

IN THE HIGH COURT OF SINDH

Circuit Court, Hyderabad

Revision Application No.174 of 2015

Azizullah and 08 others Applicants

Versus

Zulfiqar Ali and 13 others Respondents

Revision Application No.178 of 2015

Ghulam Hyder and 10 others Applicants

Versus

Zulfiqar Ali and 13 others Respondents

Date of hearing: 25.09.2020

Date of decision: 09.10.2020

Mr. Khadim Hussain Soomro, Advocate for the Applicants
Mr. Talib Khan Bhatti, Advocate for the Respondents
Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh

ORDER

Adnan-ul-Karim Memon, J. Both captioned Revision Applications are filed against the common Judgment and Decree dated 04.09.2015 passed by learned IInd Additional District Judge, Shaheed Benazirabad in Civil Appeal No. 4 and 5 of 2013 respectively, whereby Applicant's Suit No.48/2011 is dismissed and Suit No.51/2010 filed by the private Respondents is decreed.

2. The case of private Respondents is that they are owners of the land bearing Survey No. 643/3 (01-12 acres) situated in Deh Mir Muhammad Juno, Taluka Kazi Ahmed, District Shaheed Benazirabad, and such mutation was effected in Revenue Record i.e. Form VII-B. It is further averred in the pleadings that the Applicants were farmers at the suit land and were allowed to reside in Katcha Pucca houses constructed by the father of Respondent No. 1 to 10. The Applicants stopped farming activities in the year 2001 and kept Respondent's

father on false hopes that they will vacate the houses soon. In the meanwhile, the Respondents' father died, and the Respondents time and again approached Applicant No. 1 to 8 to vacate the suit land but to no avail. Thus, Respondent No. 1 to 11 felt compelled to institute Suit No.51/2010 for the 'Declaration and Possession' before learned Senior Civil Judge, Shaheed Benazirabad. The Applicants contested the suit and claimed adverse possession of the suit land on the premise that Respondent's father namely Late Mr. Khan Muhammad Juno gave the suit land to their predecessor for living purpose by constructing their houses and executing Gift Deed in their favour. However, Applicants also instituted Suit No.48/2011 for the 'Declaration and Mandatory injunction' before the same court on the cause that under the above-specified Gift Deed they have become owners of the suit land hence, are entitled to transfer/mutation in their names by the official Respondents.

3. The learned Trial Court framed 09 consolidated issues and parties led evidence. Resultantly, F.C. Suit No. 51 of 2010 (Zulfiqar Ali and others Vs Azizullah and others) was allowed and F.C. Suit No. 48 of 2011 (Ghulam Hyder and others Vs Province of Sindh and others) was dismissed vide impugned consolidated Judgment and Decree dated 27.9.2012 and decree dated 03.10.2012 respectively. The Applicants preferred Civil Appeals No.04 and 05 of 2013 respectively before learned II-Additional District Judge, Shaheed Benazirabad. The said Appeals were decided against the Applicants vide common judgment and decree dated 04.09.2015. Hence, the instant Revision Applications against the concurrent findings of two Courts below.

4. Mr. Khadim Hussain Soomro, learned Counsel for the Applicants argued that the predecessor in interest of the Respondents had delivered possession of the land in question to the Applicants on 16.1.2001 in presence of Judicial Magistrate, Nawabshah without executing a registered Gift Deed; that in pursuance of the said unregistered Gift coupled with possession the Applicants became owners of the suit land; that said property right of the Applicants is protected under the law; that under Article 142 of the Limitation Act, 1908 the period for filing a suit for possession of the immovable property is 12 years; that the suit filed by Respondents 1 to 11 was hopelessly time-barred and ought not to have been decreed; that the Gift Deed made by the predecessor-in-interest of the Respondents cannot be questioned after about two decades. Learned counsel further submits that both the courts below have decided the case in favour of the Respondents without application of judicious mind. In this context, he further submits that the Appellate Court was under obligation to decide the Appeal after independent application of mind than a mere reproduction

