IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 30 of 1994

Faiz Muhammad (deceased) through his legal heirs and others v. Army Welfare Trust and others

Date of hearing: **18-04-2022** & **25-04-2022**

Date of Judgment: **25-04-2022**

Mr. Sarfaraz Ali Metlo, Advocate for the Applicants.
Mr. Dost Muhammad Bullo, Advocate for Respondent No.1.
Mr. Muhammad Hamzo Buriro, Deputy Attorney General.
Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. **–** Through this Civil Revision, the Applicants have impugned judgment dated 21-02-1994 passed by Vth Additional District Judge, Sukkur, in Civil Appeal No.29 of 1984, whereby the Appeal filed by Respondent No.1 has been allowed and judgment dated 08-03-1984 passed by Senior Civil Judge, Ghotki in F.C. Suit No. 78 of 1978 (Old No.172 of 1974) has been set aside, through which the Suit filed by the present Applicants was decreed.

2. Learned Counsel for the Applicants has contended that the Appellate Court was not justified in setting aside a well-reasoned judgment of the Trial Court; that after earlier round of litigation, additional evidence has been recorded and now while deciding this Revision Application, such additional evidence must be looked into, which is in support of the Applicants; that the entire case of the Applicants is that they are admittedly in possession of the suit land and cannot be dispossessed, except in accordance with law; that the Applicants have produced the *khasra girdwari*, which is a proof of ownership of the Suit land which the Applicant's predecessor in interests owned since pre-partition days; that the grant of land in favor of Respondent No.1 is unlawful and against the land grant policy and any attempt by them to dispossess the present Applicants is also without lawful authority; that enough evidence has been produced by the Applicants to justify their possession and cultivation on the Suit land; that Respondent No.1 is not at present the owner of the Suit land; that the Suit of the Applicants was very

much competent and the bar contained under the Colonization and Disposal of Government Lands Act, 1912 ("**1912 Act**") and so also under the Sindh Land Revenue Act, 1967, ("**1967 Act**") is not absolute, and therefore, this Civil Revision merits consideration and be allowed accordingly. In support, he has relied upon *Abdul Rab etc. v. Wali Muhammad etc.* (**1980 SCMR 139**), *Jamal Din v. The Province of Punjab and others* (**1985 CLC 2387**), *Rasta Mal Khan and others v. Nabi Sarwar Khan and others* (**1996 SCMR 78**), *PK Muhammad v. Karachi Building Control Authroity* (**2003 YLR 1547**), *Muhammad Sadiq represented by Muhammad Sarwar and others v. Amir Muhammad and others* (**2006 SCMR 702**), *Muzaffar Khan v. Sanchi Khan and another* (**2007 SCMR 181**), *Province of the Punjab through Collector District Khushab, Jauharabad and others v. Haji Yaqoob Khan and others* (**2007 SCMR 554**), *Muhammad Khan and others v. Province of Punjab and others* (**2007 SCMR 1169**), *Muhammad Nazir Khan v. Ahmad and 2 others* (**2008 SCMR 521**), *Mst. Bano alias Gul Bano and others v. Begum Dilshad Alam and 4 others* (**2011 CLC 88**), *Muhammad Bux (deed) through Legal Heirs and others v. Army Welfare Trust and other* (**2011 SCMR 284**), *Mumtaz Ali v. Ghulam Hussain and 4 others* (**2013 YLR 499**) and *Lal Bux v. IInd Additional District Judge, Hyderabad and others* (**PLD 2021 Sindh 388**).

