

# IN THE HIGH COURT OF SINDH, KARACHI

Civil Revision Application No. 48 of 2009

Syed Sharafat Hussain and six others.....Applicants.

*V e r s u s*

Mohammad Bux .....Respondents.

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

Date of hearing : 2<sup>nd</sup> April, 2018  
 Date of Judgment : 1<sup>st</sup> August, 2018  
 Applicant No.1 : Syed Sharafat Hussain in person and attorney of applicants No.2 to 7.  
 Respondent : Mr. Farooq Rashed, Advocate

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**Kausar Sultana Hussain, J:-** This Civil Revision under Section 115 of the Code of Civil Procedure, 1908 is directed against the judgment dated 01.12.2008 and decree dated 06.12.2008, passed by Additional District Judge-I, Benazir Bhutto Shaheed District, whereby Civil Appeal No. 62 of 2005, filed by the respondent was allowed and set aside the judgment dated 14.09.2005 and decree dated 20.09.2005, passed by the learned Senior Civil Judge-1, Nawabshah in Civil Suit No. 133 of 1997 (Re-Syed Sharafat Hussain and others *Versus* Muhammad Bux).

2. The concise germane facts forming back ground to institute instant Civil Revision are that the appellants filed Civil Suit No. 133 of 1997 (New No. 171 of 2003) against the respondent for possession and recovery of lease money plus damages. It was claimed that appellants are owners of agricultural land bearing survey Nos. 21/1; 22/3; 25/3 and 4 36/1; 37/4; 38/1 and 4, 39/4 admeasuring 40.36 acres, situated in Deh 107, Nasrat Taluka & District Nawabshah. As per appellants, they had leased out the said land to the respondent from period prior to the year 1984,

and at the said point of time, about 100 trees of Babul, Neem and Tali were standing thereon, and the later up to Kharif 1984, partly paid Rs. 8000/- out of Rs. 12,054/- leaving balance of Rs. 3874/- in respect of lease money of the crops, Kharif-Rabi 1983-84 plus Rs. 8180/- for the single crops Kharif 1984 at the rate of Rs. 400/- per acre per annum. It was alleged that thereafter the respondent stopped the payment of lease money of said land and since then he has been unlawfully and illegally enjoying the land. It was further stated that appellants had been moving applications to the Revenue Authorities for recovery of lease money and possession of the said land from the respondent, but the later taking advantage of their absence exercising influence over the Revenue Authorities. It was stated that during pendency of the application for lease money with the Assistant Commissioner Nawabshah, the respondent had filed Suit No. 02 of 1993 against them and for stopping the recovery of the possession of the suit land, which was decreed exparte on 18.07.1993. It was further alleged that thereafter they many times approached to the respondent for payment of lease money so also to hand over possession of said land, but he failed to do so and also cut 100 trees and removed the same, hence they constrained to institute this suit for the following relieves:-

- a) Defendant be directed to deliver the possession of the suit land to the plaintiffs; and in case the defendant does not deliver the possession of the suit land, the possession of the suit land be got delivered to the plaintiff through Court.

b) The defendant be directed to pay the amount of lease money and the damages of the trees to the tune of Rs. 2,95,400/- to the plaintiffs.

c) The defendant be directed to pay/deposit the lease money of the suit land for the period during the pendency of the suit.

3. It may be mentioned here that during first round of litigation, the respondent failed to file written statement, consequently the aforesaid suit was decreed in favour of the appellants vide judgment and decree dated 18.03.1999 and 22.3.1999, respectively, by the learned trial Court, however, the same were challenged by the respondents through C. Appeal No. 18 of 2000, which was allowed by learned Additional District Judge, Nawabshah, vide judgment dated 27.11.2000 and remanded the matter to the trial Court to decide it on merits. After the remand, the respondent filed his written statement on 15.08.2001, wherein denied the claim of the appellants and alleged that land in question is the property of Central Government and the appellants fraudulently lease out the said land to him and under harassment got signed some lease documents. Thereafter, out of the pleadings of the parties, following issues were framed by the learned trial Court.

