

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

Revision Application No.138 of 2007

Applicants

Abdul Sattar Son of Fazal Muhammad
Mst. Sagheeran wife of Abdul Sattar
(since deceased through their legal heirs
Riaz Hussain & others)
through:

Mr. Ghulam Sarwar Baloch, Advocate.

Respondents No.1 to 3

Muhammad Azeem
Son of Muhammad Zaman
& others through:

Mr. Bisharat Ali Memon, Advocate.

Date of hearing: 01.3.2019

Date of decision: 01.3.2019

JUDGMENT

ADNAN-UL-KARIM MEMON,J:- Through captioned Civil Revision Application, the Applicants have called into question the order dated 09.04.2007, passed by learned District Judge Sanghar in Civil Appeal No.11 of 2006, whereby their Appeal was dismissed and judgment and decree dated 27.03.2006 passed in T.C. Suit No.02 of 2005 by learned Trial Court was maintained.

2. The relevant facts narrated in instant Revision Application are that the Applicants filed civil suit for Injunction and Damages of Rs.45, 000/- on the premise that they are owners of agricultural land bearing S.No.370, admeasuring 16-00 acres, situated in Deh Jakhrao, Taluka and District Sanghar, through purchase, inheritance and sale agreement; that there is 3-27 acres land bearing S.No.369/4, which is in Mohag (front) of S.No.370 which is the subject matter called as 'suit land'; that the suit land is government land and is in possession of the applicants since 20 years, in which houses of Applicants are situated. As per Applicants they had planted Trees of Shisham etc; that on 02.09.2003, private respondents alongwith seven unknown persons came at the suit land and cut down about

150 grownup Trees of Shisham and tried to dispossess the Applicants from the suit land and caused damage of Rs.45,000/-. Applicants being aggrieved by and dissatisfied with the aforesaid actions of the private Respondents had filed T.C. Suit No.02 of 2005 for injunction and damages. Private Respondents filed written statement denying the averments of the plaint being false and submitted that the suit land is the private property of Muhammad Zaman, father of Respondents No.1 and 2; that the suit land is not a government land and the Applicants have no legal right in the suit property; that the trees belonged to their father. They pleaded for dismissal of the aforesaid suit. Learned trial Court framed issues, recorded evidence and after hearing both the parties dismissed the suit of the Applicants vide impugned judgment and decree dated 27.03.2006. The Applicants being aggrieved assailed the aforesaid order in Civil Appeal No.11 of 2006, which was dismissed on 09.04.2007. The Applicants being aggrieved by and dissatisfied with the aforesaid judgments filed the instant Revision Application.

5. Mr. Ghulam Sarwar Baloch learned counsel for the Applicants contended that the impugned Judgments dated 27.03.2006 passed by learned Trial court and Judgment dated 09.04.2007 passed by the learned Appellate Court are full of errors based on misreading and non-reading of evidence; that the findings of the learned courts below are arbitrary and perverse; that the averments of the Applicants made in the affidavits in evidence regarding damages were not considered in the impugned Judgments, therefore both the judgments are nullity in the eyes of law; that both the learned courts below have failed to appreciate the material aspects of the matter with regard to possession of the suit land and planting of trees, which were cut down by the private Respondents and caused damage, amounting to Rs. 45,000/-; that learned Appellate court failed to consider the grounds of Appeals agitated by the Applicants, therefore both the Judgments cannot be sustained on this score alone, and are thus liable to be set aside; that the learned Trial court has not considered and appreciated the evidence brought on record in favour of the Applicants in its proper perspective; that the Applicants cannot be dispossessed by the private Respondents without due process of law. He lastly prayed for setting aside both the Judgments rendered by the learned Courts below and the suit of the Applicants may be decreed as prayed.

6. Mr. Bisharat Ali Memon learned counsel for the private respondents supported the judgments and decrees of both the Courts below and submitted that the Trial Court as well as Appellate Court had rightly dismissed the suit of the Applicants; that there are concurrent findings recorded by the competent forum under the law and the grounds raised in the instant Revision Application are untenable; that both the aforesaid Judgments are passed within the parameters of law; that instant Revision Application is frivolous, misleading as this Court has limited jurisdiction under section 115 CPC to dilate upon the evidences led by the parties. He lastly prays for dismissal of the instant Revision Application.

7. During the course of arguments I asked from learned counsel for the Applicants to satisfy this Court regarding maintainability of this Revision Application and listed applications on the premise that the instant Revision Application was dismissed on account of non-prosecution vide order dated 11.09.2017 and the same has not yet been restored, he in reply to the query reiterated his arguments and argued that this is a hardship case and this Court can hear and decide the matter on merits rather than dismissal on technicalities. In view of the above, this Revision Application is restored to its original position as I intend to decide the lis in hand on merit.