3. On the other hand, learned Counsel for Respondent No.1 has contended that the very Suit of the Applicants was not maintainable in law; that the Applicants are land grabbers and are holding possession, if any, without lawful authority; that the land belongs to Respondent No.1 as initially the entire area consisting of 9900 acres was granted to Respondent No.1 including the Suit land in dispute; that the Suit was barred under Section 42 of the Specific Relief Act. 1877, as no right has accrued to the present Applicants to seek a declaration; that proper notifications have been issued by the Government of Pakistan, whereby the land has been allotted to Respondent No.1 for Armoured Personnel and Gallantry Awardees; that earlier the Applicants and other aggrieved persons had challenged such grant by way of C. P. No.189 of 1971 before the Sindh-Baluchistan High Court, which was decided on 25-04-1974; that another C. P. No.422 of 1974 was also dismissed on 02-04-1975; that subsequently, another Petition bearing C. P. No. D-112 of 1985 was also dismissed on 06-02-1986; that a proper sale deed has been executed in favour of Respondent No.1 and it is only the T.O. Form which is pending because of filing of instant Suit; that the area now falls within the Cantonment limits, hence, even otherwise no

private person can be permitted to cultivate the land; that the Suit was also barred under the 1912 Act and the 1967 Act; that the Applicants had never approached any Revenue authorities for grant of the land or even seeking cancellation of the land already granted to Respondent No.1. In support, he has relied upon *Abdul Ghafar and others v. Government of West Pakistan and others* (**PLD 1963 (W.P.) Karachi 215**), *Abdur Rahman Mobashir and 3 others v. Syed Amir ali Shah Bokhari and 4 others* (**PLD 1978 Lahore 113**), *Hafiz Ali Ahmad through Legal Heirs v. Muhammad Abad and others* (**PLD 1999 Karachi 354**), *Muhammad Amir through L.Rs. v. Muhammad Sher and others* (**2006 SCMR 185**), *Hakim-ud-Din through L.Rs. and others v. Faiz Bakhsh and others* (**2007 SCMR 870**), *Muhammad Iftikhar v. Nazakat Ali* (**2010 SCMR 1868**), *Muhammad Bux (deed) through Legal Heirs and others v. Army Welfare Trust and others* (**2011 SCMR 284**) and *Khamiso Khan and 6 others v. Jamaluddin* (**2015 MLD 356**).

4. Insofar as learned DAG is concerned, he has also supported the impugned judgment and has relied upon the case reported as *Alam Sher through Legal Heirs v. Muhammad Sharif and 2 others* (**1998 SCMR 468**).

5. I have heard both the learned Counsel as well as learned DAG, and perused the record.

6. This case has a chequered history, and therefore, certain facts are to be considered first. It appears that the Applicants had filed a First Civil Suit bearing F.C. Suit No. 78 of 1978 (Old No.172 of 1974) for Declaration and Injunction seeking the following relief(s):

> ***(i) Declaration that the defendants have no lawful authority to interfere with the possession and enjoyment of the suit land under any law for the time being in force in Pakistan, for forcibly dispossessing them or forcibly taking away the produce or authorizing any one else so to do.***
>
> ***(ii) Permanent injunction thereby restraining the defts: from interfering with the possession and enjoyment of the suit land and any other equitable relief which may be permissible.***

7. The learned Trial Court, (surprisingly), and without considering the above prayer, settled inasmuch as ten (10) issues after exchange of pleadings and finally, decreed the Suit of the Applicants. The said judgment was then impugned by Respondent No.1 by way of Civil Appeal No.29 of 1984, and vide judgment dated 27-10-1986, the Appeal was dismissed and the judgment and decree of the Trial Court was maintained. The said