of the judgment of learned Trial Court. Reliance is placed on the judgment of the Honorable Supreme Court given in the case of Ghulam Mohayyauddin (PLD 1964 SC 829). He further contended that after the addition of section 24-A in the General Clauses Act, even the public functionaries are duty-bound to decide the applications of citizens while exercising statutory powers with reasons after judicial application of mind as laid down by the Honorable Supreme Court in the case of Airport Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others (1998 SCMR 2268). He further maintained that learned Appellate Court has dismissed the Appeal of the Applicants without discussing evidence and points raised by the Applicants. He further maintained that both the courts below have misread the clauses of Gift Deed and this fact was not scrutinized by both the courts below in its true perspective; that in the instant case the conclusion reached by the courts below suffers from errors of law, material irregularities, and illegalities. Hence, both decisions are liable to be reversed. In support of his contention, he has relied upon the cases of Ghulam Hyder and others Vs Wali Muhammad and Others (2008 SCMR 1425), Punjab Industrial Development Board Vs United Sugar Mill LTD. (SCMR 2007 1394), Syed Zulfiqar Hussain Naqvi Vs Syed Gulzar Hussain Shah (YLR 2005 2817), Ayyub Khan and 4 others Vs Muhammad Younis and 7 others (2016 YLR 887), Wazir Khan Vs Qutab Din (PLD 2009 SC 95), Ajmeel Khan Vs Abdur Rahim (PLD 2009 SC 102), Mehandia Vs Juma (2011 MLD 1081), Kazim Imam Jan Vs Muhammad Jawaid and 4 others (2003 CLC 200).

5. Mr. Talib Khan Bhatti, learned counsel for private Respondents raised the question of maintainability of the instant Revision Applications. While supporting the impugned judgments and decrees passed by both the Courts below, he argued that the Applicants miserably failed to assign any cogent reason to disturb the concurrent findings of the courts below. It is contended that this court is not a court of Appeal to consider the case of Applicants on the pleas taken by them in the present proceedings. However, this Court can only exercise jurisdiction, *inter alia*, if any jurisdictional error is pointed out. He lastly prayed for dismissal of instant Revision Applications.

6. I have heard learned counsel for the parties, perused the material available on record, and the case-law cited at the bar. Regarding the first assertion of the Applicants that predecessor in interest of the Respondents executed unregistered Gift Deed of the subject land in favour of predecessor interest of Applicants, it has consistently been held by this Court that Gift Deed does not create a title. And, the person deriving title, if any, thereunder has to

prove that the transferor did part with the ownership of the property voluntarily. It is for the beneficiaries to prove that it was a bonafide transaction, which the Applicants failed to prove before the two forums. Therefore, said purported Gift Deed can not be treated as a title document. Even otherwise, the Applicants had not been able to produce sufficient evidence in support of the said Gift of the suit land. And, such a question of fact can not be reopened in Revision Application.

7. Reverting to the second assertion of the Applicants that the suit of the Respondents was time-barred, it suffices to say that the period of twelve years for a suit under Article 142 of the Limitation Act, 1908 is to be reckoned from the date when the Defendants possession becomes adverse to the Plaintiff. The burden of proving dispossession within twelve years of the filing of the suit under Article 142 is on Plaintiff whereas, the onus under Article 144 is on the Defendant to establish that he remained in adverse possession for more than twelve years. In the instant case, the Applicants have no title documents to claim possession of the suit land and take resort to Article 142 of the Limitation Act; therefore, the aforesaid assertion of the Applicants is misconceived, thus, discarded. The case law cited by learned counsel for the Applicants is on a different footing, therefore, not relevant to the circumstances of the case in hand.

8. In the light of the above discussion, I have not noticed any jurisdictional defect to exercise jurisdiction under Section 115 Civil Procedure. The decisions of two courts below are found to be under the law. Therefore, the instant Revision Applications are dismissed with no order as to costs.

JUDGE