IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-1652 of 2018

Muhammad Ishaque & another Versus. Trust / Waqf & another

Petitioners	:	Through Mr. Muhammad Ishaque Khan, Advocate.
Respondents No.1	:	Through Mr. Abdul Latif Ansar, Attorney of respondent / landlord In Person.
Date of Hearing	:	23.01.2019.
Date of Judgment	:	23.01.2019

J U D G M E N T

Zulfiqar Ahmad Khan, J: Through instant Constitutional Petition, petitioners have impugned the judgment dated 20.08.2018, passed by learned Additional District Judge, Matiari, allowing the First Rent Appeal No.01/2018 and maintaining the order dated 22.01.2018, passed by learned Rent Controller Hala, whereby Rent Case No.10/2017, filed by the Respondents / applicants was dismissed.

2. Facts as disclosed in the rent application are that

plaint of 2nd Class Suit No.19/1996, are that the applicants/plaintiffs filed said suit for Declaration against the respondents/defendants, alleging therein that the building on plot No. A/81, CS.No.1993 Ward-A, admeasuring 232 Sq. fts. Daulatabad, Government College Road, Hyderabad was owned by Dr. Abdul Wahab Shaikh who died on 13.01.1989 and left behind applicants / plaintiffs were inheriting the same. At the time of death of Dr. Abdul Wahab applicants / plaintiffs No.1 & 3 were minors and applicant / plaintiff No.2 was illiterate belonging to Chitral tribel area. It was mentioned in the plaint as well as in the memo of appeal that applicants / plaintiffs were maintained themselves

through Alms, charity fund and rent from the shop of suit building. In 1994, the defendants above named met the applicant / plaintiff No.2 who agreed to sale out the suit property to defendants and as such, defendants/respondents prepared deed and obtained signature and thumb impression of applicants / plaintiffs No.2 & 3 without making any payment and thereafter the applicants / plaintiffs were forcibly ousted from the said property, thus the applicants / plaintiffs filed said suit with the following prayer:-

> "(a) That it may kindly be declared that the contract of sale of the property in question i.e House No.A/81, sheet No.11, C.S No.2993, Ward A, admeasuring about 232 Sq: feet. Located in Daulatabad Colony, Government College Road, Hyderabad is illegal void ab-initio and without lawful authority.
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> (b) That it may kindly also be declared that the possession of the property in question has also been taken over, illegally, dishonestly, forcibly and fraudulently.
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> (c) That it may kindly also be declared that mutation of property in question in the record of defendant No.3 on the basis of illegal and void document is also illegal.
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> (d) That any other relief if is found in favour of the plaintiffs may kindly also be awarded to the plaintiffs in addition to the above prayed reliefs.
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> (e) That it may kindly be also declared that the plaintiff No.1 has no concern with the impugned contract signed by the plaintiffs No.2 & 3. All the further benefits got by the contract to the extent of share of the plaintiff No.1 are also illegal, malafide, void and without lawful authority.

3. In response to that plaint, respondents/defendants filed their written statement, wherein denied all the allegations leveled against them by alleging that suit property was sold out in the consideration of Rs.2,40,000- (Rupees Two Lac & Forty Thousands) through sale deed and of Rs.50,000/- (Rupees Fifty Thousands) only was paid against it. The applicant / plaintiff No.2 being real mother of applicant / plaintiff No.1 executed deed as his guardian. The applicants / plaintiffs received sale consideration amount and thereby handed over the possession of the suit property.

5. Thereafter, the respondents / defendants had moved an application under Order 7 Rule 11 CPC, which was opposed by the applicants / plaintiffs, however, learned trial Court after hearing the same rejected the plaint vide

order dated 19.09.1997. Such order was preferred in Civil Appeal No.144 of 1997 by the applicants / plaintiffs. During pendency of such appeal, the applicants / plaintiffs moved an application under Order 6 Rule 17 R/w Section 151 CPC for amendment in Para No.23-A of the plaint with following addition:-

1. “and the sale deed No.970 dated 01-03-1994 may be ordered to be delivered up and cancelled.

2. That, the para 23(b) the full-stop at the end be converted into Coma and following be added:-

> ‘‘and the defendant No.1 be ordered to put the plaintiffs in vacant possession of the suit property’’.