judgment of the Appellate Court was then impugned by Respondent No.1 in Civil Revision No.170 of 1986, before this Court which was heard and decided along with Civil Revisions No.167 to 169 of 1986 by way of a common judgment dated 06-06-1993, and the judgment of the Appellate Court was set aside; matter was remanded for complying with the provisions of Order XLI Rule 31 CPC. The learned Appellate Court pursuant to such directions of remand order has now passed the impugned judgment dated 21-02-1994, whereby the Appeal has been allowed and the judgment of the Trial Court in favour of the Applicants has been set aside. It may not be out of place to mention that as to why this Revision has been pending since 1994. Initially, this was filed at the principal seat at Karachi, along with an application under Rule 7 of the Sindh High Court Benches Rules, 1987, and vide order dated 27.2.1994, passed by the then Hon'ble Chief Justice the said application was dismissed and the matter was sent to this Bench at Sukkur. Subsequently, another such application was filed under Rule 7 ibid, and vide order dated 31.08.2009 of the then Hon'ble Chief Justice, on an office note, it was transferred from this Bench to the Principal Seat at Karachi, and was assigned Civil Revision No.109 of 2009. From then onwards it was pending at the Principal Seat, when once again (but this time by Respondent No.1) another application was filed for transfer of case to this Bench, and the Hon'ble Chief Justice vide his order dated 28.2.2022 on office note transferred this Revision once again to this Bench, with further directions to decide the same within a maximum period of two months. Thereafter, office had fixed this matter on priority before this bench. It further appears that during pendency of this Revision before this Bench before its transfer to the Principal Seat, at Karachi, on 06-11-2002 an order was passed in this Civil Revision Application, whereby CMA No.54 of 2002 filed under Order XLI Rule 27 CPC by the present Applicants was allowed for recording of additional evidence and while doing so in fact the impugned judgment(s) of the two Courts below were set aside and the Suit was remanded to the Trial Court for fresh decision after recording the additional evidence. The operative part of the said order reads as under:

> **"***Accordingly, it appears that the facts and circumstances whereon the parties based their pleadings are to be assessed afresh and in a befitting manner, for the purpose of a just and proper decision of suit; hence, relying upon the decision of the Hon'ble Supreme Court reported in NLR 1992 SC 655, this application for production of additional evidence is hereby allowed and consequently the revision application also stands partly allowed, with a direction that the impugned judgments and decrees passed by the learned courts below are set aside and the suit is remanded to the learned trial court for*

> *fresh decision, with a direction that the legitimate facilities will be granted to both the parties, not only to produce evidence but also to make necessary amendments in the pleadings and without permitting them to change the main complexion in so far as the cause of action is concerned. There shall be no order as to costs.* **"**

8. It further appears that Respondent No.1 being aggrieved with this order dated 06-11-2002; filed Civil Petition No.45 of 2003 before the Hon'ble Supreme Court, and vide order dated 05-03-2004, the order of this Court was modified in the following terms:

> **"***The learned counsel for both the parties state that let the trial court record the evidence of both the parties and the evidence so recorded be transmitted to the High Court for decision after considering the evidence on record*
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> *2. In view of the above statement of learned counsel for both the parties, the impugned judgment of the High Court is modified with the direction that the trial court would record the evidence and then transmit the record along with the evidence so recorded to the High Court and the High Court would decide the case on merits deeming the revision to be pending.*
>
> *3. This petition is disposed of in terms of the above order.***"**

From perusal of the aforesaid order of the Hon'ble Supreme Court, it appears that not only the order of this Court dated 06-11-2002 stands modified to the extent that after recording additional evidence, the same has to be transmitted to this Court for a decision afresh, but so also the observation regarding setting aside of the two judgments of the Courts below also stands altered / modified, as apparently, the Revision is deemed to be pending. It is on the basis of these facts that this Revision Application has been heard and on the analogy that (**notwithstanding the observations of setting aside of the judgment of the Courts below as per order dated 6.11.2002**), the judgments of the Appellate Court is still in field. Otherwise, this Court would not be exercising any such jurisdiction in terms of Section 115 CPC; rather would be acting as a trial Court, and any order passed thereon, will seriously prejudice the losing party, as right of Appeal and Revision would be denied to that party.