8. I have heard learned counsel for the parties on merits and perused the material placed on record.

9. I have noted that learned trial Court, for proper determination of the case, framed the following issues:-

- (i) Whether the suit land i.e. S.No.369/4, area 3-27 acres situated in deh Jakhrao is a Govt. property?
- (ii) Whether the suit land is the property of Muhammad Zaman, father of defendants No.1 and 2?
- (iii) Whether the defendants threatened plaintiff for dispossessing from the suit property unlawfully having no legal right over the same?
- (iv) Whether plaintiffs are entitled for relief of permanent injunction and damages?
- (v) Whether the plaintiffs have no cause of action to file the suit?

10. The aforesaid suit was contested by the private Respondents and after leading evidence by both the parties, learned trial Court dismissed the suit of the Applicants vide impugned judgment and decree dated 27.03.2006 on

the premise that they are not owners of disputed land as admitted by them in the pleadings, therefore, they are not entitled for injunction and damages with further observation that mere Mohag (front) of Applicants land does not create any right and title over the disputed land, therefore they are not entitled for injunction and damages. An excerpt of the same is as under:

“ISSUE NO.4.

When the plaintiffs are not owner of disputed land as admitted by them, therefore, they are not entitled for injunction and damages. Mere Mohag of plaintiffs’ land does not create any title over the disputed land. The suit is also barred by Section 56(i) of the Specific Relief Act, 1877 because no injunction can be granted when plaintiffs can certainly be obtained equally efficacious relief by any other mode of proceedings. Therefore, this issue is also not proved.

ISSUE NO.5.

Regarding this issue no evidence on record has come from plaintiffs side, therefore, this issue is not proved.

ISSUE NO.6.

Whereas, the plaintiffs have failed to prove their suit, therefore, the suit is hereby dismissed with no order as to cost.”-

11. The Applicants’ Civil Appeal No.11 of 2006, was dismissed on 09.04.2007 on the ground that the claim made by the Applicants in respect of damages of Rs.45,000/- against the private Respondents that they allegedly cultivated trees on the suit land without permission either from the Government or owner of the suit land, therefore, the costs of trees cannot be claimed in shape of damages. An excerpt of the order is reproduced:-

“Since the appellants/ plaintiffs have no prima-facie case, being trespassed therefore, they could not come in Court for claiming injunction where a prima-facie case is not made out. Plaintiff is not entitled for grant of injunction (PLD 1992 Lahore 199). The learned trial Court has rightly refused to grant of injunction in the circumstances discussed above. Besides this the other claim made by the appellants/ plaintiffs in respect of damages of Rs.45000/- against the respondents/ defendants: I am of the considered view that appellants/ plaintiffs had allegedly cultivated trees on the land in question also not got any permission or made agreement in this regard either from the Government or the owner of the land, if any for alleged cultivation, therefore, the costs of trees cannot be claimed in shape of damages as it was not legally protected interest of the appellants/ plaintiffs. In view of these

circumstances the impugned judgment requires no interference; hence the present appeal stands dismissed. The parties to bear their own costs. R&Ps of the case be sent back to the trial Court.”

12. The primordial question involved in the present proceedings is, whether the suit for injunction and damages would lie without relief of declaration? So far as the issue of not seeking declaration is concerned, in my view, any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying or interested to deny his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the claimant need not in such suit ask for any further relief. Provided that no court shall make any such declaration where the claimant being able to seek further relief than a mere declaration of title, omits to do so. In the present case, I have noted that the basic claim of the petitioner in civil suit is with regard to damages amounting to Rs.45, 000/-. Evidence of the parties explicitly shows that the Applicants have failed to prove their claim on account of damages and entitlement on the subject land. Since the Applicants have failed to substantiate their proprietary right on the suit land in their favour through documentary evidence, though there is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute, here suit for Injunction filed by the Applicants is barred under Section 56(i) of the Specific Relief Act, 1877. In my view, in suits relating to land a suit for permanent injunction cannot be maintained if the applicant had no legal title / possession of the property. In view of the foregoing, the grant of injunction depends upon the determination of title; a suit for mere injunction may not be maintainable.

13. I have also noted that in the present case no material is placed before me to arrive at a can conclusion that the impugned orders have been erroneously issued by both the courts below, therefore, no ground existed for re-evaluation of evidences. Thus, I maintain the order dated 27.03.2006 passed by the learned Trial court and order dated 09.04.2007 of Appellate court.

14. In light of the above facts and circumstances of the case, I am of the view that this Court in its Revisional jurisdiction cannot interfere in the

concurrent findings recorded by two competent forums below as I do not see any illegality, infirmity or material irregularity in the judgments warranting interference of this Court. In my view the suit was rightly dismissed by learned Civil Judge-III Sanghar, their Appeal was also rightly dismissed by the Appellate court vide order dated 09.04.2007 which is well reasoned.

15. For the reasons discussed above, I do not find it a fit case for interference under Section 115 CPC. The impugned orders are absolutely legal and do not call for any intervention. The Revision Application is accordingly rejected along with the listed application (s).

15. These are the reason of my short order dated 01.03.2019 whereby this Revision Application was dismissed.

J U D G E