

# THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No. 176 of 2017

Raja Khan	Versus	Shah Nawaz & others
Applicant	:	Through Mr. Hameedullah Dahri, Advocate
Respondents No.1 & 2	:	Through Mr. Amanullah Khan Jadoon, Advocate
Respondents No.3 to 11	:	Through Mr. Wali Muhammad Jamari, Assistant A.G.
Date of hearing	:	25.02.2019

## **J U D G M E N T**

**Zulfiqar Ahmad Khan, J**: Through instant Revision Application, applicant Raja Khan has impugned the judgment dated 29.04.2017, passed by Additional District Judge-I, Tando Adam, where the order dated 19.10.2015, passed by Senior Civil Judge, Tando Adam in F.C. Suit No.73/2015 was set aside and the appeal was allowed.

2. Brief facts of the case are that the land bearing Survey No.695 admeasuring 0-13 Ghuntas, situated in Deh Pai Taluka Tando Adam (suit land) is a Government property and his Mohaga of the Survey Nos.265 and 266 of the land of the plaintiffs for which the defendant Raja Khan kept on approaching the concerned authorities for lease in his favour, however, they were always kept on false hopes that whenever Government would announce the schedule of price of the said land the same will be leased out to them on the basis of their rights of Mohagha. About 15 days before some persons came at the suit land and tried to forcibly dispossess the plaintiffs from the said land on pretext that it was allotted to defendant No.1. Subsequently, the plaintiffs on 17.06.2015, approached the office of defendant No.4 viz. Mukhtiarkar Revenue Tando Adam for issuance of Rubkari in respect of his possession over the suit land where they came to know that the land was allotted to defendant No.1 under T.O Form No.12 dated 03.05.2005 and vide

“A” form No.139 dated 19.10.2005 whereas mutation was made in Village Form-VII-B vide Entry No.679 dated 02.10.2006, therefore, while supplying photostat copies of Record of Rights regarding such mutation of the suit land in favour of defendant No.1, defendant No.4 refused to issue Rubkari to the plaintiffs regarding possession of the suit land. The plaintiffs, therefore, filed the above suit for Declaration, Cancellation, Mandatory and Permanent Injunction with the prayer that the allotment and its mutation made in favour of the defendant be cancelled being illegal, unlawful, malafide, null and void.

3. During pendency of the suit, defendant No.1 filed his written statement together with an application under Order VII Rule 11 C.P.C. praying therein to reject the plaint of the plaintiffs as the suit filed by the plaintiffs was barred by section 42, 54, 56(d) of Specific Relief Act and section 172 of Sindh Land Revenue Act, 1967 as well as section 11 of Revenue Jurisdiction Act; that the suit was hopelessly time barred, bad for mis-joinder and non-joinder of necessary and proper parties; that the civil Court has no jurisdiction to entertain the above suit under the provisions of section 172 of Sindh Land Revenue Act, 1967.

4. After hearing the parties counsel, learned Senior Civil Judge, Tando Adam rejected the plaint under Order VII Rule 11 C.P.C vide order dated 19.10.2015. Being aggrieved, respondents No.1 and 2 preferred appeal being Civil Appeal No.70/2015, which was allowed and the order of the Senior Civil Judge was set aside and the matter was remanded to the trial Court for deciding it on merits, through judgment dated 29.04.2017 passed by learned Additional District Judge-I, Tando Adam, which is impugned through instant revision.

5. Learned counsel for the applicant contended that suit of the respondents No.1 and 2 was barred by sections 42, 54 and 56(d) of Specific Relief Act, as the subject land was a Government property, which was rightly allotted to the applicant by the Competent Authority after fulfilling of legal requirements; that the respondents No.1 and 2 were entitled to any legal character or to right as to the suit property hence the plaint was hit by sections

42 and 56(d) of Specific Relief Act; that the suit land was allotted to the applicant by the Barrage Department as per law and the respondents No.1 and 2 without availing remedies available to them in shape of an appeal or revision before the competent forum i.e. Revenue Hierarchy, have directly approached the civil Court and filed suit, which was hit by section 11 of Sindh Revenue Jurisdiction Act, 1876.

6. On the other hand, learned counsel for the private respondents while opposing the submissions made by learned counsel for the applicant, submitted that civil Court has jurisdiction in the matter under section 9 C.P.C, as the respondents are in possession of the suit land but despite such possession, subject land was allotted to the applicant malafidely and such malafide action passed by any Government authority can be challenged before the civil Court; thus the impugned judgment where the case was remanded to the civil Court for deciding the same on merits, is sustainable.