9. Coming to the case in hand, from perusal of the prayer sought by the Applicants in their Suit, it appears that insofar as the declaration sought by them is concerned, the same is only in respect of possession or from being dispossessed; however, there is no prayer insofar as declaration of title or ownership is concerned. Even there is nothing else including any challenge to the purported grant in favor of Respondent No.1 or for that matter the

ownership and vesting of the property in Government of Sindh. Per settled law, a party seeking a declaration of possession alone, can only come to the Court when its ownership is not in dispute and for that no further adjudication is required. Here this is not so, as apparently, the Applicants have failed to or have given up any right of declaration in respect of ownership and it is merely a protection of possession for which a declaratory Suit was filed by them. In that case, the Suit by itself was not competent under Section 42 of the Specific Relief Act, 1877. Per settled law if the title of the property is in dispute, the simple suit for permanent injunction or possession, without seeking declaration of title, would not be maintainable[1]. In the pleadings as well as in evidence an attempt has also been made that the Applicants were *haris*; hence, entitled for allotment of land pursuant to land grant policy. Admittedly, they have failed to bring on record any such policy; nonetheless, even if there was one, per settled law, no person shall as of right be entitled to the allotment of land under any of these policies, whereas, Government acting through Board of Revenue retains an absolute discretion in the selection and making allotments to the *haris*, small *khatedars* and *mohagdars*. Apparently, the Suit without any legal right or character merely seeking a declaration in respect of protection of possession on the face of it was not maintainable. On the contrary, the entire case of the Applicants was built on the premise that Respondent No.1 was not qualified for the grant of land in question. However, for challenge to any such grant, in law, the Applicants had not right to seek a declaration, whereas, admitted position is that the Applicant by themselves were neither qualified for any such grant; nor admittedly, they had approached any of the concerned departments for such purposes and had in fact directly approached the Court. It may be observed that as per evidence led by the Applicants it has not been established that the Applicants had any lawful possession of the suit property being claimed, therefore, no question of its protection arises by way of a declaratory suit. The moot question would then be that without seeking a declaration to any title or entitlement, can a mere Suit for protection of possession or for that matter intended allotment (though never pleaded) could be maintained and whether the claimed relief could be granted in view of the provisions of section 42[2] of The Specific Relief Act. It

[1] (2005 SCMR 1872) SULTAN MAHMOOD SHAH V MUHAMMAD DIN

[2] Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief; provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to so.

is also not understandable as to how a suit for possession had been filed without seeking declaration in respect of title[3]. The only claim was to the effect that since purportedly the possession was with them, whereas, by way of some (unknown) policy, it was their right that the land should be allotted to them instead of Respondent No.1. This has no basis; nor it could be used as a title or in any manner could be accepted for seeking a declaration as pleaded. Form of suit also does not appear to be proper when the title of the property admittedly vested in Government.[4] Notwithstanding the above, it is also an admitted position that the Applicants were never holding any title on the suit property and it was only an anticipated order which according to the Applicants was required to be passed in their favor by the Court, and therefore, the suit is open to another objection. According to Section 42 only that person can maintain a suit for declaration who is entitled to any legal character or to any right as to any property. This means that the character or the right which the plaintiff claims and which is denied or threatened by the other side must exist at the time of the suit and should not be the character or right that is to come into existence at some future time[5]. This was in effect a suit for a declaration, not with respect to an existing right, but with respect to some possible anticipated right which even otherwise was never granted in the entire period during which allegedly the Applicant had claimed possession. Per settled law a Suit on such right cannot be entertained in terms of section 42 of the Specific Relief Act, 1877, as at the time of filing of the Suit, the Applicant was not holding any title to seek the relief as prayed for. In fact, what the Applicant wanted was to obtain an affirmative declaration that he may have a right to claim or own the property upon grant of the same, and till such time the said right is granted, their possession be affirmed as being legal by way of a declaratory decree. In other words, the Applicants had asked for a declaration not of an existing right; but of chance or possibility of acquiring a right in the future. The character or right within the contemplation of s.42 ibid, which the Applicant / Plaintiff asserts or claims, and which is allegedly being denied by the other side must exist at the time of filing of the Suit for such a declaration and should not be the character or right that is to come into existence at some later stage. It is also a settled law that no declaration of an abstract right can be granted; howsoever, practical it may be to do so.