1. Whether suit is barred by law of limitation?
2. Whether the suit is not maintainable under the law?
3. Whether the plaintiffs are the owners of the suit agriculture land bearing Survey Nos. 21/1, 22/3, 25/3 and 4, 36/1,

37/4, 38/1 and 4, and 39/4 admeasuring 40.30 acres situated in Deh 107, Nasrat Taluka Nawabshah?

4. Whether the defendant was induced as lease under lease agreement in the year 1978? If so, and whether the defendant thereafter contained to execute fresh lease agreements which was executed lastly in the month of June, 1984, with last part payment to the tune of Rs. 8000/- to the plaintiffs, if yes, what is its effect?
5. Whether the permanent settlement of 20-00 acres comprising of Survey No. 25/3 and 4, 38/1 and 3 and 39/4 with adjustment of 2555 P.1 Index units out of 8082 P.1 units and the rest 20-36 Acres retained by plaintiffs under the payment of installments with interest later on refundable to plaintiffs on additionally verified remaining 5527 P.1 units from Central Record Office, under Martial Law Regulation No. 89 of 1961, was and still is known to the defendant?
6. Whether the plaintiffs are entitled for possession of the suit agricultural lands from the defendant?
7. Whether after expiry of the lease agreements the defendant has no legal right to occupy the suit agricultural land of the plaintiffs, if yes, what is its effect?
8. Whether the plaintiff is entitled to recover the lease money etc. with compensation as claimed arising out of the continues possession and cultivation of suit land under the lease agreements? If so what amount?
9. What should the decree be?

4. As per record, the appellant No. 1 filed his affidavit in exparte proof at Ex. 41, which was treated as evidence by the learned trial Court. He also produced original lease agreement at Ex. 42 (P/1), receipt dated 01.05.1981 at Ex. 43 (P/2), duplicate receipt at Ex. 44 (P/3), photo copy of agreement at Ex. 45 (P/4), another receipt at Ex. 46 (P/5), duplicate receipt at Ex. 47 (P/6), photocopy of further lease agreement at Ex. 48 (P/7), certified photo copy of judgment in T. C. suit No. 2 of 1993 at Ex. 49 (P/8) and its decree at Ex. 50 (P/9). The appellants also got examined witnesses Azzizullah, Junior Clerk E.P. Branch of Revenue Department, at Ex. 132, who also produced letter dated 20.4.1988 at Ex. 133, Mutation Order dated 30.5.1962 vide Ex. 134, certificate dated 28.7.1962 at Ex. 135, letter dated 2.8.2002 of Mukhtiarkar Revenue Nawabshah at Ex. 136, letter dated 05.04.1995 at Ex. 137, application for issuing the Parchi Taqseem Khatooni at Exh. 138; Khuda Bux, Junior Clerk from the office of Mukhtiarkar, Nawabshah examined at Ex. 142, who produced letter received from the Settlement Department to Mukhtiarkar Office, Nawabshah at Ex. 143, another letter dated 05.04.1995 at Ex. 144, photo copies of challans (31 in number) at Ex. 145, photo copy of certificate at Ex. 146, photo copy of Mutation Order at Ex. 147, another letter dated 02.08.2001 at Ex. 148; Tapedar Faiz Muhammad, Tapo Jan Sahib examined at Ex. 149, who produced record of rights at Ex. 150 and 151; Tapedar Sikandar Ali, Tapo Khipro, examined at Ex. 153, who produced the copy of record of rights at Ex. 154, Tapedar Asghar Ali, Tapo Chanessar examined at Ex. 155, who also produced the copy of record of rights at Ex. 156. On the other hands, the respondent Muhammad Bux Brohi examined himself at Ex. 181 and during his evidence also

produced photo copy of land revenue receipts (25 in number) at Ex. 182. The respondent also got examined his two witnesses namely Moulvi Raza Muhammad at Ex. 185 and Chakar Khan at Ex. 184.

5. Thereafter, the learned trial Court decreed the suit in favour of the appellant, vide judgment and decree dated 14.09.2005 and 20.09.2005, respectively. Being dis-satisfied the respondent challenged the said judgment/decreed through Civil Appeal No. 62 of 2005 and the learned Additional District Judge-1, Benazir Bhutto Shaheed District, allowed the said appeal and set aside the judgment/decreed passed by the learned trial Court and dismissed the suit of the appellant. Being aggrieved, the appellants have preferred instant Civil Revision Application.

