

Judgment Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Civil Revision Application No. 129 of 2015

Date of hearing
& decision: 21.8.2020

Applicant: Hansalal @ Hanslo and 3 others through Mr. Jagdesh
R.Mullani, Advocate.

Respondent 1: through Ms. Naseem Abbasi, Advocate
Mr. Wali Muhammad Jamari, Asstt: A.G.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. – The version of the respondent No.1 / plaintiff is that he filled F.C Suit No.115/2011 against the applicants, for declaration, possession, permanent injunction, and mesne profit in respect of an immovable property viz. plot bearing No.131, City S.No. 943 admeasuring 2500 square feet situated in Ward No. B Gharibabad Mohalla Matli; that he purchased the suit plot through registered Sale Deed bearing No.1562 dated 02-12-2010 along with construction. Respondent No.1 / plaintiff, in order to prove his case, has examined himself at Ex.28 and produced certain documents. In support of his case he examined PW-2, Rafique Ahmed Sub-Registrar Matli, who produced attested copy of registered Sale Deed dated 2.12 2010. He also examined PW-3 Hero, PW-4 Zakauallah Jr. Clerk, who produced Authority letter, registered Sale Deeds vide Jr. No.1302 dated 29.12.2013, Jr. No. 481 dated 14.4.2006. He examined PW-5 Muhammad Usman City Surveyor Matli, who produced copy of Extract Form City Survey record, copy of Map, Extract from Hero, Extract Form respondent / plaintiff. Learned trial Court after careful examination of the parties and evidence decided the aforesaid suit in favour of Respondent / Plaintiff vide impugned Judgment and Decree dated 08.04.2013. The reasons stated in the impugned judgment reads as under:

“ Perusal of entire record clearly shows that the Defendants have no title documents in their favour and they are residing over the suit plot illegally without any lawful authority and on the contrary to it the Plaintiff is lawful owner of the suit plot through registered sale deed. Therefore the plaintiff is entitled for the relief claimed hence this issue decided as affirmative. *Secondly*, the Plaintiff has not

produced any documentary proof to show that the other premises adjacent to the suit plot are on rent at rate of Rs.5,000/- per month therefore prayer clause 'B' is dis-allowed.

Issue No.6

On the observation of above issues and in the light of evidence which is available on record, the suit of plaintiff is decreed to the extent of declaration that Plaintiff is owner of the suit plot and Defendants are liable to vacate the same and handed over the physical possession of suit plot to Plaintiff.

2. The applicants being aggrieved by and dissatisfied with the aforesaid Judgment and Decree preferred statutory Civil Appeal No. 59/2013 which too was dismissed by learned 1st Additional District Judge, Badin, vide Judgment and Decree dated 29.04.2015. An excerpt of the same is reproduced as under:

“ Therefore, in my opinion the Plaintiff successfully proved his ownership over the suit plot and has established on record that the Defendants are in illegal possession of the suit plot. Thus the suit of the Plaintiff is maintainable and the cause of action accrued to the plaintiff and he is entitled to the relief as prayed for by him in the plaint. Therefore, in my opinion, the learned Trial Court has rightly decided the issues in favour of the Plaintiff.

The upshot of my above discussion is that appellants / Defendants 1 to 4 failed to prove any illegality and irregularity committed by learned Trial Court while passing impugned Judgment and Decree. Therefore, said Judgment and Decree is upheld / maintained, appeal is dismissed with no order as to costs. Let such Decree be prepared.

3. The applicants being aggrieved by and dissatisfied with the concurrent findings of both the Courts below have filed the present Civil Revision Application before this Court.

4. Mr. Jagdish R. Mullani learned counsel for the applicants argued that the suit of Respondent No.1 / plaintiff is / was liable to be dismissed for non-joinder and mis-joinder of necessary parties as provided under section 79 of CPC; that the suit had been filed without proper court fee ; that the applicants are residing over the suit plot since their forefathers and paying tax to Municipal Committee so also paying electricity bills ; that the said Hero filed Application against the Respondent No.1 to DDO (R) Matli for vacating the suit plot. It was averred by him that the Suit was not maintainable and no cause of action was accrued to respondent No.1 for filing the same. Learned Counsel for Applicants, contended the impugned Judgments passed by learned Courts below are full of errors, based upon misreading and non-reading of evidence; that the findings of Courts below are arbitrary and perverse; that the averments of Applicants made

in the affidavit in evidence / examination-in-chief were not considered in the impugned judgments; therefore, both the Judgments are nullity in the eyes of law; that both the Courts below have failed to appreciate the material aspects of the case as such the judgments of both the Courts below are liable to be set-aside; that both learned Courts below have failed to appreciate the law involved in the matter; He lastly prayed for setting aside both the judgments rendered by learned Courts below.