[3] Muhammad Aslam v Mst. Ferozi (PLD 2001 SC 213)
[4] Province of Punjab v Syed Ghazanfar Ali Shah (2017 SCMR 172)
[5] AIR 1944 Lahore 110 Ahmad Yar Khan Vs.Haji Khan and Ors

The Appellate Court after coming to a definitive conclusion that the land in question was never owned by the Applicants, was fully justified to refuse exercise of any discretion in the matter, as it is not a matter of absolute right to obtain a declaratory decree; rather it is a discretionary relief and was rightly refused by the Appellate Court in the given facts of the case in hand. This power of granting a discretionary relief should be exercised with care, caution and circumspection. Such power ought not to be exercised where the relief claimed would be unlawful. The Courts have always been slow and reluctant in granting such relief(s) of declaration as to future or reversionary rights. Per settled law, for seeking a declaration under Section 42 of the Specific Relief Act, 1877 through a declaratory decree, a pre-existing right can be declared by the Court and a new right cannot be created[6]. When the Applicants / plaintiff claimed a declaration of title, without a pre-existing right, suit for declaration was not competent and the trial court below should not have granted a declaratory decree when no pre-existing rights were available with the Applicants / plaintiff in the suit land[7].

10. As to holding any *khasra girdawari* and even a mutation entry in the record of rights is concerned, the same also does not support the case of the Applicants for two reasons. First if there is any mutation entry (which in fact is not) in their favour as to ownership, then there is no declaration which has been sought by them; secondly, per settled law, even if any declaration had been sought, a mutation entry by itself is not a title document and cannot be relied upon by the Applicants to justify their unauthorized possession. No presumption of correctness attaches, under the law, to entries in the *khasra girdawari*, unlike those appearing in Jamabandi[8]. The position is different, if such entries are incorporated in the Jamabandi[9]; however, this is not at all the case of the present Applicants. In case there is conflict between entries in the *khasra girdawari* and the entries in the record of rights, the latter shall prevail[10]. It is also a matter of fact that the *khasra girdawari* in question has not been supported by any official record; nor any official duly authorized to record the same has been examined in

[6] Muhammad Jameel v Abdul Ghafoor (2022 SCMR 348)
[7] Muhammad Jameel v Abdul Ghafoor (2022 SCMR 348)
[8] Muhammad Akram v The State (1977 SCMR 433); Sikandar v Sher Baz (2007 SCMR 1802); Abdul Majid v Muhammad Ashraf (1994 SCMR 115); Malik Sher v Rab Nawaz (1993 SCMR 2035) & Fateh Muhammad v Syed Afzal Hussain (1983 SCMR 1050).
[9] Muhammad Hussain v Eisa (1994 SCMR 523)
[10] Ghulam Muhammad v Ellahi Bux (PLD 2002 Lahore 48)

support of the same; therefore, the ratio in the case of ***Muhammad Aslam***[11] that Entries of *Khasra Girdawari* do not have the same degree and statutory force as exists for entries of annual revenue record if they are not supported or recorded by authorized officers fully applies in this case. Learned Counsel for the Applicants had made an attempt to argue that the entries in the *Khasra Girdawari* proved that the Applicants were tenants of the suit land which could not be lightly interfered with; however, it may be so, but entries in the *Khasra Girdawari* according to law were rebuttable and in this case, strong evidence of unimpeachable character to rebut the same is available on record[12]. The true copies Khasra Gardawari as well as Number shumari registrer in the absence of basic documents of title, do not prove the case of the Applicants[13].

