

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision Application No. S- 21 of 2013

Bhale Dino and another.Applicants

Versus.

Muhammad Chattal and others..... Respondents

For hearing of case (Priority)

1. For hearing of main case.
2. For hearing of CMA 145/2013.

Mr. Kalandar Bakhsh Phulpoto Advocate for the applicants.

Mr. Nusrat Hussain Memon Advocate for the respondents.

Date of hearing: 06-05-2019

Date of Order: 31-05-2019

ORDER

ZAFAR AHMED RAJPUT J., This Civil Revision Application under Section 115 C.P.C impugns the order dated 05.03.2013, whereby learned 2nd Additional District Judge, Khairpur dismissed the application under Order 41 Rule 27 read with Section 151 C.P.C filed by the applicants in Civil Appeal No. 115 of 2012 (re: Bhale Dino and others v. Muhammad Chattal) by observing that the matter was decided by the trial Court after giving full opportunity to the parties to lead their evidence and that the learned counsel for the applicants had not established that the suit was badly conducted and had also not proved that the documents were produced before the trial Court and that the documents were in custody of applicants, but failed to point out as to why they remained silent and not produced the same before the trial Court.

2. From the divergent pleadings of the parteis, learned trial Court settled as many as nine issues and after recording evidence decreed the suit vide judgment dated 25.09.2012. Against that, the applicants filed Civil Appeal No.115 of 2012, wherein they filed an application under Order 41 Rule 27 read with Section 151 C.P.C seeking permission of the appellate Court to produce the documents listed in the application as additional evidence, which was dismissed by the appellate Court vide impugned order dated 05.03.2013.

3. Learned counsel for the applicants has mainly contended that the impugned order is against the law, facts and equity, therefore, same is not sustainable under the law; that the documents sought to be produced as additional evidence are the public documents which have bearing upon the merits of the case being relevant to the points in controversy the veracity and authenticity of the same cannot be denied; that the case set up by the respondent in his pleadings is confusing and such confusion can be removed only by the documents sought to be produced which shall help the Court below to pass appropriate judgment; that the father of applicants and father of respondent were brothers inter se and the disputed survey numbers were privately partitioned by them under a family settlement, which was affirmed by the Mukhtiarkar concerned and such record-of-rights was mutated accordingly; that the learned Court below failed to consider that the applicants are poor and illiterate persons whose valuable rights are involved in the matter. He further contended that applicants filed their written statement denying the allegations of the

respondent and claiming that the suit land was owned by the father of the applicants and such mutation entry in the record-of-right exists in his favour and that T.O. form produced by the respondent was forged and fabricated document. In support of his contentions, learned counsel has relied upon the cases of Zar Wali Shah v. Yousaf Ali Shah and others (1992 SCMR 1178), Ghulam Muhammad v. Mian Muhammad and another (2007 SCMR 231), Syed Sharif ul Hassan v. Hafiz Muhammad Amin (2012 SCMR 1258), Muhammad Ijaz Ahmad Chaudhry v. Mumtaz Ahmad Tarar (2016 SCMR 01) and Commissioner Multan Division Multan and others v. Muhammad Hussain and others (2015 SCMR 58).

4. On the other hand, learned counsel for the respondents has maintained that the documents sought to be produced by the applicants were neither referred by the applicants in their pleadings nor any defence has been set up by them on the basis of such documents and it was after three months of filing of the appeal, the applicants filed application under Order 41 Rule 27 read with Section 151 C.P.C; that no good ground has been shown by the applicants for production of the alleged comments even after framing of the issues before the trial Court, hence applications cannot be permitted to fill-up lacunas left by them in evidence before the trial Court. In support of his contentions, he has relied upon the cases of Bashir Ahmad v. Ahmad-ul-Haq Siddiqui (1985 SCMR 1232), Muhammad Yousaf v. Mst. Maqsooda Anjum and others (2004 SCMR 1049), Sh. Qamar Javed and others v. Sh. Hassan Hassan Ali (2001 SCMR 1766) and

Mustafa Kamal and others v. Daud Khan and others (2009 SCMR 221).

5. Heard learned counsel for the parties and perused the material available on record. It appears that respondent had filed F.C suit No.144 of 2011 against the applicants for declaration, possession, mesne profit and permanent injunction alleging therein that the suit land originally owned by the Government on being granted by the Barrage authority under T.O. Forum. It was case of the respondent that the land admeasuring 02-39 acres in Survey No.426, 01-32 acres in Survey No.427 and 02-12 acres in Survey No.236 vide entry No.4 dated 07.04.2011 were mutated by the Mukhtiarkar (Revenue), taluka Kingri in his name after death of his father in revenue record and thereafter the applicants illegally occupied the said land, said suit was filed by the respondent.

6. Perusal of aforementioned documents shows that the documents are “Public Documents” and it has not been disputed by the learned counsel for the respondent that same do not belong to the suit land. The authenticity and genuineness of the said documents could not be doubted being public documents. Prima facie, it appears from perusal of the record that the case was badly conducted not only from the applicants’ side but also from the respondent’s side. All the relevant documents were not produced on record. Trial Court was not denuded of power to summon all the necessary revenue record and also to summon the concerned revenue official so as to supply omissions

from both the sides. It seems that it was an appropriate case for exercise of power under Order 41 Rule 27 C.P.C for bringing on record additional evidence. The additional documentary evidence proposed by applicants is appears to be authentic documentary evidence consistent with the pleadings of the parties and directly relevant to the findings of ownership of the suit land. Such additional evidence in my view shall facilitate the resolution of the controversy between the parties. The Hon'ble Supreme Court of Pakistan in the cases of Muhammad Tariq v. Shamsa Tanveer (PLD 2011 SC 151) and Bisvil Spinners (Pvt) Ltd. V. Pakistan through Secretary Ministry of Finance, Islamabad etc. (PLD 1992 SC 96) has held that the additional evidence in the foregoing qualities is admissible on record. The jurisdiction of appellate Court to do the complete justice between the parties also favours additional evidence to be admitted in order to meet the ends of justice. Under the provisions contained in Rule 27 (1)(b) of Order 41 C.P.C. In the case of Muhammad Ijaz Ahmed Chaudhry (supra) it has been held by the Hon'ble Supreme Court of Pakistan as under:

“Any document that is genuine and relevant to the determination of a factual controversy may be admitted on record at any stage of the proceedings, whether original or appellate, so that justice may be done. This rule is laid down in Bisvil Spinners (Pvt) Ltd. V. Pakistan through Secretary Ministry of Finance, Islamabad etc. (PLD 1992 SC 96). Another principle of general application is that every procedure that promotes the administration of justice is admissible unless it is expressly prohibited. Reference in this behalf can be made to H.M. Saya & Co. v. Wazir Ali Industries Ltd. (PLD 1969 SC 65).

7. For the foregoing facts and reasons, this Civil Revision Application is allowed. Resultantly, impugned order dated 05.03.2013 is set aside and the application made by the applicants under Order 41 Rule 27 read with Section 151 C.P.C for additional evidence is hereby allowed.

JUDGE