6. The appellant in person has contended that the impugned Judgment passed by the first appellate Court is outcome of an erroneous and mis-appreciation of the facts resulting miscarriage of justice. Elaborating his contentions, he has argued that the learned appellate Court ignored the material fact that respondent duly admitted his occupancy over the land in question extended by the appellants under lease agreement, which duly established from the receipts of lease agreements, receipt for lease money as well as contents of plaint of suit filed by the respondent. It was argued that once certain facts are admitted, subsequently resiling thereof, did not allow by law and Rule of Estoppel comes into play, but the learned appellate Court not only ignored the Article 114, 116 of Qanoon-e-Shahadat Order, but also failed to discuss the citation quoted in the written arguments. He referred case law reported in PLD, 1980 LAHORE 316 AND PLD, 1989 S.C 353. He

has further argued that the learned appellate Court completely ignored the receipts of payment of installments (Exh.145) as well as certificate (Exh.146), which clearly vesting rights of ownership to the appellants and also failed to appreciate the fact that the Revenue Department never objected to the said right of ownership of the appellants concerning the land in question, as such, the issue of ownership was unnecessarily taken up by ignoring the merits of the case on the admitted violation of contractual obligations. He has further argued that learned appellate Court, failed to appreciate the facts that the written statement was filed by the counsel with his own signature without verification on oath, as such, in fact there was no written statement existed in view of Order VI Rule 14 & 15 C.P.C and claim of the appellants gone unchallenged and un-rebutted. In this regard he has also referred case law PLD, 1980, KARACHI 477.

7. Conversely, the learned counsel for the respondent has argued that the appellants are not the owners of the land in question, on the contrary, the land in question belonged to the Central Government. In respect of lease documents produced by the appellant(s) before trial Court, the learned counsel for respondent submitted that appellant(s) had fraudulently leased out the said land to him while they themselves had no titled documents of it and obtained his signatures on lease documents by keeping him under threats that he will be dispossessed from the said land; besides this the Respondent had paid huge amount to the appellant(s) on account of lease of land. He prayed that the claim of the appellant(s) is baseless, hence not liable to be considered and their appeal and suit are deserved to be dismissed.

8. Considered the submissions, perused the impugned Judgment and material available on record, in the perspective of relevant provisions of law. It is pertinent to mention here that during the proceedings of Revision in hand, this Court vide Order dated 18.08.2010 issued notice to the notified officer of the District Benazirabad (Nawabshah) for production of record of settlements pertaining to the suit land bearing Survey No.107, 25/1 and 3, 30/ 1 & 2, 39/4, 22/3, 38/2 and 4, 27/1, 37/4 and 36/1 total 40 Acres 367 ghuntas. In pursuance whereof, District Officer (Revenue) Shaheed Benazirabad submitted his statement in writing along with attested copies of record. The germane part thereof is reproduced for ready reference in verbatim.

*"The main contention of the applicant party is that the mutation Order in respect of land bearing S. Nos. 107, 25/13, 30/1,2, 39/4, 22/3, 38/2,4, 27/1, 37/4, 36/1 total area 40-36 Acres of Deh 107 Nasrat in favour of applicant may be issued.*

*In this connection, it is submitted that the relevant record of Evacuee Property Branch has been verified and found that the land bearing S. No.27/1 area 4-00 Acres, 37/4, 4/00 Acres, 38/34 8-00 Acres, 22/3 Area 2-00 Acres and 36/1 Area 2-00 Acres total Area 20-00 Acres of Deh 107 Nasrat was cancelled from the allotment of applicant and the remaining S.No25/3,4 Area, 8-00 Acres, 38/1 Area 4-00 Acres, 38-3 Area 4-00 Acres and 39/4 Area, 4-00 Acres total area, 20-00 Acres of Deh 107 Nasrat were confirmed in the name of applicant(s) Syed Sharafat Hussain and others for which mutation Order dated 01.08.1962 was issued by the defunct Assistant Rehabilitation and Settlement Commissioner land Nawabshah.*



As regards S.No.107 and 30/1,2 of Deh 107 Nasrat shown by the applicant in R.A No.48/2009 do not belong to him”.