7. Heard the arguments of both the respective parties as well as the learned A.A.G and perused the entire record made available to me. Admittedly, the private respondents are in possession of the suit land bearing Survey No.695 admeasuring 0-13 Ghuntas, situated in Deh Pai Taluka Tando Adam. So far as the jurisdiction of the civil Court in the matter at hand is concerned, it is stated that the respondents No.1 and 2 are in possession of the suit land despite, the land has been allotted in favour of the applicant. Sections 42 of the Specific Relief Act, deals with the declaration of status or right of any person entitled to any legal character or to right as to any property. Admittedly, the suit land belongs to Government and not to the respondents No.1 and 2, thus they have no right to it. In such a matter, the jurisdiction to try with the same vested in Revenue Hierarchy and not civil Court, hence the suit filed by the said respondents was not maintainable before civil Court. Further section 11 of the Sindh Revenue Jurisdiction Act 1876 also renders bar in respect of the suit of the respondents, which reads as under:-

“ **11. Suits not to be entertained unless plaintiff has exhausted right of appeal:-** No Civil Court shall entertain any suit (against the government) on account of any act or omission of any Revenue Officer unless the plaintiff first proves that,

previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.”

8. Admittedly, the suit land was allotted to the applicant in 2005 and such mutation has been effected in Record of rights in the year 2006. It is also an admitted position that in such type of matters the remedy available to the aggrieved person is an appeal or revision before the Revenue hierarchy; where the respondents without exhausting such remedies have directly approached the civil Court by filing the aforementioned suit, which in view of the bar contained in section 11 of Sindh Revenue Jurisdiction Act 1876 (produced hereinabove), was barred, thus the plaint which was challenged under Order 7 Rule 11 CPC before the trial Court, rightly rejected, as Section 172 of Sindh Land Revenue Act, 1967, specifically excludes the jurisdiction of Civil Court in the matters of Revenue jurisdiction; where the appeal which was preferred against the said rejection order, was entertained and allowed illegally, erroneously and without applying judicious mind as well as considering the relevant law. For sake of convenience, section 172 of Sindh Land Revenue Act, 1967, is produced as under:-

“ 172. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers.-

(1) Except as otherwise provided by this Act, no Civil Court shall have jurisdiction in any matter which Government, the Board of Revenue, or any Revenue Officer, is empowered by this Act to dispose of or take cognizance of the manner in which Government, the Board of Revenue, or any Revenue Officer exercises any powers vested in it or him by or under this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), a Civil Court shall not exercise jurisdiction over any of the following matters, namely: —

- (i) any question as to the limits of any land which has been defined by a Revenue Officer as land to which this Act does or does not apply;
- (ii) any claim to compel the discharge of any duties imposed by this Act or any other enactment for the time being in force on any Revenue Officer as such;
- (iii) any claim to the office of a Village Officer, or in respect of any injury caused by exclusion from such office, or to compel the discharge of the duties or a division of the emoluments thereof;

- (iv) any notification directing the making or revision of a record of rights,
- (v) the framing of a record-of-rights or periodical record, or the preparation, signing or attestation of any of the documents included in such a record;
- (vi) the correction of any entry in a record-of-rights, periodical record or register of mutations;
- (vii) any notification of the undertaking of the general re-assessment of a District or Taluka having been sanctioned by Government;
- (viii) any objection to the amount or rate of any assessment of land revenue or the period thereof authorized by Government;
- (ix) the claim of any person to be liable for an assessment of land revenue or of any other revenue as assessed under this Act;
- (x) the amount of land revenue to be assessed on any '[deh] or to be paid in respect of any holding under this Act;
- (xi) the amount of, or the liability of any person to pay, any other revenue to be assessed under this Act, or any cess, charge or rate, to be assessed on a deh or holding under this Act or any other enactment for the time being in force;
- (xii) any claim relating to the allowance to be received by a land owner who has given notice of his refusal to be liable for an assessment, or any claim connected with, or arising out of, any proceeding taken in consequence of the refusal of any person to be liable for an assessment under this Act;
- (xiii) the formation of a deh or determination of its boundaries;
- (xiv) any claim to hold free of revenue any land mills, fisheries or natural products of land or water;
- (xv) any claim connected with, or arising out of the collection by Government, or the enforcement by Government of any process for the recovery of, land-revenue or any sum recoverable as an arrear of land-revenue;
- (xvi) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land-revenue or any sum recoverable as an arrear of land-revenue;
- (xvii) the amount of, or the liability of any person to pay, any i cess, fees, fines, costs or other charge imposed under this Act;
- (xviii) any claim for partition of a deh or holding, or any question connected with or arising out of, proceedings for partition, not being a question as to title in any of the ' property of which partition is sought;
- (xix) any question as to the allotment of land on the partition of a deh or holding, or as to the distribution of land subject by established custom to periodical redistribution or as to

the distribution of land revenue on the partition of a deh or holding or on a periodical redistribution of land;

- (xx) any question connected with or arising out of or relating to any proceedings for the determination of boundaries of dehs subject to river action under the provision of this Act;
- (xxi) any claim regarding boundaries fixed under any of the enactments hereby repealed or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary marks.”

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 the plaint was rightly rejected under Order VII Rule 11 C.P.C., thus the impugned judgment dated 29.04.2017, passed by the appellate Court suffers from illegality, irregularity and perversity, hence not sustainable. In these circumstances, this revision application is allowed and the impugned judgment dated 29.04.2017 is set aside and the order passed by the trial Court is maintained.

Hyderabad: 02.2019

JUDGE

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