

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
LARKANA**

Civil Revision Application No. 79 of 2010

Hussain Ali Khakkheli & others ***Applicants***

versus

Nisar Ahmed Khokhar & others ***Respondents***

Date of Hearing: 29.10.2018

Date of Decision: 29.10.2018

Mr. Vinod Kumar Jesrani, advocate for applicants.

Mr. Faiz Muhammad Larik, advocate for Respondent No. 1.

Mr. Abdul Rasheed Soomro, State Counsel.

ORDER

KHADIM HUSSAIN TUNIO, J- Through this Revision Application, applicants/plaintiffs have challenged the judgment and decree dated 30.10.2010, passed by Additional District Judge Mehar, in Civil Appeal No.62/2007, whereby he set-aside the judgment and decree passed by learned trial court and dismissed the suit of the applicants/plaintiffs. The applicants/plaintiffs have further prayed for the restoration of the trial court's judgment and decree.

2. Brief facts of the case are that the applicants/plaintiffs filed a suit on 24.10.2005 against the defendants/respondents for declaration, cancellation of order of D.D.O (R) Mehar, restoration of Entry No. 450 of V.F VII of Deh Wah Gahi, Taluka Mehar and permanent injunction. The case, pleaded by the



applicants/plaintiffs, is that the applicants' father had purchased suit land bearing Survey Nos. 26, 27, 28, 29, 30, 31, 334, 335 and 336 of Deh Wah Gahi and after their demise, the applicants/plaintiffs were enjoying the exclusive possession of the said land. It is pleaded that the defendant Nos. 10 & 11 filed Misc. Application to defendant No. 3 D.D.O (R) Mehar against the dead persons namely Jam son of Sawan and Ghulam Nabi son of Ali Muhammad for cancellation of Entry No. 450 of V.F-VII, after 58 years of the said entry. The D.D.O Revenue passed impugned order without issuing any notice or hearing the applicants/plaintiffs, therefore, the defendants started pressurizing the applicants/plaintiffs on the basis of said impugned order of D.D.O. The applicants/plaintiffs left with no alternative were forced to file F.C Suit No. 61 of 2005 with the following prayers:-

1. To decree the suit of the plaintiffs against the defendants and declare that the act of the defendants Nos. 3 to 7 cancelling the Entry No. 450 by playing mischief with record of rights and order for keeping entry in favour of defendant Nos. 6 and 7 in record of rights, is illegal, void, contrary to law and against natural justice.

2. This Hon'ble Court may kindly be pleased to cancel the order dated 05.10.2005 passed by defendant No. 3 (Ex.38-C) (Annx. F/2 on Page Nos. 99 to 101)

3. The defendants may be retained permanently from disturbing the possession of the plaintiffs over the suit land.

4. Costs and any other relief deemed fit and proper may also be awarded to the plaintiff.



3. On pleading of the parties, trial court framed the issues and while answering issues; 1 regarding possession of suit land by the applicants' fathers; and 2 regarding the order of D.D.O Revenue being illegal, in affirmative, decreed the suit in favour of the applicants/plaintiff with no order as to costs. Afterwards, out of the 16 defendants, 10 (Defendant Nos. 1 to 10) filed an application on 26-02-2008 before the Additional District Judge Mehar and the learned appellate court, without taking into account the maintainability of appeal, allowed the same and set aside the judgment and decree passed by learned Trial Court. Therefore, applicants/plaintiffs filed the present Civil Revision Application.

4. Learned counsel for the applicants/plaintiffs argued that firstly, the initial application filed by the defendants was badly time-barred as the initial mutation, in which the defendants' father Qadir Bux was a witness, was 58 years prior to the filing of the initial application by the defendants, so also the Civil Appeal filed by the defendants was also time-barred. He has further argued that the learned trial court passed the judgment and decree with sound reasons and the findings recorded by the appellate court are illegal, as the appellate court has completely failed to give its findings on Issues No. 1, 3, 4, 5 and 6, therefore violated provisions of Order 20 Rule 5 and Order 41 Rule 31. Learned counsel further contended that the registered sale deeds dated back to 1947 and 1954 and had therefore gained statutory presumption of correctness vide Article 100 of Qanun-e-Shahadat Order 1984;

that the observation of learned appellate court that the learned trial court had no jurisdiction to entertain such a suit as the decision of D.D.O could only be challenged with a Senior D.D.O, is incorrect.

5. Learned counsel for the Respondent/Defendant No. 1 has argued that the impugned judgment passed by the learned Appellate Court is sound and speaking; that he has recorded proper reasons and rightly dismissed the suit of the applicants while setting aside the judgment & decree of trial court, therefore present Civil Revision Application may be dismissed.

6. Learned state counsel did not support the impugned judgment.

7. While passing the impugned judgment, learned appellate court firstly examined that since the initial order was passed by D.D.O Revenue, it could only be challenged with a higher revenue forum and the aggrieved party could only exercise remedy before the higher forum. In this regard, it would be appropriate to reproduce the statute below:-

Sec.9. ---Courts to try all civil suits unless barred.---The Courts shall *(subject to the provisions herein contained)* have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.---A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on

the decision of questions as to religious rites or ceremonies.

8. Considering the above statute, I would like to state at this juncture that the *Civil Courts* are courts of ultimate jurisdiction. Even though there might be special tribunals in effect to redress the issues of aggrieved parties yet the *Civil Courts* have the jurisdiction to examine the acts of such forums to see whether their acts are in accordance with the law or if they are illegal and mala fide. In this respect, reliance may respectfully be placed on the case law titled as ***Hamid Hussain v. Gov. of West Pakistan & others (1974 SCMR 356)***.