9. Appraisal of record, it is revealed that the appellants filed Civil Suits No.133 of 1997 (New No.171 of 2003) against the respondent for possession and recovering of lease money plus damages and claimed themselves to be owner of Agricultural land bearing survey Nos.21/1, 22/3, 25/3 & 4, 36/1, 37/4, 38/1&4 and 39/4 admeasuring 40.36 acres, situated in Deh 107, Nasrat Taluka, District Nawabshah, which they leased out to the respondent from period prior to the year 1984. Per record, during first round of litigations, the suit was decreed ex-parte in favour of the appellant(s), which was set aside vide judgment and decree passed in M.C appeal No. 18 of 2000, preferred by the respondents. Upon perusal of findings of the learned appellate court, it is revealed that it was observed that after remand the affidavit in ex-parte proof filed by the appellant’s side was taken as evidence by the learned trial court and no fresh evidence was recorded and proceeded the matter and recorded evidence of other witnesses who are official witnesses. No doubt, such procedure adopted by the learned trial court did not recognize by the law, yet it is also settled law that no one’s legitimate right would be infringed due to omission or error committed by the court and no party could be condemned on account of confusion created by itself. The apex court in case of **Iftikhar Baig Versus Azam and Others (1996 SCMR 762)** has been pleased to held “**that no act or omission of court should be allowed to prejudice the rights of parties and court is bound to rectify error brought to its notice**”.

**10.** It may be mentioned that appellant(s)/plaintiff(s) in the plaint claimed ownership of agricultural land bearing Survey Nos. 21/1, 22/3, 25/3,4, 36/1, 37/4, 38/1,4 and 39/4. Per report called by this Court, it was reported by the District Officer (Revenue), Shaheed Benazirabad that out of the aforesaid subject land, survey Nos. 25/3,4, 38/1 and 39/4 are stand in name of Appellants, whereas, survey Nos. 22/3, 36/1, 37/4, 38/4 have been cancelled from their names. It is noted that in the said report, no date has been provided regarding cancellation of referred survey numbers, which needs to be probed into for the reason whether such cancellation of the land was done before leasing out the subject land to the Respondent by the Appellants or subsequently. Such facts directly attaches to adjudicate the claim of the Appellants on merits. Apart from above, out of the subject land, Survey Nos. 25/3,4, 38/1 and 39/4 are still stand in name of Appellants, which fact clearly establishes that claim to a certain extent. It appears that the learned Appellate Court while passing Impugned Judgment failed to exercise its jurisdiction and failed to take any step whatsoever for a just and proper decision rather than confined its findings mostly on technicalities cannot be appreciated as the law always favours adjudication on merits rather stifling the same on technicality. It would not be out of place to observe that the Appellate Court can on its own take the necessary steps for doing complete justice and such an authority can be exercised by it under Rule 33 of Order XLI or if need be in the exercise of its inherent jurisdiction under Section 151 CPC. Reference is placed to case of **Mohabat versus Asadullah Khan and others (PLD 1989 SC 112)**, **Mst. Faal Jan versus Resham Bibi and others (PLD 1992 SC 811)**, **Ghulam Hussain and**

**another versus Fazal Muhammad and others (PLD 1991 SC 218) and North West Frontier Province Government, Peshawar versus Abdul Ghafoor Khan (PLD 1993 SC 418).**

**11.** In view of above discussion, it is abundantly appears on record that not only the trial Court committed material illegality in proceedings the case, but also the Appellate Court failed to exercise its jurisdiction and to take any steps for a just and proper decision based on justice. Hence, instant Revision is accepted, the Impugned Judgment passed by the lower Appellate Court as well as Judgment and decree passed by the trial Court are hereby set aside and suit is remanded back to the trial Court for fresh decision on merits. The trial Court is directed to record the evidence of Applicants / Plaintiffs so also call report from Deputy Commissioner (Revenue), Shaheed Benazirabad, and Member (Land Utilization) and bring on record the report as well as documents attached thereto placed by him before this Court so also to call any other Government Authority for verification of the official documents, if needed and after providing fair opportunity of hearing to both the side, pass a fresh decision as per law. Since the matter is very old, therefore, the trial Court is also directed to proceed with the matter on day to day basis and dispose of the same within a period of two months from the date of receipt of this judgment.

**J U D G E**