

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

RA. No. 213 of 2006

[Muhammad Hassan through L.Rs v. Mst. Husna and others]

Date of hearing : 18.05.2017
Date of Order : 19.06.2017
Applicant : Muhammad Hassan through L.Rs, through Arbab Ali
Hakro, Advocate
Respondents : Mst. Husna and others, through Mrs. Razia Ali
Zaman, Advocate

JUDGMENT

Zulfiqar Ahmad Khan. J:- The applicant has preferred the instant Revision Application against the concurrent findings given in the judgment passed by learned Additional District Judge, Sanghar in Civil Appeal No. 13 of 2005 dated 17.8.2006 and the earlier judgment and decree dated 3.2.2005 passed by learned Senior Civil Judge, Sanghar in F.C. Suit No. 76 of 2001.

Brief facts leading to instant chain of litigation are that late Muhammad Juman son of Muhammad Jaffar owned share as legal heir of Muhammad Jaffar in agricultural land bearing Survey No. 189/1 measuring 03-09 acres, S.No.189/2 measuring 03-10 acres, S.No.190 measuring 05-27 acres, S.No.191 measuring 05-05 acres, S.No.211 measuring 08-10 acres and S.No.212 measuring 09-21 acres, total area 35-02 acres, situated in Deh Barachari Jagir, Taluka Shahdadpur District Sanghar which was acquired by him as being co-sharer (0-19 paisa in the entire land) and being in physical possession made Muhammad Juman full owner of the above referred land (hereinafter referred to as the "suit land"). The case of the appellant is that while Muhammad Juman was still alive, on the consideration of Rs.3,55,000/- (Rupees Three Lac Fifty Five Thousand) he agreed to sell his share of land to his brother Muhammad Hassan (present Applicant) through an agreement dated 13.8.1999 (annexure L/M). The Applicant contended that he paid Rs.3,00,000/- (Rupees Three Lacs) by cash on the date of signing of the said agreement and the balance amount of Rs.55,000/- (Rupees Fifty Five Thousand) was allegedly agreed to be paid on 2.8.2001 at the time of execution and registration of sale deed in respect of the suit land before the concerned Sub Registrar. Interestingly it is also contended that immediately on the date of execution of said agreement, Muhammad Juman would hand over physical possession of the suit land to his brother (present applicant).

On 9.5.2001 Muhammad Juman expired (nearly after one year and six months from the date of agreement) leaving behind his widow Mst. Husna and his two minor sons aged 5 and 16 months. As per version portrayed by the counsel for the Applicant, his client approached the legal heirs of his brother to perform agreement of sale which he entered with his dead brother, which was denied by widow of the deceased which resulted in the applicant filing of suit for specific performance of contract and permanent injunction being F.C. Suit No. 76 of 2001 in the court of Senior Civil Judge, Sanghar where a prayer was made that the widow and the minors be directed to execute a registered sale deed before Sub-Registrar in favour of the plaintiff, failing which Nazir of the court may be directed to do the needful. It seems that during the course of said litigation the widow was put behind the bars and the kids being minor were abandoned which resulted in no defence being put forward. Thereby Affidavits-in-Exparte Proof were submitted. The trial court after consideration of the matter, rendered its judgment on 31.1.2005 and came to the following conclusion:-

“ After admission of the suit summons were issued against the defendants and served upon them on 28.07.2003 as per report of bailiff through pasting but remained absent, hence all the defendants were ex-parte vide order passed on order sheet dated 29.3.2003.

Thereafter, in support of his contention the plaintiff filed his affidavit in exparte proof, and affidavits of witnesses Peerano, Haji Mooso and Gul Hassan. At the time of final arguments plaintiff's counsel pointed out that application under Order 32 Rule 3 CPC is pending. Notice of this application was issued against defendant No.1 through Special Bailiff of the court and as per report of bailiff the defendant No.1 is confining in Special Prison for Women Karachi. Hence report was called from concerned Prison, and Superintendent reported that defendant No.1 Mst. Husna is confined in said jail. Again the Superintendent reported / intimated that the defendant No.1 has been shifted to Special Prison for Women at Hyderabad. The notice of this court was also sent to Hyderabad Special Prison for Women to defendant No.1 which was served upon her as per report of Superintendent Special Prison for Women Hyderabad. The matter was fixed for filing of objections on said application under Section 32 Rule 3 CPC but neither defendant nor her counsel appeared before this court.

I have heard the learned counsel for plaintiff and gone through the R&Ps of this case. From the perusal of plaint it appears that defendant Nos. 2 and 3 are minors and still suit land is in khata of Muhammad Juman and till today khata has not been changed in the name of defendant Nos. 1 to 3. Further I am of humble view that in these circumstances defendant No.1 is not competent to execute registered sale deed of suit land in favour of plaintiff on her behalf

and on behalf of defendant Nos. 2 and 3 as at present defendant No.1 is not owner of the suit property.

