

reference being answered in the negative, however all other convictions and sentences under the P.P.C. are maintained including fines and compensation. He shall however have the benefit of section 382(B), Cr.P.C. and any remission available to him under the law now that the appellant has been acquitted of the ATA offences and all his sentences shall run concurrently.

17. The appeal is partly allowed in respect of the ATA offences and dismissed in respect of the P.P.C. offences except as modified above in terms of sentencing and the confirmation reference is answered in the negative.

18. The appeal is disposed of along with confirmation reference in the above terms.

JK/M-142/Sindh. Order accordingly.

2024 Y L R 684

[Lahore]

*Before Abid Aziz Sheikh and
Faisal Zaman Khan, JJ*

**MUHAMMAD RAMZAN &
COMPANY---Plaintiff**

versus

**MUHAMMAD AMEER KHAN
and others---Defendants**

R.F.As. Nos. 33094 and 44060 of 2022,
heard on 2nd October, 2023.

***Punjab Mining Concession Rules,
2002---***

***---R. 236---Qanun-e-Shahadat (10 of
1984), Arts. 117 & 120---Civil Procedure
Code (V of 1908), O. VI, R.4---Specific***

***Relief Act (I of 1877), S. 42---Suit for
declaration and recovery of money---
Excavation of limestone--- Onus to
prove--- Facts not mentioned in
pleadings---Respondent/plaintiff sought
recovery of cost of limestone allegedly
excavated by appellants/defendants
during construction of road from the
area leased to him---Trial Court decreed
the suit in favour of respondent/
plaintiff---Validity---Person who alleged
a certain fact had to prove the same---No
specific incident with regard to when,
through whom and how illegal
excavation of limestone was done by
appellants/defendants---It was also not
mentioned in the plaint as to how the
limestone was transported---Any evidence
led in such regard was beyond the scope
of pleadings---Suit filed by respondent/
plaintiff was not maintainable in view of
bar contained in R. 236 of Punjab
Mining Concession Rules, 2002, as no
Court or other authority had jurisdiction
to entertain or to adjudicate upon any
matter which Provincial Government or
Licensing Authority was empowered by
or under rules to dispose of or to
determine---High Court set aside
judgment and decree passed by Trial
Court and had dismissed the suit
filed by respondent/plaintiff---Appeal
was allowed, in circumstances. [pp. 686,
688] A & B.***

Sheikh Ishtiaq Ahmad and others
v. Muhammad Usman Ali Sheikh and
another 2021 SCMR 1277; Muhammad
Aslam and others v. Muhammad Anwar
2023 SCMR 1371; Messrs Pak Suzuki
Motors Company Limited through
Manager v. Faisal Jameel Butt and
another PLD 2023 SC 482; Muhammad
Ghaffar (Deceased) through L.Rs. and
others v. Arif Muhammad 2023 SCMR

344; Moiz Abbas v. Mrs. Latifa and others 2019 SCMR 74; Combined Investment (Pvt.) Ltd. v. Wali Bhai and others PLD 2016 SC 730; Muhammad Nawaz alias Nawaza and others v. Member Judicial Board of Revenue and others 2014 SCMR 914; Messrs Essa Engineering Company (Pvt.) Ltd. and another 2014 SCMR 922; Muhammad Wali Khan and another v. Gul Sarwar Khan and another PLD 2010 SC 295; Abdul Haque and others v. Shoukat Ali and 2 others 2003 SCMR 74 and Muhammad Hussain v. Khushi Muhammad through L.Rs. and 5 others 2003 CLC 478 rel.

Ch. M. Tariq Mehmood Ansari
for Appellants.

Baleegh uz Zaman Chaudhry,
Addl. A.G. along with Safdar Iqbal,
S.D.O., Highway, Mianwali for
Appellants (in R.F.A. No. 44060 of
2022).

Usman Nasir Awan for
Respondent No.1.

Date of hearing: 2nd October,
2023.

JUDGMENT

FAISAL ZAMAN KHAN, J.---
Through this consolidated judgment, we intend to decide the instant appeal along with connected R.F.A. No.44060/2022, which have been directed against the judgment and decree dated 09.04.2022 passed by the learned Civil Judge, Mianwali, whereby a suit for declaration and recovery of money instituted by respondent No.1 against the appellants and respondents Nos.2 to 5 (appellants in the connected appeal) has been decreed.