The above view was initially taken by the Privy Council in the case of *Sec. of State v. Mask & Co. (AIR 1940 PC 105)*, wherein it was held that:-

“It is also well settled that even if jurisdiction is so excluded, the civil Court have jurisdiction to examine into cases where provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.”

I would further add that *barring* provision in a special enactment *alone* would never be sufficient to give a license to *authority/ functionary* to act beyond commandment of law hence the moment there is a *prima facie* departure to / violation of commandment of law then the plenary jurisdiction of the Civil Court may well be invoked so as to examine such aspect. Reference

may well be made to the case of Muteeullah v. Chairman, Evacuee

Trust Properties & 4 others 2009 CLC 659 wherein it is held that:-

"4. Furthermore, if there is an ouster clause in the statute, barring the jurisdiction of Civil Court, that must be construed in favour of the existence of jurisdiction of the Civil Court, as the Civil Court has got plenary and over all jurisdiction under section 9, C.P.C. The other cardinal principle of interpretation is that if there is a barring provision in a Statute and special jurisdiction is conferred upon functionaries created under that particular statute, then they must act within the four corners of the Statute and the moment it is found that the functionaries acting under the Statue have themselves violated these provisions and traveled beyond their jurisdiction, then the Civil Court will act as the Court of corrective process curing the wrongs done by the functionaries under that particular statute in view of the proposition explained in Abdul Hamid Khan v. Government of Wast Pakistan and others PLD 1969 Pesh. 324 and Mian Muhammad Laatif v. Province of West Pakistan through the Deputy Commissioner Khairur and another PLD 1970 SC 180.

9. The second reason which seems to have prevailed with learned appellate Court in dismissing the suit and setting aside the trial court's judgment and decree was that allegedly, the sale deed dated 11.04.1947 *seemed* to be a managed one as the defendants produced death certificate of the executant Fateh Muhammad who had allegedly expired away in 1946, therefore the sale deed was executed after the death of executant. In this regard, I would like to hold that the author of the said death certificate was not examined, nor was the original death certificate called for. How could the appellate court assume that the alleged sale deed was a managed one and not the death certificate, even when the author of the said certificate was not examined. At this juncture, I would like to hold that by now it is well-settled that any copies of



documentary evidence brought on record cannot be received in evidence without proof of signature or handwriting of the persons alleged to have signed or authored them, for which their examination is necessary. In this respect, reliance is placed on case law reported as Khan Muhammad Yusuf Khan Khattak v. S.M. Ayub & others (*PLD 1973 SC 160*) wherein it has been held that :-

(e) Evidence Act (1 of 1872), Ss. 47, 67 & 145 and Civil Procedure Code (V of 1908), O. XIII, r. 4---Documents which are not copies of judicial record, should not be received in evidence without proof of signatures and handwritings of persons Alleged to have signed or written them, even if such documents are brought on record and exhibited without objection [filer majority; Hamoodur Rahman, C. J. contra].

I would also add that mere production / exhibiting of a document would never be sufficient to believe the contents thereof rather the party, producing such document, shall continue under legal obligation to prove the contents thereof as per requirement of law. Reliance could be made to the case of *Dawa Khan v. Muhammad Tayyab* 2013 SCMR 1113 wherein it is observed as:-

“The contention of the learned counsel for the respondent that under Article 81 of the Order, if a document produced is admissible in evidence, the party relying upon it is not required to prove its contents, is without force and misconceived. Admissibility of a document in evidence, by itself, will not absolve the party from proving its contents in terms of Article 79 provided under the scheme of the Order’

The learned appellate Court also seems to have lost sight of the fact that *legally* presumption of correctness is attached to a **‘registered document’** and stronger evidence is required to cast

aspersion on its genuineness. Reference is made to the case of Rasool Bukhsh & another v. Muhammad Ramzan 2007 SCMR 85 wherein it is observed as:-

'It is settled law that the registered document has sanctity attached to it and stronger evidence is required to cast a aspersion on its genuineness as law laid down by this Court in Mirza Muhammad Sharif's case NLR 1993 Civil 148. ..."


Considering the above legal positions, mere production of death certificate on record is not sufficient to believe contents thereof nor in absence of examination of its *author* the presumption attached to registered document can be doubted which *otherwise* was done by learned appellate Court.

10. After observing the material available on record, there is sufficient evidence that shows that the applicants are the sole, legal and rightful owners of the suit land. They have, time and again established their ownership to the suit land by producing original/certified sale deed in respect of the suit land. No legitimate proof whatsoever had been produced by the defendants to disprove the sale deeds produced by the applicants/plaintiffs except the death certificate, which too had been issued by the Mukhtiarkar Revenue even though it is clearly the duty of Chairman Union Council/Town Committee to do so. Further, it was also never *safely* established that issuer of such certificate has issued the same on basis of his own knowledge or *otherwise*. Since, *legally* the office of Mukhtiarkar is not authorized to maintain the

record of '**death**' therefore, same *otherwise* would not fall within meaning of a '**public document**'. This *legally* also brings the validity thereof to *zero*, if same is compared to a '**registered document**'. Even otherwise, no Office Number of the Mukhtiarkar whatsoever is mentioned on the said death certificate, so it cannot be ascertained whether the same is legitimate or not. Therefore, I would like to hold that the learned trial court rightly decreed the suit of the applicants/plaintiffs and learned appellate court's judgment was illegal, controverting the merits of the case.

11. In the light of above discussion and circumstances, by my short order dated 29.10.2018, present Civil Revision Application was allowed. The judgment and decree passed by the learned appellate court was set-aside, while the judgment and decree of the trial court in the Suit was restored.

These are the reasons for my short order.


14.12.2018
JUDGE