

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

Civil Revision Application No.S-138 of 2015

Applicants : Through Mr. G.M Leghari,
Advocate

Respondents No.1 to 3 : Through Mr. Mir Muhammad
Narejo, Advocate

Respondents No.4 to 9 : Mr. Habib-ur-Rehman Jamali,
Assistant Advocate General.

Date of hearing & judgment : 22-01-2019

J U D G M E N T

Zulfiqar Ahmad Khan J: This revision impugns the judgment dated 13.05.2014, passed by the Additional District Judge, Tando Adam in Civil Appeal No.83 of 2011 and the order passed in F.C Suit No. nil of 2011 dated 01.08.2011 by Senior Civil Judge, Tando Adam.

2. Brief facts of the case are that upon an appeal No.197 of 2011, preferred by the legal heirs of late Ghulam Nabi being Ali Bux S/o Ghulam Nabi, Karim Bux S/o Ghulam Nabi and Hazoor Bux S/o Ghulam Nabi, who are the respondents No.1 to 3 in the instant revision application, stating that an agricultural land bearing survey Nos.109, 266 and 267 admeasuring 4-37 acres situated in Deh 48-Jamrao, Taluka Jam Nawaz Ali, District Sanghar, was allotted to their deceased father by the Colonization Officer Sukkur Barrage, Hyderabad in the year 1999-2000, after fulfillment of all codal formalities. Thereafter, for allotment of the said land, the applicants paid all installments to the Government, T.O Form No.137 dated 10.06.2009, was issued in respect of above mentioned survey numbers by the District Officer (Revenue & Estate) Sanghar after observing all codal formalities. The physical as well as cultivation possession of the above said survey numbers land was lying with

the applicants being legal heirs of their deceased father namely Ghulam Nabi. However, it was alleged that the present applicants through an engineered Form-A No.PE-2424 in respect of an area of land pertaining to survey Nos.27, 57 & 58 of Deh 35-Jamrao Taluka Sinjoro, claimed ownership of the respondent's land. It was further alleged that the said Form-A was bogus and resultantly entry in pursuance thereof was also illegal and it was prayed that the illegal entry No.168 in Form-V.F VII-II B of Deh 48 Jamrao Taluka Jam Nawaz Ali which is lying unattested may kindly be cancelled. On the said application, hearings took place and eventually order dated 06.07.2011 was passed. The said order is reproduced here under:-

The brief facts of this appeal are that Agricultural Land bearing Nos.109, 266, 267 admeasuring 4-37 acres situated in Deh 48-Jamrao Taluka Jam Nawaz Ali was allotted to deceased namely Ghulam Nabi S/o Adam by the defunct Colonization Officer Sukkur Barrage, Hyderabad with effect from 1999-2000 on harap conditions. The installments of the said land have been paid to the Government. T.O Form No.137 dated 10.06.2009, in respect of land in question stands issued in the year 2009. The physical as well as cultivation possession of above land is lying with the legal heirs of deceased Ghulam Nabi A-Form No.2424 stands issued in the name of Allahdad and Muhammad Ramzan in the year 2005-2006 and aforementioned A-Form No. relates to S.No.27, 57, 58 admeasuring 9-39 acres of Deh 35-Jamrao Taluka Sinjoro. The Qadir Bux @ Misri (Respondent No.1) has succeeded in getting the bogus second undated entry No.168 entered in V.F VII-B of Deh 48-Jamrao Taluka Jam Nawaz Ali in his name and the same bogus entry is lying unattested.

The Attorney of appellant prays that second entry No.168 of V.F VII-B, of Deh 48-Jamrao Taluka Jam Nawaz Ali stands kept on the basis of A-Form No.2424 the same is bogus one, therefore, the same may be cancelled and the legal heirs of deceased Ghulam Nabi S/o Adam Mahar may be given justice.

Notices were issued to both the parties. Both parties present. Tapedar of the beat present alongwith relevant record. Heard them at length. Perused relevant record. The Attorney of the appellant stated the same facts as stated by him in appeal. From the perusal of the relevant record, it has appeared that first entry No.168 of V.F VII-B of Deh 48-Jamrao whereas, the second entry No.168 on the same page of V.F VII-B of Deh 48 Jamrao Taluka Sinjoro stands kept undated in the name of Qadir Bux @ Misri S/o Muhammad Siddique (Respondent No.1) on the basis of A-Form No.PE-2424. It has also been shown that S.No.266, 267 area 0-18 ½ Ghuntas (Phittai Bhada Boundaries) is allotted to aforementioned respondent No.1. Besides, the said bogus entry does not bear office seal. It is clear that second entry No.168 of V.F VII-B of Deh 48-Jamrao Taluka Jam Nawaz Ali in the name of Qadir Bux @ Misri is unattested and bogus one.

From the above position, I have arrived to the conclusion that the second entry No.168 of V.F VII-B, of Deh 48-Jamrao Taluka Jam Nawaz Ali in the name of Qadir Bux @ Misri (respondent No.1) in respect of

S.No.266 and 267 area 0-18 ½ Ghuntas is lying unattested and bogus one therefore, the same entry is cancelled.