6. The respondents / defendants filed their objection to such application for amendment and objected to allow amendment as sought by the applicants / plaintiffs on the ground that if the proposed amendment was allowed then it will change the nature and character of the suit and such amendment was sought only to fill lacunas. Moreover, both parties led their respective arguments and after hearing parties’ counsels, learned appellate Court dismissed the appeal vide judgment dated 17.11.1999, against which the instant revision application has been preferred.

5. Counsel for the applicants / plaintiffs submitted that impugned judgment, passed by the learned appellate Court is against the facts, law and equity; that the impugned judgment is based on no evidence and the same is liable to be reversed; that both the Courts below have erroneously ignored and not considered the oral as well as documentary evidence available on record; that the proposed amendment which was sought by the applicants before the appellate Court by moving an application under Order 6 Rule 17 r/w Section 151 CPC was very much essential and it will not change the nature of suit; that proposed amendment was necessary for property adjudication for suit; that delay in supplying for amendment and in deficit of court fees would not defeat amendment; that trial Court had framed issues eve then no chance for proceedings with suit was given to parties, thus the judgment of learned appellate Court as well as order of learned trial Court are liable to be set-aside and suit of the applicants / plaintiffs may be decreed as prayed.

6. Counsel for the private respondents as well as the learned AAG while supporting the impugned judgment submitted that the appellate Court has rendered the judgment in proper manner after considering all material aspects as well as examining the evidence available on record, therefore, no illegality or material illegality apparent on surface. They submitted that the impugned judgment be maintained and the instant revision may be dismissed.

7. Heard counsel and reviewed the record.

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8. It is seen that the appellate Court while rendering the impugned judgment observed that the learned Senior Civil Judge, in his judgment dated 30.04.1998 has dealt with issue No. 10 as main issue and came to the conclusion that the suit land does not belong to “Gauchar” area nor the suit land was part of the road and decided issues No.1 & 2 in the affirmative, issue No. 3 in the negative, issues No. 4, 5, 6 & 7 in the affirmative, issue No. 8 in the negative, issue No. 9 in the affirmative , issue No. 11 in the affirmative, issue No. 12 in the negative, issue No. 13 in the negative, issue no 14 not discussed, issue No. 15 in the negative , issue No. 16 & 17 in the affirmative, and in his findings on issues No. 18 & 19, decided the fate of the suit having decreed the same with no orders as to cost and against the said judgment & decree, the aforementioned appeal was preferred. The appellate Court also observed that the trial Court in its findings on issue No. 10, held that the land in question was not a part of “Gauchar” area or of Road, which he was not competent to have given such findings, which was the exclusive function of the revenue authorities, to deal with the matter in respect of grant and disposal of agricultural lands. It is further observed that the Senior Civil Judge has dis-believed the valid Rubkari alongwith sketch, which clearly speaks about

reservation of suit land as “Gauchar” and as per para No.12, of Thar Land Grant Policy 1930, wherein it is mentioned that in all the cases of (decided) disputes, Rubkari issued to the parties should invariably be accompanied by the sketches of the disputed fields. It appears that the instant Rubkari was issued as per provisions of Thar Land Grant Policy then the trial Court ought to have taken into consideration the said Rubkari to be validly issued by taluka Mukhtiarkar, Diplo it has to come alongwith sketch of the land. Thereupon the appellate Court held the findings of the trial Court on issue No. 10 as improper and reversed them.

9. So far as the validity of grant of suit land in favor of applicants No.1 & 2, on the basis of Hameshgi Yaddasht as alleged, is concerned, the appellate Court reached to the conclusion that the case of the respondents was that the applicants No.1 & 2/plaintiffs obtained the suit land by practicing fraud and misrepresentation. As applicants No.1 & 2/plaintiffs obtained the suit lands by practicing fraud and misrepresentation on the ground that applicant No.1 Ahmed, was a practicing Doctor, and he cannot be termed as Abadgar under Land Grant Policy. Secondly, the land in suit, being grazing place (Gauchar) and common road and passage for cattle, could not be granted under Thar Land Grant Policy, which provides specific bar to such grants. According to respondents, as soon as they came to know about this fraud, they immediately moved an application before the Deputy Commissioner, Tharparkar, who after hearing the parties and obtaining reports from the Additional Commissioner, Hyderabad, canceled the said grant of Survey Nos. 170 & 172 in Makan Malhiyar, Taluka Diplo, within Hameshgi Yaddasht. The relevant portion of the letter of Deputy Commissioner, Tharparkar, addressed to the Additional Commissioner, Hyderabad on the subject land grant dispute in desert Hameshgi Yaddasht sanction in respect of survey Nos. 160,161,162,170 & 172,Makan Malhiyar, Taluka Diplo, is reproduced as under:

> “ While hearing case of land grant dispute in respect of above cited land as an application of Sobho s/o Arab and others which was subsequently filed on withdrawal application put forth by the counsel of applicant it was brought to my notice that S.Nos. 170 and 172 of the same Makan were got sanctioned by Achar s/o Motan and others wrongly on false representation of

> facts in the Hameshgi Yaddasht and that after paying Malkanas, they got Ijazatnama of the same. Facts were got ascertained through the Assistant Commissioner, Mithi, who after site visit has reported area of the Makan specified as 'Gaucher' and that S.No.172 appeared has never been cultivated. Hence he has recommended cancellation of both S. Nos. from the " Hameshgi-yadasht. "

10. The record further shows that the learned Additional Commissioner, Hyderabad, instead of deciding the reference, advised the Deputy Commissioner, Tharparkar, under his letter Ex. 136-B, for directing the aggrieved party to file appeal against the inclusion of survey No.160 and others in Hameshgi, if they so chooses. The respondents, accordingly filed an appeal before the learned Additional Commissioner, Hyderabad along with an application u/s 5 of Limitation act. The said appeal was heard by Additional Commissioner, Hyderabad, who passed orders dated 05.12.1991 setting aside the order of Deputy Commissioner and further ordered that the disputed pieces be closed for cultivation as per provisions of Thar Land Grant Policy, the relevant portion of the order is reproduced as under;

> "Perusal of the site report of Mukhtiarkar Diplo, showed that disputed pieces are part of "Gauchar" as well as part of main road and the same are used by the villagers and cattle passages, as well as for village Asaish. Obviously the site report is more reliable than the entries made by the Tapedar in Khasra Girdawari Register. "

11. The applicants challenged the said orders dated 05.12.1991 passed by the Additional Commissioner, Hyderabad, before the learned Member, Board of Revenue Sindh, Hyderabad, who also vide his order dated 15.11.1992, has rejected the appeal of the applicants by up-holding the order of the Additional Commissioner, Hyderabad, para-6 of the order is re-produced as under:-

> "As regards points of limitation is concerned The learned Additional Commissioner has condoned the delay as is evident from the impugned order. The only question remains that whether he was justified to condone the delay or not. In this connection it is an admitted position that the learned Deputy Commissioner has himself found the entries in Hameshgi-Yadasht in favour of appellants being in contravention of the provisions of Thar Land Grant Policy, and, therefore, he made reference to the Additional Commissioner for cancellation of such entries. This is further supported by the site report of the Mukhtiarkar that the pieces are part of "Gauchar" and cattle passage/road. The counsel for the appellants could not controvert the above position through any reliable evidence. It is established that the order of the Deputy Commissioner, Tharparkar dated 07.08.1982 approving pieces in Hameshgi

> Yadasht is void ab-initio as the pieces were part of “Gauchar” and cattle-passage/road. The order in any way could not be allowed to sustain. Against void order no period of limitation is prescribed. It is held in case reported in PLD 1986 Revenue -119 that the Disposal of land which was initially wrong could not be rectified by the passage of time. “