For above reasons, the suit of plaintiff stands dismissed with no order as to costs.

Upon having denied the relief, the applicant preferred appeal against the said judgment, and the Appellate Court after giving full consideration held as under:-

I have minutely perused the judgment dated 31.01.2005 passed by learned Senior Civil Judge, Shahdadpur which is an outcome of affidavits filed by the appellant and his witnesses namely Peerano, Haji Mooso and Gul Hassan. The appellant failed to produce the evidence before the court for the reason best known to him. The material thing is that there is only sale agreement on Rs.100 Non-Judicial Stamp Paper. There is only name mentioned in the bottom of agreement (Muhammad Juman) and no copy of identity card is affixed, nor any document is filed, which may telly the signature of executants Muhammad Juman. It is settled principle of law that the huge transaction is necessarily be executed on the document and the same be registered before the Registrar. The appellant has not produced any death certificate, which may confirm that owner of property namely Muhammad Juman died on the particular date. He has produced two land revenue receipts issued by Tapedar on dated 27.7.2001 and 17.7.2003, which indicates that appellant Muhammad Hassan has deposited the amount on behalf of owner of the land namely Muhammad Juman. But since the survey numbers are not mentioned in the land revenue receipts, therefore, we cannot believe that these receipts are of the land of Muhammad Juman, which is allegedly sold out to the appellant as such there is also other land of deceased Muhammad Juman still standing in his name. The appellant / plaintiff was so hurried that he had not mentioned in the initial document of litigation viz. plaint filed on dated 24.4.2001 mentioning therein that the land in question is mortgaged with A.D.B.P. long ago by Muhammad Juman (owner of the land). All the above facts and circumstances lead me to hold that the alleged sale agreement is forged document, which is concocted after the death of deceased Muhammad Juman and confinement of his widow namely Mst.Husna in the Women Jail Hyderabad, as such, two sons namely Muhammad Sharif and Moharram, both are minor aged by five months and 16 months. The Honourable Superior Courts had always put the guidelines for the properties of widows, minors and orphans, those matters are to be examined minutely as such there is every likelihood of fraud with them.

Considering the above facts and circumstances, I do not see any substance in the appeal of the appellant, which is dismissed with no order as to costs.”

Against the above judgment, present Civil Revision Application has been made.

Mr. Arbab Ali Hakro, learned counsel for the applicant gave a detailed resume of the facts as well as by placing reliance on the documents annexed along with this application all of which did form part of the litigation before the courts below, it was contended that the legal heirs of Muhammad Juman have to make specific performance of contract and the fact that the widow of late Muhammad Juman was confined to Women Jail was of no consequence as she could have appointed a counsel. He emphasized that during the trial, the applicant examined himself as well as attesting witnesses at Ex.21, 28 and 29 respectively. Resultantly it was alleged that the trial court failed to exercise jurisdiction vested in it. He stated that the learned Senior Civil Judge Shahdadpur illegally dismissed applicant's suit on the ground that the mutation of the suit land in the name of legal heirs of Muhammad Juman had not taken place, which per counsel was quite illegal finding. He contended that as long as the property stood in the record of rights in the name of late Muhammad Juman through V.F. VII, the court itself was competent to have it transferred to the name of the applicant. With regard to the Appellate Court, it was submitted that the Appellate court also failed to consider the above referred facts making the order passed in appeal not sustainable. It was further contended that the applicant has been constantly paying land revenue in respect of the land in question since the date of the agreement and it also paid some outstanding against ZTBL lying against deceased Muhammad Juman. The counsel concluded that on account of all the above quoted facts and circumstances, coupled with the fact that there was no evidence put forward by the defense, these all pave way for the transfer of suit land in the name of applicant. In support of his contentions, he has placed reliance on the case reported in 2004 SCMR 4000. All of these assertions (blatantly groundless and obnoxiously ill founded) have been very aptly attended by the courts below and do not merit any specific comments from this court, with small addition that none of the courts nor the Applicant's counsel was able to establish that from where did the sum of Rs.300,000 was obtained by the Applicant as no evidence was shown that these sums were his personal saving, borrowed from any Bank or from a third party, this lack of evidence further falters the case of the Applicant. With regards the case law no relevancy of the same with the issue at hand could be seen.

Learned counsel for the Respondent submitted that the Agreement is fake and manipulated and created after the death of the Respondent No.1's husband. It was further submitted that the Agreement has no legal binding on the legal heirs and could not be enforced in violation of O32R3 CPC since no

guardian ad litem were appointed for the minors. It was also contended that to have the deceitful transaction sailed, payment was shown to have been made in cash and not via Bank transfer, defeating possibility of creation of independent evidence, which possibility has been mutilated. It was further submitted that suit land was mortgaged by the deceased then how that same could have been released by the Appellant and he took possession thereof. Court was informed that as soon Juman died, the Applicant took possession of the land, managed to have the widow sent to jail and the minors aged 5 and 16 months were left to die. Out of which one in fact died and from that point onwards, the suit land has been enjoyed by the Applicant without any legal grounds as no court decisions are in favor of the Applicant. The learned counsel stressed that the matter at hand pertains to rights of widows and the Apex Court has given directions that such matters be dealt with cautiously.