3. As seen from the aforementioned order, the Executive District Officer (Revenue), Sanghar after hearing the parties and perusing the record, came to the just conclusion that the second entry No.168 of V.F VII-B of Deh 48-Jamrao Taluka Jam Nawaz Ali in the name of Qadir Bux @ Misri in respect of survey Nos.266 and 267 admeasuring 0-18½ Ghuntas was lying unattested and bogus and the entry was accordingly cancelled. Against the said order, applicants preferred F.C Suit No. nil of 2011, whereupon an application under Order 7 Rule 11 CPC was filed by the defendants, on which the following order was passed:-

“I have heard learned counsel for the plaintiff with regard to the maintainability of the present suit. Plaintiff has also been perused by me.

Plaintiff has challenged the order before this Court passed by the EDO Sanghar dated 06.07.2011, without exhausting all the remedies available to the plaintiff under land Revenue Act. Plaintiff did not challenge the order in question before the high-ups of the Revenue Authorities.

Suit of the plaintiff is incompetent and not maintainable.

I therefore, reject the plaint under Order 7 Rule 11 CPC”.

4. Being aggrieved by the said order where applicant’s plaint was rejected under Order 7 Rule 11 CPC, an appeal was preferred by the applicants before the learned Additional District Judge, Tando Adam in Civil Appeal No.83 of 2011, where after considering the matter at length and perusing the record as well as being fortified with the case law reported as 2013 CLC 1155, the appellate Court reached to the following conclusion:-

“Furthermore, Section 172 (2) (6) of the Land Revenue Act, jurisdiction of Civil Court exclusively barred and the matter pertains to cancellation of entry and the period of limitation as contended by the learned counsel for the appellant pertains to revenue forum, which may be agitated before the revenue hierarchy. The case law relied upon by the learned counsel for appellant are quite distinguishable from the facts of present case because learned counsel for the appellant did not rely any case law regarding hierarchy of the revenue forum before invoking jurisdiction of Civil Court and he has remedy to file an appeal against the order of EDO Sanghar, therefore, my findings on point No.1 is that no any illegality or material irregularity committed by the learned trial Court while passing the order impugned herein.

Keeping in view of above discussion, since the appellant / plaintiff failed to point out any illegality or material irregularity in the order and decree passed by the learned trial Court, hence, no scope for interference in the order and decree of learned trial Court, therefore, this appeal is hereby dismissed, with no order as to costs”.

5. Learned counsel for the applicants stated that both the impugned judgment and the earlier order were illegally passed as the both courts should have decided the case on merits rather than rejecting the plaint under Order 7 Rule 11 CPC. He further states that recently the land of the applicants has been re-measured and reduced in Ghat Wadh Form. He further stated that there was no illegality in the Form-A and all the codal formalities were complied with regarding the entry No.168 in the record of rights.

6. Learned counsel for the respondents on the other hand stated that the said Form-A bearing No.PE-2424 was in respect of different piece of land in 35-Jamrao whereas the land of the respondents has been located in survey No.48-Jamrao, and the order passed by the learned EDO Revenue suffers from no illegality and if the applicants were aggrieved from that order they should have followed the remedies available under Sindh Land Revenue Act, 1967, by filing an appeal or revision before the appropriate departmental forum.

7. Learned A.A.G while affirming the contention of learned counsel for the respondents stated that the Section 172 of the Sindh Land Revenue Act, 1967, specifically bars the jurisdiction of the Civil Court in the matters of Revenue jurisdiction.

8. Heard the arguments of both the respective parties as well as heard the learned A.A.G and perused the entire record made available to me. Admittedly, the respondents are in possession of the suit land bearing survey Nos.109, 266 & 267 admeasuring 4-37 acres situated in Deh 48-Jamrao, Taluka Jam Nawaz Ali, District Sanghar inherited by them from their deceased father and till today they are in possession of the suit land and cultivating there. A review of Form-A No.PE-2424 which has been

shows that the said Form was issued in relation to an area falling in Deh 35-Jamrao for survey Nos. 27, 57 & 58, wherein the land is shown as 9-39 acres, whereas the land of the respondents is allotted in Deh 48-Jamrao Taluka Jam Nawaz Ali in survey Nos.109, 266 and 267 admeasuring 4-37 acres and the order passed by the learned EDO dated 06.07.2011 has fully addressed the controversy, and after considering the relevant facts, the said Officer reached to the conclusion that the said Form-A which otherwise was unattested and bogus could not create any legal title and directions were given for the cancellation of entry No.168 of V.F CII-B of Deh 48 Jamrao Taluka Jam Nawaz Ali sitting in the name of Qadir Bux @ Misri. Admittedly, against that order, F.C Suit bearing No. nil of 2011 was preferred which was challenged under Order 7 Rule 11 CPC and the trial Court rightly rejected the plaint as Section 172 of Sindh Land Revenue Act, 1967, specifically excludes the jurisdiction of Civil Court in the matters of Revenue jurisdiction. Similarly, when an appeal was preferred against said rejection order, the appellate Court rightly passed the impugned judgment maintaining the order of learned trial Court.

9. In the light of the foregoing, particularly when Section 172 of Sindh Land Revenue Act, 1967, clearly excludes the jurisdiction of Civil Court in matters falling within jurisdiction of Revenue hierarchy, the Civil Suit filed before the Senior Civil Judge was coram-non-judice and it was rightly dismissed by the learned trial Court, and the appellate Court did not commit any illegality by maintaining the said order. In these circumstances, this revision application being meritless is accordingly dismissed alongwith all pending applications.

JUDGE