

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 100 of 2018
(*Haji Imdad Ali Jalbani v. Pehlwan & others*)

Civil Revision No. S – 101 of 2018
(*Haji Imdad Ali Jalbani v. Pehlwan & others*)

Date of hearing : **09.09.2024**

Date of decision : **09.09.2024**

Mr. Tariq G. Hanif Mangi, Advocate for the Applicant.
Mr. Ghulam Abbas Kuber, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – Through this common order, I intend to dispose of the captioned civil revision applications, whereby the applicant has challenged the Judgment and Decree dated 29.03.2018 and 30.03.2018, respectively, passed by learned 3rd Additional District Judge, Naushahro Feroze in Civil Appeals No.67 and 68 of 2011, upholding the Judgment and Decree dated 12.10.2011 and 15.10.2011, respectively, passed by learned Senior Civil Judge, Naushharo Feroze, in F.C. Suit No.48 of 2007 (Re- Pehlwan and others vs. Haji Imdad Ali Khan & others) and F.C Suit No.139 of 2008 (Re- Haji Imdad Ali Khan vs. Pehlwan and others), whereby Suit No.48 of 2007 was decreed and Suit No.139 of 2008 was dismissed.

2. Despite publication none has effected appearance on behalf of the private respondents.

3. Learned counsel for the applicant states that applicant Haji Imdad Ali S/o Mureed Hyder Jalbani till today remained undisputed owner of the land bearing area (3-36 acres) in S.No.411 along with three daughters and two wives vide entry No.30 since 1955, which fact is crystal clear from the report submitted by concerned Mukhtiarkar (Revenue) and wrongly shown to be in possession of the respondent-Pehlwan, and which survey number

is admitted by one of the witnesses of respondents (page 295) to be adjacent to the houses of the respondents per cross-examination of witness namely Zulfiqar Ali, cousin of respondents.

4. Counsel states that initially respondent filed Suit bearing No.16 of 2006 (Old No.78 of 2004) for injunction and enforcement of oral agreement alleging that the predecessor of the applicant had exchanged Survey No.411 in lieu of respondents' Survey Nos.181 and 182, however, later on the said Suit was withdrawn at the stage of recording of evidence by moving an appropriate application, which withdrawal was imposed with a cost of Rs.2000/- and the plaintiff (present respondent) was allowed to file a fresh suit subject to law of limitation.

5. Counsel states that when the new Suit was presented, an objection as to the maintainability of the new Suit bearing No.48 of 2007 was made (as per page 59 hereinabove) and on unsustainable grounds, the respondents were permitted to proceed that claim, which should not have been allowed. Be that as it may, the said Suit was consolidated with the already pending Suit of the applicant bearing No.99 of 2004 (page 65), which was filed for possession of Survey No.411 as allegedly respondent Pehlwan had taken over possession of the said land illegally after threatening the applicant of dire consequences.

6. Counsel states that the trial Court through a consolidated judgment dated 12.10.2011 has completely misunderstood the fact and the key document i.e. Mukhtiarkar's report which has been misread. Where at one point the trial Court admits that Survey No.411 is in the name of applicant Haji Imdad Ali Jalbani, and his daughters and wives, but it does not at all speak about the exchange of the said survey number with the respondent's Survey Nos.181 and 182, the subject-matter of which was alleged through specific performance in the earlier Suit (typed page 15 line No.4). He further adds that the trial Court has wrongly mentioned that

father of the applicant was co-owner in S.Nos.181 and 182, which fact does not transpire from the perusal of the Mukhtiarkar's report, and hence the applicant has no concern with Survey Nos.181 and 182, which were never in their names, nor in their possession.

7. Learned counsel also states that the judgment dated 29.03.2018 has once again misplaced its finding by mentioning that Mukhtiarkar of the beat has fully supported the exchange of Survey numbers between the parties, where in fact the Mukhtiarkar has not used the word "exchange" at all in his report (Page 383). Counsel states that even if there was an exchange, the provision of Article 118 of the Transfer of Property Act, 1882 were to apply where such a transfer can only be made in the manner provided for sale transactions i.e. through a registered document. Counsel has placed reliance upon the judgment in the case of Tahir Hussain vs. Ghulam Rafique and 7 others (PLD 1978 Karachi 182) to show that sale transaction and exchange by mutual transfer, have to follow the same process. Per counsel neither any such documents exchanged nor were filed or presented to the Court, and in fact for all legal purposes Survey No.411 still remains in the name of the applicant and his daughters / wives. It is also alleged that no cross-examining was recorded by both Courts, which initially misread the report from the concerned Mukhtiarkar and secondly treating the said transaction as exchange while there was no record of which whatsoever.

8. Learned AAG Sindh admits the legal position and states that as per record Survey No.411 is still in the name of applicant Haji Imdad Ali Jalbani and there is no order of any exchange in the revenue record in the relevant Registers.

9. In the circumstances at hand ample opportunity was provided to all respondents to adduce their version but no appearance has been made. These Civil Revision Applications are **allowed**. Both the judgments of the

Courts below are set-aside. Old Suit No.139 of 2004 (Re- Haji Imdad Ali S/o Mureed Hyder vs. Pehlwan S/o Jodho Khan and others) is allowed and decreed, and the respondents are directed to hand over the possession of land admeasuring area (3-36 acres) falling under Survey No.411 holding entry No.30 in the Village Form to the applicant, and possession of the respondents over such land is to be declared illegal.

Office to place a signed copy of this judgment in the captioned connected matter.

JUDGE

ARBROHI