

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

CP No. D- 2837 of 2016

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Mitho and others ----- Petitioners

Versus

Ashique Ali and others ----- Respondents

Date of Hearing : 19.02.2019

Date of Announcement : 06.03.2019

Mr. Mashooq Ali Bhurgri, Advocate for petitioners

Mr. Jhamat Jethanand, Advocate for respondents

Mr. Allah Bachayo Soomro, Addl.A.G.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through the captioned petition, the petitioners have prayed that the impugned order dated 24.5.2016 passed by the Senior Member Board of Revenue (SMBR) may be quashed.

2. Brief facts of the case as per pleadings of the parties are that survey Nos. 161/3 to 6, 11 to 14, 162/1 to 4, 203/1 to 16, 204/1 to 16, 205/3 to 6, 9 to 16, 209/2,3,4, 210/1 to 4, 211/1 to 4; admeasuring 109-34 acres of agricultural land situated in Deh Sehri, Tapa Bhitto, Taluka Diplo, were allotted on installments to one Dino son of Mitho Babur (grandfather of the petitioners) in year 1937 and entry No.178 to this effect was made in the record of rights. The petitioners' grandfather leased out an area of 66-34 acres out of 109-34 acres to deceased respondent Ghulam Ali Khowaja. The said respondent by way of fraud got sale of 66-34 acres of land registered in his favour vide sale deed dated 25.04.1959. In the year 1961, Dino, the grandfather of petitioners, died and left behind his son namely Jaro and others, later on Jaro also expired. That after death of Ghulam Ali Khawaja his heirs paid lease money to Jaro and after his death to his legal heirs till 2008, but, thereafter they refused to pay lease money on the premise that they are owners of the land. The applicants came to know about the alleged fraud in year 2008 and filed appeal before the Assistant Commissioner Diplo against the entries made in the record of rights in favour of Ghulam Ali Khowaja. That their appeal

was dismissed by the Assistant Commissioner vide order dated 13.9.2008 and they preferred Revision Application before the defunct Executive District Officer (Revenue) Tharparkar at Mithi, which was also dismissed vide order dated 30.12.2008. Then the petitioners filed Civil Suit No. 38 of 2009 before 1st Senior Civil Judge, Mithi for declaration, possession, and cancellation of entries and permanent injunction. The learned trial Court framed the issues and after recording the evidence and hearing the parties dismissed the suit of petitioners with cost vide Judgment dated 31.3.2011 and decree dated 6th April, 2011. The petitioner being aggrieved by and dissatisfied with the aforesaid impugned judgment, filed Civil Appeal No. 28 of 2011 before the learned Additional District Judge, Tharparkar @ Mithi, who declared the sale deed dated 25.4.1959 as illegal, void and ordered for cancellation of all the above discussed entries/sale deeds made in favour of Ghulam Ali Khawaja and entries subsequent to that and directed the Senior Member Board of Revenue Sindh to hold enquiry to find out responsible officials who were/are involved in giving losses to the exchequer and initiate proceedings against them under intimation to the Court. Operative part of the judgment dated 09.3.2011 is reproduced below:-

“In view of above discussion the Senior Member Board of Revenue is directed to arrange the cancellation of all the entries/Sale deeds as discussed above and hold enquiry to point out the responsible officials who were/are involved in giving losses to the exchequer and to initiate proceedings against them under intimation to this court with the above modification in impugned Judgment/Decree the instant appeal as well as application under Order 1 rule 10 CPC is dismissed with no order as to costs.”

That since, the judgment dated 09.3.2012 was not being implemented by the revenue functionaries. The petitioners filed case No.46/2012 before Senior Member Board of Revenue for its implementation. The Senior Member Board of Revenue vide order dated 19.5.2015 cancelled registered sale-deeds and mutation entries, the private respondents however filed Review Application No.13 of 2015 before the Senior Member Board of Revenue; who allowed the same vide order dated 24.5.2016 at the back of the petitioners, although their counsel was present in his office but he was not called even. Petitioners being aggrieved by and dissatisfied with the aforesaid impugned order filed the instant petition on 25.10.2016.

3. The Respondents filed comments and controverted the allegations leveled by the Petitioners.

4. Mr. Mashooq Ali Bhurgri, learned Counsel for the petitioners has contended that impugned order dated 24.5.2016 passed by the Senior Member, Board of Revenue in essence has invalidated order dated 09.3.2012 passed the Additional District Judge, Tharparkar at Mithi, which was not assailed by the respondents, hence, had attained finality; that the impugned order dated 24.5.2016 is nullity in law and is liable to be reversed; that there was no ground to review the order dated 19.5.2015 passed by the Senior Member Board of Revenue, which contains direction for implementation of the order passed by the Court of Additional District Judge; that scope of review is limited but here the whole case has been decided in favor of the private respondents.