5. Conversely, Ms. Naseem Abbasi, learned Counsel for the respondents has supported the impugned judgments passed by the Courts below. She further contended that the captioned Revision Application is liable to be dismissed; that there are concurrent findings recorded by the competent forums/ courts below 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 and misleading as there are concurrent findings by the Courts below; that learned trial Court after recording evidence passed just, proper and fair Judgment and Decree in the case and held entitlement of the Respondent No.1; that learned Appellate Court after hearing Counsel for the parties passed the Judgment in favour of Respondent No.1. However, the Applicants have now approached this Court by filing the instant Revision Application. She lastly prayed for dismissal of instant Revision Application.

6. I have heard learned Counsel for the parties at considerable length and also perused the record available before me.

7. I have noticed that in view of the divergent pleadings of the parties, learned trial court framed the following issues:

- “1. *Whether the plaintiff is lawful registered owner of the suit plot and defendant No.4 has illegally occupied the suit plot and residing over it illegally?*
2. *Whether the defendant No.4 is liable to vacate the suit plot and deliver its possession to the plaintiff?*
3. *Whether the plaintiff accrued no cause of action against the defendants?*
4. *Whether the suit is maintainable under the law?*
- 5 *Whether the plaintiff is entitled to the relief claimed?*

8. I asked the learned counsel that, Revision is a matter between the higher and subordinate Courts, and the right to move an application in this respect by

the Applicants, is merely a privilege. However he reiterated his submission as discussed supra.

9. To appreciate the above proposition, the law on the subject is very clear in its terms that the provisions of Section 115, C.P.C., have been divided into two parts: First part enumerates the conditions, under which, the Court can interfere and the second part specify the type of orders which are susceptible to Revision. In numerous judgments, the Honorable Apex Court was pleased to hold that the jurisdiction under Section 115 C.P.C. is discretionary in nature.

10. Learned counsel for the applicant has not been able to point out any infirmity or illegality in the concurrent findings of Courts below or any misreading or non-reading of evidence by them, especially with regard to title or entitlement of the applicants in respect of the suit property, merely producing receipts of MC Matli, residence certificate, electricity bills, Form-B of NADRA, is not sufficient to claim subject property, for which learned courts below have dilated this issue and gave findings against the applicants, which is sufficient to discard their version.

11. Prima-facie, it appears from the record that respondent / plaintiff was/is owner of the suit plot and defendants/applicants were/are liable to vacate the same and hand over the physical possession of the suit plot to the legal heirs of respondent No.1/ plaintiff as per title documents produced in evidence.

12. The findings of learned trial Court were concurred by learned appellate Court, by holding that the applicants / defendants had admitted the possession over the suit plot and have not given justification for their possession over the same, they only produced receipts of MC Matli, residence certificate, electricity bills, Form-B of NADRA, which were not title documents; and, the applicants had failed to produce any proof with regard to their ownership in respect of the suit property and / or the house constructed thereon. It is well settled law that concurrent findings arrived at by the Courts below cannot be lightly interfered with unless some question of law or erroneous appreciation of evidence is made out and I see no ground to differ with the concurrent findings of the courts below.

13. I am of the view that learned trial Court has dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidence of the parties. The Appellate Court has also considered every aspect of the case and thereafter passed an explanatory Judgment, therefore no ground existed for re-evaluation of evidence, and thus, I maintain the Judgments and Decrees passed by the Courts below. Hence, the instant Revision Application is found to

be meritless and is accordingly dismissed along with listed application(s) with no order as to costs.

14. Foregoing are the reasons of the short order announced by me on 21.08.2020, whereby this Revision Application and pending stay application were dismissed.

J U D G E

Karar_hussain/PS*