2. Succinctly, the facts of the case are that vide agreement dated 22.08.2006 land measuring 179.73 Acres situated near Rakhi, District Mianwali was leased out by respondent No. 5 to respondent No.1 for excavation of lime stone for a period of 10 years for a bid amount of Rs.2,222,000/-. A suit for declaration and recovery of money was filed by respondent No.1 against the appellants and respondents Nos.2 to 5 on the ground that for construction of Sohawa Chakwal Talagang and Mianwali Road respondents Nos.2 to 4 awarded a contract to the appellant, however, during the construction of the same and without permission of respondent No.1, limestone has been used from the area, which has been leased out to respondent No.1. Respective written statements were filed by the defendants denying the claim of respondent No.1. Out of divergent pleadings of the parties as many as 07 issues were framed, evidence *pro* and *contra* was led, whereafter, through impugned judgment and decree the suit to the extent of recovery of Rs.136,002,410/- has been decreed, hence, these appeals.

3. Learned counsel for the appellant as well as learned Law Officer, who is representing the appellants in the connected appeals submit that without any evidence it has been held that the lime stone, which has been used in the construction of the road belong to respondent No.1 and it was illegally and without permission excavated by the appellants and used for construction of road. Further adds that there is no basis for determining the amount of compensation/amount, which has been decreed in favour of respondent No.1.

4. Replying to the above, learned counsel for respondent No.1 submits that overwhelming evidence is available on the record justifying the claim of the said respondent, therefore, the impugned judgment and decree has been passed in accordance with law.

5. Arguments heard. Record perused.

6. From the perusal of the plaint, it is manifest that it is the case of respondent No.1 that a road has been constructed by the appellants, in which limestone has been used, which has been illegally and without permission excavated from the area leased out to respondent No.1 by respondent No.5.

7. Since the above allegations were bald in nature for the reason that a bare perusal of the plaint would show that no specific incident/s have been mentioned therein wherefrom this could be culled out that when, how and through whom limestone was excavated by the appellants from the area of respondent No. 1.

8. It is settled proposition of law that a person who alleges a certain fact has to prove the same. For reference reliance can be placed on Sheikh Ishtiaq Ahmad and others v. Muhammad Usman Ali Sheikh and another (2021 SCMR 1277).

9. In the above background, a perusal of the record would show that since no specific incident with regard to illegal excavation of lime stone, when, through whom and how it was excavated and transported, has been mentioned in the plaint, thus, any evidence led in this regard will be beyond the scope of

pleadings, thus, keeping in view judgments reported as Muhammad Aslam and others v. Muhammad Anwar (2023 SCMR 1371), Messrs Pak Suzuki Motors Company Limited through Manager v. Faisal Jameel Butt and another (PLD 2023 SC 482), Muhammad Ghaffar (Deceased) through L.Rs. and others v. Arif Muhammad (2023 SCMR 344), Moiz Abbas v. Mrs. Latifa and others (2019 SCMR 74), Combined Investment (Pvt.) Ltd. v. Wali Bhai and others (PLD 2016 SC 730), Muhammad Nawaz alias Nawaza and others v. Member Judicial Board of Revenue and others (2014 SCMR 914), Messrs Essa Engineering Company (Pvt.) Ltd. and another (2014 SCMR 922), Muhammad Wali Khan and another v. Gul Sarwar Khan and another (PLD 2010 SC 295), Abdul Haque and others v. Shoukat Ali and 2 others (2003 SCMR 74) and Muhammad Hussain v. Khushi Muhammad through L.Rs. and 5 others (2003 CLC 478), the same cannot be relied upon.

10. A perusal of the impugned judgment would show that it has been held by the trial court that the road for which illegally excavated lime stone was used is being constructed on the land leased out to respondent No.1 thus the material used in construction also belong to the said respondent, hence, he has to be compensated.

11. The above finding is not only erroneous but is also beyond the record for the reason that in his plaint, it was not the case of respondent No.1 that the land upon which road was constructed was part of the land which was leased out to respondent No.1, thus, on this score alone the impugned judgment and decree cannot sustain.

12. It shall be apposite to mention here that the land was leased out to respondent No.1 through an agreement which was produced as Exh.P.1, however, a bare perusal of the said agreement would show that no specifications of the land which has been leased out to respondent No.1 have been given, in view of which how could the trial court render a finding that road was constructed on the land leased out to respondent No. 1.

