

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Revision Application No. S - 23 of 2003

[Mst. Bibi Shah Sultani versus Province of Sindh & 05 others]

Applicant : Mst. Bibi Shah Sultani daughter of Abu Muhammad Saleh Shah wife of Syed Khair Ali Shah through Mr. Kalander Bakhsh M. Phulpoto Advocate.

Respondents 1-5 : Province of Sindh through Deputy Commissioner, Khairpur & 04 others through Mr. Ahmed Ali Shahani Assistant Advocate General Sindh.

Respondent 6 : Town Committee Ranipur, District Khairpur, through Mr. Safdar Ali Kanasro, Advocate.

Dates of hearing : 21-09-2020 & 05-10-2020

Date of Decision : 08-02-2021

ORDER

Adnan Iqbal Chaudhry J. - Suit No. 21/1997 was filed by the Applicant/Plaintiff against the Animal Husbandry Department, Government of Sindh, and the Town Committee Ranipur (Respondents) *inter alia* for declaration of title to certain land on the basis of a gift from her father, for possession of the land, and for *mesne* profits. The land for which the said prayers were made was 0-2 $\frac{1}{4}$ ghuntas out of 0-9 ghuntas of Survey No. 477, deh Ranipur, taluka Sobhodero, District Khairpur. The suit was decreed by the Senior Civil Judge Gambat by judgment dated 31-08-2001 and decree dated 01-09-2001. However, on Civil Appeal No. 62/2001 filed by the Government of Sindh (Respondents 1 to 5) before the Additional District Judge Gambat, the suit was dismissed by judgment and decree dated 23-12-2002; hence this revision by the Plaintiff/Applicant.

2. It was the case of the Plaintiff that in 1944, Survey No. 477 in deh Ranipur, along with other Survey No.s, was granted to the Plaintiff's grandfather, Pir Syed Ghulam Mohiuddin Shah, by the

Minister of Khairpur State; that in 1957, Survey No. 477 alongwith other land was gifted by Pir Syed Ghulam Mohiuddin Shah to his son Muhammad Saleh Shah (Plaintiff's father); that in 1985, the Town Committee Ranipur unlawfully occupied 0-2 ¼ guntas in Survey No. 477 (suit land) and passed a resolution dated 30-01-1985 to deliver possession of the same to the Animal Husbandry Department, who proceeded to construct an animal husbandry facility thereat; that when Muhammad Saleh Shah took issue, the Town Committee conceded, and by letter dated 28-05-1986 the Chairman Town Committee informed the Animal Husbandry Department that the suit land belonged to Muhammad Saleh Shah and he was entitled to its possession; that the Government sought time to vacate the suit land by the year 1991; that in 1987, Survey No. 311 (0-5 ghuntas), Survey No. 303/1 (0-20 guntas), and Survey No. 477 (0-9 guntas), which included the suit land, was gifted by Muhammad Saleh Shah to his daughter, the Plaintiff; that the suit was filed when the Government declined by letter dated 26-12-1996 to vacate the suit land. To demonstrate her ownership of the suit land, the Plaintiff relied on the record of rights.

3. The case of the Animal Husbandry Department, Government of Sindh (Respondents 1 to 5) was that the suit land was delivered to the Government by the Town Committee Ranipur for the public purposes of animal husbandry pursuant to the Council's resolution dated 30-01-1985; that to that end, the Government proceeded to construct a building and hospital thereat; that Muhammad Saleh Shah (Plaintiff's father) himself was Administrator of the Town Committee up till 30-10-1988 but he never raised any objection; that after the death of Muhammad Saleh Shah, the revenue record was forged and fabricated by Revenue Officers to favor the Plaintiff; and that all letters of the Animal Husbandry Department and Town Committee Ranipur relied upon by the Plaintiff were also forged and fabricated.

4. The written statement of the Town Committee Ranipur (Respondent No.6) was that Survey No. 477 (0-9 ghuntas) along with Survey No. 316 (0-11 ghuntas) was the property of the Town

Committee, which was offered by it to the Animal Husbandry Department for construction of an Animal Husbandry Hospital; that Survey No. 316 had been purchased by the Town Committee by a registered conveyance deed from one Muhammad Hassan Palh; that the Plaintiff belonged to an influential family and had managed to forge and fabricate the revenue record of Survey No. 477 in her favour in collusion with Revenue Officers; and that the letters of the Animal Husbandry Department and Town Committee relied upon by the Plaintiff were all forged and fabricated.