5. Mr. Jhamat Jethanand, learned Counsel for private respondents referred to the counter affidavit filed by the respondents to the main petition refuting the claim of the petitioners, he further supported the decision dated 24.5.2016 passed by the Senior Member Board of Revenue and argued that the instant petition is not maintainable under the law and is liable to be dismissed; that the private respondents are owners of the land; according to him Dino son of Mitho sold the land admeasuring 66-24 acres situated in Deh Serhi, Taluka Diplo District Tharparkar to Ghulam Ali son of Muhammad Ali Khowaja for consideration of Rs.13,000/- and the vendee was put in possession of above land; that the record of right was also mutated in favour of Ghulam Ali; that Ghulam Ali also owned and possessed survey Nos. 205/1,2,7,8 admeasuring 4-00 acres in Deh Serhi, Taluka Diplo, which was granted to him by the Barrage authorities in 1964. The record of rights was mutated in his favour vide entry No.235 dated 25.06.1964; That Ghulam Ali purchased other land bearing survey No.155/A to D admeasuring 4-00 acres in Deh Serhi Taluka Diplo District Tharparkar through registered sale deed dated 01.02.1973 from Muhammad son of Bado. The mutation was sanctioned in his favour vide entry No.197 dated 18.6.1975. Accordingly, Ghulam Ali son of Muhammad Ali became owner of the land admeasuring 72-35 acres situated in Deh Serhi, Taluka Diplo, district Tharparkar and the land was mutated in his favour. Ghulam Ali through gift dated 11.3.1993 transferred 24-35 acres of his land to Amin son of Ashique Ali and 48-00 acres to Ashique Ali son of Muhammad Ali; that Ashique Ali through registered sale deed dated 28.07.1999 transferred the land admeasuring 48-00 acres to Ameena wife of Karim Bux and Amin sold out 24-35 acres and his other land to Mst. Shahnila and Masooma, both daughters of Ashique Ali and said vendees have been in continuous possession of the land in petition. The respondents have no concern with the remaining land, if any, of Dino son of Mitho; That the remaining land of Dino son of Mitho,

admeasuring 43-16 acres was mutated in favour of his two sons Ameer Bux and Jaro, Mst. Singhar and that 17 paisa share of Mst. Singhar was inherited by her two sons, namely Abdul Rehman and Manthar; that Jaro son of Dino died and left behind 09 sons and three daughter namely Mitho, Karam Khan, Nawaz Ali, Asghar Ali, Munawar, Abdul Jabbar, Khurshid Arshad, Rajab, Mst. Hakeeman, Mst Riaz and Mst. Nazi. Subsequently, Mitho son of Jaro died and left behind petitioners 1 to 5; that Civil Appeal No. 28 of 2011 was dismissed and there was no need to challenge the same order; that enquiry was conducted before passing of order dated 19.5.2015 and in the said inquiry, it was reported that Dino had executed registered sale deed which was available in the record. Despite such report, the order dated 19.5.2015 was passed by the Senior Member BOR; that in view of dismissal of C.A. No. 28 of 2011 and the report of registration of sale deed, the Member Board of Revenue had no jurisdiction to pass order dated 19.5.2015 which has been rightly set-aside by the impugned order dated 24.5.2016. In support of his contentions he relied upon the cases of *Abdul Hamid versus Abdul Ghani (1983 CLC 1022)*, *Mst. Khadija Khatoon versus The Additional District Judge, Rawalpindi and 2 others (PLD 1973 Lahore 463)*, *Ghulam Ahmed and another versus Atta Muhammad and 2 others (PLD 1974 Lahore 248)*, *Sana Ullah and others versus Ghulam Qadir and others (PLD 1958 [W.P.] Peshawar 213)*, *Muhammad Munir versus Muhammad Saleem and others (2004 SCMR 1530)*, *Sakhi Muhammad versus Chairman Distt. Council Sheikhupura & another (PLJ 1980 Supreme Court 96)*, *Malik Bashir Ahmed Khan and others versus Qasim Ali and others (PLD 2009 Supreme Court 183)* and *Tansukh Rai and others versus Gopal Mahto and others (AIR 1929 Patna 586)*.

6. We have queried from the learned counsel whether the private respondents have impugned the findings of the learned appellate court adversely effecting their right. In reply to the query, learned counsel for the private Respondents has submitted that the findings of learned appellate court dismissing the appeal of the petitioners does not call for the respondents to assail the same; that the sale deed of the private respondents on the subject land is protected under the law, therefore, the same cannot be called in question until and unless it is set-aside by the competent court of law.

7. Mr. Allah Bachayo Soomro, Addl. A.G representing the official respondents supported the decision dated 24.5.2016 passed by the Senior Member Board of Revenue and adopted the arguments of Mr. Jhamat Jethanand, learned Counsel for the private respondents.

8. Heard the learned counsel for the parties and perused the material on record and case law cited at the bar.

9. The pivotal questions in the present proceedings are as under:-

i) Whether the Senior Member Board of Revenue had the jurisdiction to allow the review application of the private respondents?

ii) Whether the Senior Member Board of Revenue (BOR) has jurisdiction relating to the matters brought before him against registered sale-deeds and mutation entries based on registered sale-deeds and adjudicate?