13. Even otherwise no revenue record has been produced by respondent No.1 which could spell out the details/specifications of land leased out to respondent No.1 enabling the trial court to come to any conclusion.

14. Record would show that the total claim of respondent No.1 rests on Exhs.P.13 to P.15 which is a report of a mining surveyor who was engaged (privately) by respondent No.1 and was produced as his witness as PW.3.

15. A bare perusal of the said report would show that no terms of reference have been mentioned according to which the report was to be prepared. Similarly, no formula has been mentioned therein where from this could be ascertained that how the lime stone which has allegedly and illegally been excavated by the appellants has been calculated/measured and on what basis compensation has been calculated. The said report, even otherwise, is of no significance for the reason that none of the appellants or the revenue officials have been associated while making of such report enabling them to put forth their stance.

16. It has also been alleged in the

plaint that 12,800,000 feet of lime stone has been illegally excavated by the appellants for using it for construction of the road, however, there is no explanation that wherefrom this figure has been ascertained/calculated. Record would show that this figure has been borrowed from Exhs.P13 to 15, however, since the said documents have been prepared at the behest of respondent No.1 and none of the appellants have been associated, hence, the same has no bearing as the same remained unproved.

17. While going through the impugned judgment and decree, we have also not been able to understand that how the amount of compensation has been determined by the trial court as the cases are decided by the courts on the principle of preponderance of evidence, however, the perusal of the impugned judgment would show that for determination of compensation, total reliance has been placed on Exhs.P13 to 15, which as discussed above per se do furnish any explanation or guidelines either for determination of amount of compensation for the alleged illegal excavation of limestones used by the appellants in construction of the road or for establishing that how the same belong to respondent No.1. A bare reading of the said report would signify that it has been prepared at the behest and for the benefit of respondent No.1.

18. Another aspect which needs consideration is that the lease for excavation of lime stone awarded to respondent No.1 was for an amount of Rs.2,222,000/- and despite this fact, how an exorbitant amount of Rs.136,002,410/- has been calculated and awarded as compensation to respondent No. 1. The

matter requires an inquiry against the lessor and the lessee that if the land was so valuable and such valuable amount of lime stone was available, how the same was given to respondent No.1 on lease at such a throw away price.

19. The above observations are further fortified from the fact that on the application filed by respondent No. 1, respondent No.5 issued Exh.P.4, 5, 7 and 9 directing the appellant to compensate respondent No. 1, however, there is nothing on the record to prove that any probe or inquiry was conducted by respondent No.5 and after proper determination appellant was directed, thus, the said letters are of no consequence.

20. Record would further reflect that the defence put forth by the appellants has neither been considered nor any finding has been rendered thereon. It was the case of the appellants that for construction/widening of Sohawa Chakwal Talagang and Mianwali Road appellant was awarded a contract by respondent No.5. In fact the process of widening of the already existing road, which was initiated in 2005-06 (when the lease was not even granted to respondent No.1) but due to some unavoidable circumstances the same could not be completed, whereafter in 2014 the contract was awarded to the appellant. The above facts are proved through the contents of Exh.D.12.

21. It shall be apposite to mention here that within 100 meters of the said road no excavation work could be done. This fact has been admitted by PW.1 and PW.2 and also borne out from Clause-VI of Exh.P.1.

22. The above facts clearly stipulate that respondent No.1 could not lodge any claim with regard to excavation of limestone within 100 meters of the said road and as discussed in the previous paragraphs since no specific area has been shown by respondent No.1 wherefrom the limestone was excavated, hence, this could not be proved by him that the excavation was done by the appellant within 100 meters of the road or from the leased area of respondent No.1.

23. Last but not the least, we have also noted that the suit instituted by respondent No.1 was not maintainable in view of the bar contained in Rule 236 of the Punjab Mining Concession Rules, 2002 for the reason that notwithstanding anything provided in any other law for the time being in force no Court or other authority whatsoever shall have jurisdiction to entertain or to adjudicate upon any matter which the Government, the Director General, Mines and Minerals, Punjab or the Licensing Authority or any other person is empowered by or under these rules, to dispose of or to determine, therefore, even otherwise, the impugned judgment and decree passed by the lower court is liable to be set aside. B

24. For what has been discussed above, both these appeals are allowed, as a sequel to which the impugned judgment and decree is set aside, resultantly the suit instituted by respondent No.1 stands dismissed.

MH/M-11/L

Appeals allowed.