5. The trial Court decreed the suit finding that the revenue record sufficiently established that the suit land was the ancestral property of the Plaintiff; that there was no evidence to show that Survey No. 477, which included the suit land, was the property of the Town Committee Ranipur; and the question whether the Town Committee was owner of Survey No. 316 was besides the point inasmuch as that Survey No. was not the land subject matter of the suit. Against said decree, no appeal was preferred by the Town Committee Ranipur (Respondent No.6). However, Civil Appeal No. 62/2001 was filed by the Government of Sindh (Respondents 1 to 5) before the Additional District Judge, Gambat, which was allowed by judgment and decree dated 23-12-2002. In dismissing the suit, the appellate Court held that there was sufficient evidence to show that the suit land was the property of the Town Committee Ranipur; that Muhammad Saleh Shah, the donor of the suit land, had never objected to construction of the animal husbandry hospital on the suit land during his lifetime; and that the Plaintiff had not produced any registered gift deed from the donor, Muhammad Saleh Shah.

6. Mr. Kalandar Bakhsh M. Phulpoto, learned counsel for the Applicant/Plaintiff submitted that the judgment passed by the appellate Court suffers from a misreading and non-reading of the evidence; that the record of rights produced by the Tapedar had proved that the suit land was gifted by Muhammad Saleh Shah to the Plaintiff; that the Respondents were unable to show that the record of rights had been manipulated, hence a presumption in favour of such

record under section 52 of the Sindh Land Revenue Act, 1967; that the suit land was gifted to the Plaintiff by an oral gift, and at that point in time section 123 of the Transfer of Property Act, 1882, was not applicable to Sindh; and that the Government of Sindh (Respondents 1 to 5) had no right to the suit land because it was claiming the same through the Town Committee Ranipur who had acknowledged by letter dated 28-05-1996 (Exhibit 92-F) that the suit land belong to Muhammad Saleh Shah, the Plaintiff's father.

7. Mr. Ahmed Ali Shahani, learned Assistant Advocate General Sindh for the Respondents 1 to 5 submitted that the Chairman, Town Committee Ranipur, and the Revenue Officers were in league with Muhammad Saleh Shah and the Plaintiff; that the suit land vested in the Town Committee Ranipur who had purchased it from one Muhammad Hassan Palh by a registered sale deed, and thereafter delivered its possession to the Animal Husbandry Department; that the alleged gift of the suit land recorded in Exhibit 89-A did not bear the acceptance of the donee, the Plaintiff; and that in any case, since the suit land was admittedly in possession of the Animal Husbandry Department, Government of Sindh, the essential ingredient of delivery of possession was missing from the gift.

8. Mr. Safdar Ali Kanasro, learned counsel for the Town Committee Ranipur (Respondent No.6) submitted that the Town Committee had no connection with the suit land; and that the letter dated 28-05-1996 (Exhibit 92-F) issued by the Town Committee was correct. All learned counsel submitted that at present the animal husbandry facility constructed on the suit land was lying abandoned as the facility had been shifted elsewhere.

9. Heard the learned counsel and perused the record.

10. The land subject matter of the suit was only 0-2 $\frac{1}{4}$ ghuntas out of 0-9 ghuntas of Survey No. 477 in deh Ranipur. The case of the Animal Husbandry Department, Government of Sindh, was that it was delivered possession of the suit land, along with 0-11 ghuntas of Survey No. 316, by the Town Committee Ranipur for the purposes of

constructing an animal husbandry facility. But it was not the case of the Government that title of such land was transferred to it by the Town Committee, nor that the suit land had been acquired under the Land Acquisition Act for a public purpose. The Town Committee also denied that it had transferred title of any land to the Government. In these circumstances, the Government could not have any better right to the suit land than the Town Committee Ranipur.

11. Though the Town Committee Ranipur had pleaded that it had purchased Survey No. 316 by a registered sale deed from one Muhammad Hassan Palh, there was no explanation how it claimed to be the owner of the suit land in Survey No. 477. No evidence whatsoever was produced by the Town Committee to show title to Survey No. 477. The Tapedar of deh Ranipur also deposed that the revenue record of Survey No. 477 did not show the Town Committee to be having any title to the same. The Tapedar was not cross-examined by the counsel for the Town Committee. The Town Committee did not appeal the judgment and decree passed by the trial Court in favour of the Plaintiff. During the hearing of this revision, counsel for the Town Committee Ranipur had also conceded that the Town Committee had no connection with the suit land. Given the evidence of the Tapedar, there is no force in the argument that the Town Committee Ranipur was in league with the Plaintiff to forego the suit land. Resultantly, the finding of the appellate Court that there was sufficient evidence to show that the suit land was the property of the Town Committee Ranipur, is a misreading of the evidence.