11. As to the argument that the Applicants are in possession and cannot be dispossessed except in accordance with law is concerned, it may be observed that there is no cavil to such proposition; however, this is only applicable when otherwise a party is in possession pursuant to some lawful arrangement by the landlord or the owner or lessor of the property. The same could be by way of an agreement of tenancy or otherwise a lease or license granted by the owner, and if such agreement or lease or license has expired, then per settled law, the owner or the landlord cannot dispossess a person in possession except in accordance with law. However, here it is not so as the possession being claimed by the Applicants is not pursuant to any of such instruments; rather they appear to be in possession unlawfully and without any grant, agreement or allotment. In such a situation the possession is perfectly good against all the world except the rightful owner, and in this case the Applicants admit that if not Respondent No.1; but at least the Government is the owner of the suit land. In that case, even if any such protection is available, at least a declaratory Suit under Section 42 of the Specific Relief Act is barred.

12. As to the challenge of allotment of Respondent No.1 is concerned, it may be observed that firstly the Applicants have no *locus standi* to challenge any such allotment. Secondly, even otherwise, the only prayer in their Suit was regarding their possession and never ever they have challenged or sought cancellation of any allotment or grant of land to

[11] Muhammad Aslam v Khudadad (1982 SCMR 511)
[12] Khalid Mahmood v Ahmad Nawaz (2002 SCMR 445)
[13] Bashir Hussain v Muhammad Tufail (2005 MLD 878)

Respondent No.1 in any manner. Therefore, the argument so made about the illegality, if any, in respect of the allotment of Respondent No.1 cannot be considered. It is also a matter of admitted position, as per the evidence of the Applicants that they never approached any of the Revenue authorities, either for allotment of the suit land in their favor, as pleaded on the basis of some policy; nor, they ever filed any representation or appeal against the allotment of land in favor of Respondent No.1. In that case, the very maintainability of the Suit is also a question which had escaped the attention of the trial judge. There is no cavil to the proposition that even if a statute provides a bar to the exercise of jurisdiction by a civil court, the said bar is not absolute, and a civil court in terms of section 9 CPC, can still exercise jurisdiction, however, the same can only be done in cases, wherein, the impugned orders are tainted with *malafides* or are without jurisdiction[14]. If the parameters as laid down in these cases is not met, then the jurisdiction of a civil court would be barred. Here, in this case, there is no order of the authorities below against which *malafides* or even lack of jurisdiction could be attributed, as the Applicants had never approached the said authorities to seek an appropriate remedy including allotment of land in their favor. Not even cancellation of grant to Respondent No.1, instead a civil suit was directly filed, which on the face of it was not competent. Hence, the case law to this effect relied upon by the Applicants Counsel is not relevant to the facts of the case in hand.

13. There is also another aspect of the matter which also needs to be attended to. In the entire plaint there is no mention of any *Khasra Girdawari* nor it has been relied upon in any manner to justify possession of the suit land. The entire crux of the Applicants case in the plaint, including the amended plaint, after passing of order dated 6.11.2002, whereby, additional evidence was permitted to be recorded, was in essence premised on some unexplained land grant policy and at no point of time even in the amended plaint any such reliance was placed on the *Khasra Girdawari*; nor the same was sought to be brought on record through pleadings. This was despite the fact that considerable time had lapsed, and even one round of litigation had passed, but even then the plaint remained silent to this effect. This is notwithstanding the fact that per settled law, a suit must be tried on the

[14] See the cases reported as Mian Muhammad Latif Vs. Province of West Pakistan and another (PLD 1970 SC 180); Abbasia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd.) and another Vs. Hakeem Hafiz Muhammad Ghaus and 5 others (PLD 1997 SC 3); Abdul Rauf and others Vs. Abdul Hamid Khan and others (PLD 1965 SC 671); Union of India v. Tarachand Gupta & Bros. (AIR 1971 SC 1558) and Mafatlal Industries Ltd. Vs. Union of India 1999 (89) E.L.T. 247(S.C.)