12. It could be observed that the learned Senior Civil Judge, in his findings on issues No.1, held that the respondents No.1 to 5 cultivated the suit land continuously for more than five years and in his findings on issue No.2 held that the order of Additional Commissioner, Hyderabad dated 05.12.1991 was illegal, void, malafide and without jurisdiction and his order of entertaining the appeal of respondent No.1 was also illegal and also the condonation of delay in filing appeal was in violation of principle of natural justice and the said findings were not supported by documentary proof. I do not agree with the conclusion arrived at by the learned Senior Civil Jude, Mithi, as according to law, the Revenue Officers had jurisdiction and were empowered to decide the matters relating to grant and disposal of lands and jurisdiction of civil Courts in such matters is barred. This view finds support from the authority reported in **PLD 1963 Karachi P-215**, which at relevant page at 218 hold that “the Civil Court cannot sit over the judgment of Revenue Officers, if they have acted in exercise of their jurisdiction. The jurisdiction is an authority to decide a question, it is sometime exceeded in its exercise, but so long the question is decided within limit of Jurisdiction. It is immaterial for jurisdiction point of view, whether the decision is wrong unless jurisdiction is conferred by provisions of law, The Civil Court can check the usurpation of powers made by Revenue Courts or officers, but not the errors of their judgment. Correction of errors of their judgments is obligation of the Court or Officers, appointed under the legal system on revenue side.”

13. I am also fortified by the case reported as PLD 1979 (Supreme Court) P-56, (**Sher Muhammad khan and others v/s Muhammad Aslam Khan and others)**, which is an elaborate authority on the subject. In the said authority, the jurisdiction of Civil Court and exhaustion of remedies before coming to Civil Court has been discussed. Besides this, so far the question of limitation as has been alleged by the Advocate for respondents is concerned, support is

also forthcoming from an authority reported in **1988 MLD Lahore P-1314**, in which it has been held that no limitation applies to get a rid of void orders. It has been further held in the said authority at Page 1344-D, that if, remedies provided by statute in subject hierarchy, are not availed, a civil suit would not lie.

14. It is also to be noted that in the instant case, the applicants did not challenge the orders of Member, Board of Revenue, before next superior forum i.e. Government of Sindh, therefore, the suit filed by the applicants was hit by provisions of section 11 of Sindh Revenue Jurisdiction Act. Reliance is placed on **PLD 1963, west Pakistan (Karachi) P-613**, It is true that the civil Courts are Courts of an ultimate jurisdiction to check and examine the acts of such forums, if they are malafide and are not in accordance with law, but as its discussed above, the civil Court is not competent to check the errors of their judgment. The Revenue Authorities are competent to rectify the mistakes, when it has been brought on record to their notice, and it does not amount to excess exercises of the powers to invoke jurisdiction of civil Courts.

15. It was also an established principle of law that fraud vitiates even the most solemn proceedings and that the Court of general jurisdiction are competent to Suo-Motu recall decrees obtained from it by fraud. As has been observed by his lordship of Supreme Court in an authority reported in **1994 SCMR P-782**, the relevant page at 790, where reference has been taken from **PLD 1975 Supreme Court P- 331**. It has further been held in an authority reported as **1998 SCMR P-341**, where the petitioners were required under the law to obtain declaration from the Custodian to the effect that the property in dispute was not an evacuee property, but they failed to approach the Custodian and as such could not possibly be granted the same relief through the back door by invoking the jurisdiction of the Civil Court, the apex Court held.

16. It is also worth noting that the learned Senior Civil Judge, Mithi, in his findings on the remaining issues, has not properly discussed and appreciated the case of the respondents, nor he has properly discussed the legal issues

about maintainability of the suit and the jurisdiction of the Civil Court to entertain the civil suit in these peculiar circumstances. Therefore, the findings of learned Senior Civil Judge on the remaining issues are not maintainable. To me, the applicants have no case on law as well as on facts. The suit of the applicants was barred by law, and the learned Senior Civil Judge had no jurisdiction to entertain the same, thus the suit of the applicants was improperly decreed by the learned Senior civil Judge, Mithi, In view of the above discussion, in my humble view the appellate Court rightly allowed the civil appeal by setting aside the impugned judgment and decree dated 30.04.1998, passed by the trial Court and dismissed the suit No. 24/93, of the applicants with costs aptly.

17. To conclude, the impugned judgment is rendered after minutely scrutinizing the evidence, legal as well as factual aspects of the case and no illegality or irregularity warranting interference. Accordingly, both these revisions are dismissed and the judgments rendered by the appellate Court in Civil Appeals No.7/1998 dated 10.12.1998 and in Civil Appeal No.8/1998 dated 10.12.1998 are upheld. No orders as to costs.

18. These are the reasons for my short order dated 15.05.2018 in terms of which these revisions were dismissed and the appellate Court’s judgments and decrees were upheld.

JUDGE

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