations prescribed in any law**’, as insisted in Section 16 of the Code. This is also in line with settled principle that according to the comity of nations all legislation of a country is territorial, all exercise of jurisdiction is territorial in nature and the laws of a country apply to all **its subjects, things and acts within its territory.** (2001 CLC 1904). Accordingly, suit classified as ‘**for partition of immovable property**’ or one falling within meaning of Section 17 of the Code, will give choice to the plaintiff to file the suit before any ‘**Competent Court**’ regardless of territorial limitations, including that of District or provinces, even.

7. At this point, pertinent to mention that per Section 120 of the C.P.C, the provisions of Section 16,17 and 20 of the Code have been made inapplicable to High Court in its original civil jurisdiction but it is meant to enlarge the jurisdiction of the original jurisdiction of High Court, however, whenever a question arising the criteria for deciding

the same would be same as provided by Sections 16 to 20. Reference can be made to the case of Messrs Sh. Muhammad Amin & Co. v. The Provincial Industrial Development Corporation 1991 CLC 684, wherein it was held:

**‘...Although the provisions of section 16, 17 and 20 of the Code of Civil Procedure do not apply to the High Court in exercise of its original civil jurisdiction, the Court will have jurisdiction to entertain a suit if the cause of action has arisen within its local limits of the jurisdiction’**

On above account too, the suit before this Court is maintainable because undisputedly number of properties fall within jurisdiction of this Court and even parties are residing within jurisdiction of this Court.

8. Even otherwise, worth to add here that **‘administrative suit’** has got its own peculiar purpose and object. The scope of the **‘Administrative suit’** stood defined by honourable apex courts as:-

*‘to determine what estate the deceased left at the time of his death; administration thereof; payment of debts and liability and partition of rest of estate between the heirs’*

In nutshell, it is meant to preserve the assets, payment of debts and legacies and distribution of the residue among the legatees. The nature and character of the **‘administrative suit’** is different from that of an ordinary civil suit (governed by Specific Relief Act). In an **‘administrative suit’** the final decree is to follow the result of an inquiry within meaning of Order XX rule 13 CPC while in an ordinary suit the determination of rights and status is dependant upon a full fledged **‘trial’**. This has got nexus and relation with that of

**‘succession / inheritance’**. The appointment of **‘administrator’** ,in all senses, is meant to preserve, protect, payment of debts and distribution of residue among the legatee which should not be done in piecemeal but in one inquiry because :

- i) *payment of debts cannot be denied or avoided by legatees;*
- ii) *the legal entitlement of residue among the legatee (per applicable law of inheritance) cannot be denied by legatees;*
- iii) *partitions / distribution of **‘property’** cannot legally happen in different episodes else purpose thereof shall stand frustrated because partition / distribution requires equal treatment. Equal treatment /distribution cannot happen unless all (property) is kept before those among whom partition / distribution is to be made;*

This is so, that in the case of Yusuf Abbas v. Izmat Mustafa (PLD 1968 Karachi 480), while responding to the same issue it was answered as:

- (1) This Court has jurisdiction to administer the estate of the late Mustafa Bin Abdul Latif, including his immovable and movable situate within Pakistan, or within the jurisdiction of the Persian Gulf States, that is, Bahrein, Dubai, Sharjah or else where abroad
- (2) ...
- (3) That the present proceedings for the administration of the deceased’s estate, as well as the authority of the administrator, who may be appointed by this Court, and all questions concerning administration up to the point of distribution, would be governed by the law of Pakistan;

Further, it appears that preliminary decree was passed by consent and Nazir was directed to approach the revenue authorities with regard to agricultural land, which is situated in Province of the



Punjab, (order dated 17.02.2009). The objection with reference to Section 172 of Sindh Land Revenue Act is of no help in the instant matter, as discussed above. In administrative suit, such plea is not acceptable and there is no cavil in the proposition that Court has to administer the property left by the deceased, therefore, Nazir would be competent, in pursuance of preliminary decree, to move application before revenue authorities for partition of that land.

9. In view of above discussion, instant applications and plea, raised thereon, is of no legal value, in consequence thereof both applications are dismissed.

JUDGE

SAJID

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