10. To appreciate the aforesaid proposition of law, in our view, none of the revenue courts, including the Senior Member Board of Revenue, has jurisdiction to initiate proceedings against the registered sale-deeds, mutations sanctioned on the basis of registered sale-deeds, as well as, judgments, orders, etc., of courts of Law.

11. The scope of review under Section 8 of the Sindh Board of Revenue Act, 1957 is confined to the following matters:-

i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made;

ii) Mistake or error apparent on the face of the record;

iii) Any other sufficient reason.

12. The following are the settled principles of law to decide the review application:-

i) Every order or judgment pronounced by the Court is presumed to be a considered, solemn and final decision on all points arising out of the case;

ii) If the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not lie;

iii) The fact that the view canvassed in the review petition is more reasonable than the view found favour with the Court in the judgment/order of which review is sought, is not sufficient to sustain a review petition;

iv) Simpliciter the factum that a material irregularity was committed would not be sufficient to review a judgment/order but if the material irregularity was of such a nature, as to convert the process from being one in aid of justice to a process of injustice, a review petition would lie;

v) Simpliciter the fact that the conclusion recorded in a judgment/order is wrong does not warrant review of the same but if the conclusion is wrong because something obvious has been overlooked by the Court or it has failed to consider some important aspect of the matter, a review petition would lie;

vi) If the error in the judgment/order is so manifest and is floating on the surface, which is so material that had the same been noticed prior to the rendering of the judgment the conclusion would have been different, in such a case a review petition would lie;

vii) The power of review cannot be invoked as a routine matter to re-hear a case which has already been decided;

viii) Review is not a re-hearing of the main case and hence re-arguing a case falls outside the scope of review;

ix) The scope of review is very limited and it cannot be used as a substitute for a regular appeal.

13. On merits of the case, we have seen that the learned trial court answered the issues and finally adjudicated the matter with regard to the suit property and dismissed the suit of the petitioners; the learned appellate court too dismissed the appeal by modifying the judgment and decree of the learned trial court by appreciating the factual and legal aspect of the case; that the order dated 18.5.2015 passed by the Senior Member, BOR, was in compliance with judgment dated 09.3.2012 and decree dated 14.3.2012 of the appellate Court passed in Civil

Appeal No. 28 of 2011. Whereas, the order dated 24.5.2016 passed by the Senior Member, Board of Revenue, Sindh reviewing the earlier order tantamounts to nullifying the directions of the judgment and decree of the appellate Court which under no law can be sustainable when the appellate Court has given specific findings about the suit land and authenticity of sale deed and its registration and which since was not challenged by the private respondents and therefore has attained finality, Member BOR could not be allowed to substitute the same under review jurisdiction on the ground that registered sale deed is available in favor of private respondents.

14. The submissions made by the learned counsel representing the private respondents have been considered at length. Learned counsel in his abortive attempt to justify his stance contended that in fact his client had obtained the subject land from the predecessors of the petitioners in accordance with law. But we have reservation with regard to the purported sale transaction of Government land as equally shown by learned appellate court. We are of the considered view that mutation entries in the Record of Rights are maintained for fiscal purposes and do not decide the question of title finally. In any event, such entries do not confer right of ownership to property. Furthermore, Revenue Authorities might be able to rescind and revoke the mutation entries wrongly entered, however, in law they are not empowered to annul and set aside a registered sale-deed which has sanctity under the Registration Act, etc. The whole transaction in our view appears to be sketchy. The learned Appellate Court in the aforesaid Civil Appeal has rightly thrashed out the transaction between the parties on the subject land and corrected the wrong. Looking through the above perspective and keeping in view the factual as well as legal position of the case, we hereby infer that the senior Member Board of Revenue under the law does not enjoy absolute suo moto powers of review. Therefore, purported exercise of jurisdiction thereunder by the senior Member Board of Revenue was ex facie without lawful authority, the petitioners were not heard and a sweeping order was issued undoing the orders passed by the learned appellate court. Such an order could hardly be maintained. Our view is supported by the decision rendered by the Honorable Supreme Court of Pakistan in case reported as (2008 SCMR 589).

15. The case laws cited by the learned counsel for the private respondents are distinguishable from the facts of the present case.

16. In the light of above facts and circumstances of the case, we came to the conclusion that the impugned Order dated 24.5.2016 passed by a Senior Member

Board of Revenue is beyond the scope of review and is without jurisdiction and nullity in law. Consequently the instant Petition is hereby disposed of in the terms, whereby the Senior Member Board of Revenue, Sindh is directed to cancel the illegal grant of land in favour of the private respondents and subsequent sale transaction strictly in compliance with the order dated 4.3.2012 passed by Additional District Judge Tharparkar, in Civil Appeal No.28 of 2011 within a period of two months from the date of receipt of this judgment. The compliance report shall be submitted before the learned Additional Registrar of this Court for our perusal.

17. This petition stands disposed of in the above terms along with pending application(s) if any.

JUDGE

JUDGE

Karar_hussain/PS*