original cause of action.[15] Similarly, even the order dated 6.11.2002 had specifically observed that "*not only to produce evidence but also to make necessary amendments in the pleadings and* ***without permitting them to change the main complexion in so far as the cause of action is concerned****".*and therefore, even if the application for recording of additional evidence was allowed, it would not *ipso-facto* permit the Applicants to suddenly bring in a new cause of action by way of *Khasra Girdawari*, as admittedly, it is only in the additional evidence that suddenly the *Khasra Girdawari* has been exhibited by the Applicants witness and not through any official or authorized person of the Government. Notwithstanding, that the *Khasra Girdawari* cannot be relied upon and considered in this manner, even otherwise, since it was never a part of the pleadings, it could not have been brought in evidence, suddenly, and that too after passing of a judgment by at least two Courts. The Hon'ble Supreme Court in the case of *Muhammad Nawaz v Member Judicial Board of Revenue* (**2014 SCMR 914**) has been pleased to delve upon this aspect of the matter in the following terms which fully applies to the facts of the case in hand;

> 7. The next question emerging for the consideration of this Court is whether the appellants have proved what they have pleaded in their plaint? The answer to the aforesaid question is a simple no. In para-3 of the plaint, the appellants have averred that they are tenants of the vendors and now of the vendees, but one of them who appeared in the Court for himself and on behalf of others stated that the suit property was let out to one Sikandar on contract, therefore, they had been paying share of the produce to him. This statement, so to speak, is not consistent with what has been pleaded by the appellants in their plaint. It is, indeed, a clear drift rather an outright departure from what has been pleaded in the plaint. Granted that averments made in pleadings do not constitute evidence but the evidence led in their support must be consistent therewith. Anything stated outside the scope of such averments cannot be looked into. The rule of secundum allegata et probata, not only excludes the element of surprise, but also precludes the party from proving what has not been alleged or pleaded. This Court, in the cases of "Government of West Pakistan (Now Punjab) through Collector, Bahawalpur v. Hail Muhammad) (PLD 1976 SC 469), "Messrs Choudhary Brothers Ltd., Sialkot v. The Jaranwala Central Co-operative Bank Ltd., Jaranwala" (1968 SCMR 804), "Binyameen and 3 others v. Chaudhry Hakim and another" (1996 SCMR 336) and "Major (Retd.) Barkat Ali and others v. Qaim Din and others" (2006 SCMR 562), held that no party can be allowed to lead evidence on a fact which has not been specifically pleaded nor can any evidence be looked into which is outside the scope of pleadings.

Further reliance can also be placed on the case of *Basit Sibtain v Muhammad Sharif* (**2004 SCMR 578**).

[15] Nair Service Society Ltd v Rev. Fr. U.C. Alexander (AIR 1968 SC 1165)

14. Lastly a word about section 27 of the Forest Act, 1927, as the learned Counsel for the Applicants had argued that it supports their case. With respect it does not. Section 27 provides that The Provincial Government may, by notification in the official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under the Act shall cease to be a reserved forest; and from the date so fixed, such forest or portion shall cease to be reserved, but the rights (if any), which have been extinguished therein shall not revive in consequence of such cessation. The simple interpretation is that even if any right had accrued to the Applicants as claimed by them in the plaint when the land in question was a forest land, after issuance of notification under section 27 ibid, when the land no longer remains as forest, the same cannot be revived or claimed in any manner. Therefore, this argument is also misconceived.

15. In view of hereinabove facts and circumstances of this case, since the Applicants have failed to make out a case for any indulgence; whereas, the Appellate Court has arrived at a fair and just conclusion, and even the additional evidence so recorded on behalf of the Applicants does not appear to be of any help to their case, therefore, by means of a short order passed on 25-04-2022, this Civil Revision Application was **dismissed** and these are the reasons in support thereof.

J U D G E

Abdul Basit