12. The appellate Court was swayed by the argument that since Muhammad Saleh Shah, who is said to have gifted the suit land to the Plaintiff, had never objected to the construction of the animal husbandry hospital on the suit land, that fact established that he had no title to the same. That argument was at best conjecture. If Exhibit 92-F was to be believed, which was letter dated 28-05-1986 by the Chairman, Town Committee Ranipur to the Animal Husbandry Department, that demonstrated that Muhammad Saleh Shah was pursuing possession of the suit land during his life. During this

revision, the same letter was produced by the Town Committee Ranipur from its record and filed under cover of statement dated 24-02-2020. It was never established that Muhammad Saleh Shah was Administrator of the Town Committee Ranipur at the time possession of the suit land was delivered by the Town Committee to the Animal Husbandry Department. While it was contended by the Government that Muhammad Saleh Shah was Administrator 'uptill' 1988; the Plaintiff's witness deposed that Muhammad Saleh Shah became Administrator 'from' 1988, ie., after he had gifted the suit land to the Plaintiff. As regards the finding of the appellate Court that the Plaintiff had not produced any registered gift deed from Muhammad Saleh Shah to prove the gift, that again was a misreading of the evidence, inasmuch as it was never the case of the Plaintiff that the gift was by way of a deed.

13. Having seen that the judgment of the appellate Court is a result of misreading of evidence, I now turn to the judgment of the trial Court which had decreed the gift of the suit land in favour of the Plaintiff.

14. It was the case of the Plaintiff that in 1987 she had been gifted by her father, Muhammad Saleh Shah, the following land in deh Ranipur: Survey No. 311 (0-5 ghuntas), Survey No. 477 (0-9 ghuntas) and Survey No. 303/1 (0-20 ghuntas). The Tapedar of deh Ranipur was examined with the original record of rights. Exhibit 89-A and Exhibit 89-B produced by him showed that the statement of oral gift by Muhammad Saleh Shah in favour of the Plaintiff was recorded by the Mukhtiarkar on 18-03-1987, and mutation entry in favour of the Plaintiff was made on 25-07-1989. However, the plaintiff acknowledged that at the time the gift was made to the Plaintiff, 0-2 ¼ ghuntas of Survey No. 477 (suit land) was in possession of the Animal Husbandry Department, Government of Sindh. Therefore, even assuming that Muhammad Saleh Shah had made the statement of gift before the Mukhtiarkar in favour of the Plaintiff, the question that eluded the trial Court was whether the gift, to the extent of 0-2 ¼ ghuntas of Survey No. 477, could be said to be complete when its

possession was not delivered by the donor to the donee. The other evidence that escaped the attention of the trial Court was that entry No. 3 dated 26-08-1989 produced by the Tapedar as Exhibit 89-C showed that subsequent to the gift, Muhammad Saleh Shah (donor) had proceeded to sell/transfer 0-6 ghuntas from Survey No. 477 to one Abdul Hussain. It was unexplained how and why Muhammad Saleh Shah sold land in Survey No. 477 in the year 1989 when he had gifted the entire 0-9 ghuntas of Survey No. 477 to the Plaintiff in the year 1987, and when the mutation entry thereof stood intact in the Plaintiff's name. In fact, that bit of evidence could well suggest that Muhammad Saleh Shah had revoked the gift to the extent of Survey No. 477 prior to delivering possession to the Plaintiff. As regards the award of *mesne* profits by the trial Court, no evidence whatsoever was lead by the Plaintiff to that end. In other words, the judgment and decree of the trial Court for a declaration of the gift of the suit land in the Plaintiff's favour and the award of *mesne* profits, was a result of misreading of evidence.

15. Notwithstanding that the Plaintiff was not entitled to a decree for the gift in her favour nor the *mesne* profits, but with regards the other relief sought in the suit, including possession of the suit land from the Respondents, the Applicant/Plaintiff could still fall back on her status as legal heir, sole or as co-inheritor, of late Muhammad Saleh Shah, who passed away in 1991 before the suit was brought. Though the Plaintiff had produced only a copy of the mutation entry in favour of her father, Muhammad Saleh Shah, made in the year 1957 (Exhibit 92-B), the original record brought and produced by the Tapedar as Exhibit 89-A, did show Survey No. 477, along with other land, standing in the name of Muhammad Saleh Shah before the entry of gift to the Plaintiff. On the other hand, and as already discussed above, it was not the case of the Respondents that the suit land was Government land, nor was there any evidence to that effect. Therefore, there is sufficient evidence to sustain the decree of the trial Court in terms of prayer clauses (ii), (iii) and (v) of the plaint, which include possession of the suit land against the Respondents.

16. Having seen that the judgment and decree passed by the appellate Court is a result of misreading of evidence, and that part of the judgment and decree passed by the trial Court too was a result of misreading of evidence, this revision application is disposed of as follows. Judgment and decree dated 23-12-2002 passed in Civil Appeal No. 62/2001 is set-aside, and the judgment dated 31-08-2001 and decree dated 01-09-2001 passed in Suit No. 21/1997 is sustained only to the extent of relief granted in terms of prayer clauses (ii), (iii) and (v) of the plaint.

JUDGE