Women's Property: Complex Title Disputes Need Civil Court Referral, Supreme Court Rules

Supreme Court requires a civil court reference where women's property claims need evidence, and rejects dismissal merely because a suit is pending.

CPLA Nos. 2630 and 2639 of 2026 | Decision: 2026-10-29

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A disputed claim to a woman's property should reach the civil court through the statutory reference procedure when it needs detailed evidence. It should neither be decided as a summary possession complaint nor simply dismissed because a civil suit is pending. That is the central holding of the Supreme Court of Pakistan in the Naheed Shah Afridi and Islam Bibi petitions. Judgment, paragraphs 6–8.

The judgment dated 29 October 2026 was written by Justice Ayesha A. Malik, sitting with Justice Muhammad Shafi Siddiqui. The Court set aside both the Khyber Pakhtunkhwa Ombudsperson's possession order and the Peshawar High Court judgment dismissing the complaint. It sent the claim for adjudication by the civil court at Bara. Case particulars Paragraph 8.

A family property claim with competing roots of title

The dispute concerned approximately 39 kanals near Dogra Hospital in Bara, District Khyber. Rehmat Shah Afridi's wife and daughters sought possession through a complaint under the Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019. They relied on a gift said to have been made by him in November 2023, followed by a verbal arrangement with the other children. His brother, Muzaffar Shah Afridi, asserted a competing claim and maintained that his family occupied the property. These were rival claims requiring adjudication. Paragraphs 1–2.

After an earlier remand and further reports, the Ombudsperson ordered restoration of possession on 2 October 2025. The High Court set that order aside on 3 July 2026 and dismissed the complaint, principally because it considered the procedure defective. The Supreme Court found errors in both approaches. Paragraph 1 Paragraph 6.

Summary enforcement depends on a clear right

The Court read the 2019 Act as an enforcement law protecting ownership and possession that are already established or readily ascertainable. It offers a swift remedy against unlawful deprivation; its summary process is not a substitute for a civil trial of intricate title disputes. At the preliminary stage, the Ombudsperson must examine ownership and possession or entitlement to possession. Paragraph 4.

Sections 4 and 5 provide the summary route where the statutory conditions are met. Section 6 supplies the route where the controversy instead needs an in-depth inquiry, detailed evidence or intricate adjudication: the Ombudsperson must formulate a reference, send the collected material to the competent civil court, and the court must entertain it as a civil suit. The reference protects the complainant from having to start the entire process again. Paragraphs 3–4 Paragraph 4.

This does not reduce the threshold to proof that the complainant personally occupied every portion of the land. The judgment expressly includes entitlement to possession. The relevant question is whether the right can properly be enforced through a summary process, or first needs a judicial determination on contested evidence. Paragraph 4.

Why the possession order could not stand

The only title document before the Ombudsperson was a 2015 property certificate in Rehmat Shah Afridi's name. Neither the alleged gift deed nor an inheritance document establishing the petitioners' title had been produced before that forum. The Deputy Commissioner's report recorded occupation by Muzaffar Shah Afridi's family. Paragraph 5(i).

The claimed verbal arrangement also needed proof against the competing claimant. An expression of willingness by the petitioners' brothers to give them shares did not settle the position of the person actually occupying the property. The Court further identified the need to determine shares and partition, and the absence of relevant revenue records in the area. Taken together, these matters prevented summary adjudication of title and possession. Paragraph 5(i)–(ii) Paragraph 5(iii)–(iv).

The Court did not declare the alleged gift genuine or false. Its existence, genuineness and legal validity were among the questions reserved for decision after evidence. Paragraph 7.

A pending suit calls for coordination under section 7

The High Court's outright dismissal overlooked section 7. That provision permits a woman to complain even where proceedings about the property are pending and allows the Ombudsperson to obtain a further inquiry. A pending suit therefore did not justify the blanket conclusion that the Ombudsperson could issue no direction to the Deputy Commissioner. Paragraph 6(i).

The Supreme Court also rejected the High Court's criticism of the local commission and Deputy Commissioner's involvement. Those steps had to be read with the application on which the commission was appointed and the High Court's own earlier remand directions. In appeal, the High Court possessed the corresponding powers under the Act and should have considered a reference rather than forcing the women back into fresh litigation. Paragraph 6(ii)–(iii) Paragraph 6.

The complaint will proceed as a civil reference at Bara

The Ombudsperson must transmit the complaint, applications, documents, reports and other relied-upon material to Civil Judge-I, Bara, District Khyber, where the connected suit is pending. It is to be treated as a section 6 reference and may be treated as the petitioners' suit. The women may alternatively pursue another appropriate remedy. On receiving the reference and judgment, the civil court must issue notices requiring the parties to appear within fifteen days. Paragraph 8.

For counsel, the practical task is to identify the threshold issue early: establish the client's clear right for summary enforcement, or show why the documents and competing claims require a section 6 reference. An appeal against the Ombudsperson's order should address that statutory choice expressly. This follows from the Court's criticism of the preliminary assessment and the relief it ultimately ordered. Paragraphs 6–8.

For related evidence questions, see the journal's analysis of old sale deeds and mutation entries and women's inheritance and alleged oral gifts.

Sources

- Complete Supreme Court judgment.
- Download judgment PDF.
- Case details and searchable judgment summary.
- Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019 — official provincial text.

Frequently asked questions

Can the KP Ombudsperson decide a seriously disputed property title?

The Supreme Court held that the summary procedure cannot replace a civil trial where ownership depends on disputed documents and detailed evidence. Section 6 requires a reference to the competent civil court in those circumstances. paragraphs 4–5.

Does a pending civil suit automatically bar a woman's complaint?

No. Section 7 permits a complaint despite pending civil proceedings and provides for inquiry and coordination with the court. The High Court was wrong to treat pendency as a reason for rejecting the complaint in this case. paragraph 6.

Did the Supreme Court award the disputed land to the women?

No. It set aside both the possession order and the High Court judgment dismissing the complaint. The title dispute must be decided by the civil court on evidence. paragraph 8.

What happens to the complaint after a section 6 reference?

The complaint and collected material go to the competent civil court, which entertains the reference as a civil suit. Here, the Court directed transmission to the civil judge at Bara already hearing the connected property suit. paragraph 8(i).

Must a woman previously have occupied every part of the property?

The judgment refers to established ownership and possession or entitlement to possession. It should not be read as requiring personal physical occupation of every part in every case; this particular claim failed the threshold for summary relief because title and possession were unclear. paragraphs 4–5.

What did the Court direct about the next hearing?

On receiving the reference and judgment, the civil court must issue notices requiring the parties to appear within fifteen days. The Court expected the dispute to be decided within a reasonable time. paragraph 8(iii).