To me, the case at one hand while marred with deceitful acts of the Applicant, is also extremely tragic in nature as to how and what one could do to grab his dead brother's land. Once the brother died on 09.05.2001, the Applicant came up with a sale agreement dated 13.08.1999 claiming that he paid Rs.300,000 in cash in consideration of purchase of the suit land and the balance Rs.55,000 was to be paid at the time of registration of sale deed in his favour. Since the only opposition in this regard could have come from the widow (Mst. Husna) of his dead brother (as her two children were minor), by a scheme cooked, criminal cases were filed against her to the extent that she was jailed and could not even come to record her evidence against the alleged sale agreement when the suit for specific performance was being tried. When no evidence was put forward by the defendants except by way of Affidavit-in-Exparte Proof, to me the trial court acting very wisely and judiciously reached to the conclusion that there are no possibilities of transferring the suit land in the name of the Applicant. It is extremely important to observe that the agreement is dated 13.08.1999 and Juman died on 09.05.2001 (about 1 year 8 months afterwards) and during this period no attempt was made to have the said transaction registered considering more than 84% of the total payment had been made. This does not at all appeal to common sense as one would have paid more than 84% of the sale consideration and would not have taken any measures to have his interests secured. Now coming to the evidence in support of the Applicant's case, the Applicant by way of Ex:21 has submitted an Affidavit-in-Exparte Proof. The attesting witnesses namely Gul Hasan and Haji Masoo at Ex:29 have also filed ditto Affidavits in Exparte Proof. Peerano, a local general councilor, has also filed an affidavit in exparte proof as Ex:28. It

could be seen that the agreement was witnessed by as well as Khamiso who has not been produced as witnesses before the trial court. As well as the Agreement was also witnessed by the oath commissioner Mr. Riaz Ali Memon who was also not brought forward to give any evidence. The last three affidavits are totally mechanical in nature and do not provide for any independent corroborating evidence in support of the Applicant's claim leaving the Applicant's case highly doubtful and far-fetched, I therefore have no reasons to interfere with the judgment of the trial court.

Now coming to the appellate court's judgment in the light of the above background it is satisfying to note that the appellate court went into more nitty-gritties of the agreement and noticed that the material thing is that the sale agreement is on Rs.100 Non-Judicial Stamp Paper and only the name Muhammad Juman is mentioned in the bottom of agreement and no copy of Juman's identity card is affixed, nor any document is filed, which could tally the signature of executants Muhammad Juman. Since the death certificate was not produced, the appellate court observed that it was not ascertainable that Juman died on that particular date. Court pondered on the settled principle of law that where huge transactions were involved, the documents should be executed and registered before the Registrar. As to the payment of ZTBL loan, the appellate court noted that the two land revenue receipts issued by Tapedar dated 27.7.2001 and 17.7.2003 while indicated that Applicant Muhammad Hassan had deposited the amount on behalf of Juman, those but did not carry survey numbers, therefore, court cannot ascertain that these receipts are of the land of Muhammad Juman, which has allegedly been sold out to the Appellant. Court also observed that the Appellant was so hurried that he had not mentioned in the initial document of litigation viz. plaint that the land in question was mortgaged with ZTBL long ago by Juman.

On the above referred grounds the Appellate court came to the conclusion that the alleged sale agreement was forged document, concocted after the death of deceased Muhammad Juman and after the confinement of his widow namely Mst. Husna in the Women Jail, leaving two minors aged 5 and 16 months to die, who nonetheless did not cause any danger to the Applicant. Which reasons, again are cogent and neither there exists any misreading or non-reading of evidence on the record, nor the judgment is conspicuous, nor there is an error in the exercise of jurisdiction and nor is the case that the court had acted in the exercise of its jurisdiction illegally or with material irregularity, thus cannot be interfered through this revision application.

Before parting with these grounds, the Apex courts in circumstances where there are concurrent findings given by the court below had only provided for limited scope of revision applications (2016 SCMR 24, 2014 SCMR 161, 2012 SCMR 1373, 2008 SCMR 428, 1999 SCMR 100) which window is not available in the case at hand for the reasons mentioned in the foregoing paragraphs.

It is on this account that this court was pleased to dismiss the instant revision application with all pending applications and ordered appointment of Additional Sessions Judge Shahdadpur as receiver to take over possession of the suit land for the benefit of the legal heirs of the deceased Muhammad Juman, which land should now be handed over to the said legal heirs. These are the reasons of the said short order.

Judge