

*Judgment Sheet*

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

R.A No.276 of 2017

***Shahnawaz Vs. Muhammad Azam and others***

Applicant: Through Mr. Rustam Khan Talpur, Advocate.

Respondents 1,3&4: Through Mr. Muhammad Ishaque Khoso, Advocate.

Respondents 2&5: Through Mr. Ghulamullah Chang, Advocate.

Respondents 6 to 9: Through Mr. Wali Muhammad Jamari, Assistant A.G. Sindh.

Date of hearing: 25.01.2021 and 01.02.2021

Date of judgment: 01.02.2021.

**JUDGMENT**

**ARSHAD HUSSAIN KHAN, J:** - The applicant through instant Civil Revision Application has challenged the Judgment and Decree dated 24.10.2017 passed by learned 2<sup>nd</sup> Additional District Judge, Badin in Civil Appeal No.31 of 2017, whereby he allowed the appeal and the Judgment & Decree dated 10.02.2017 respectively passed by the Senior Civil Judge, Badin in F.C Suit No.110 / 2013 in favour of the applicant were modified.

2. Brief facts leading to the filing of the present revision application are that agricultural land bearing S. Nos.466/1 to 3, 478/1 to 4, 493/1 to 4 and 492/1 to 3 total area 49-37 acres situated in deh Amarnar Tapo Bakho Chandio, Taluka Tando Bago, District Badin [the agricultural land] out of which the applicant / plaintiff had purchased 0-19 paise share of area 9-19 Acres from one Muhammad Ishaque Pijaro (respondent No.2) through a registered

sale deed No.562 dated 25.10.1993 (subject land). The applicant purchased the subject land from Muhammad Ishaque who had purchased the same from one Ali Muhammad son of Bachal Talpur (respondent No.5) in the year 1993 through statement of sale dated 24.01.1993 and entry in respect thereof was also mutated in the name of said Muhammad Ishaque as entry No.51 dated 24.01.1993. Besides, the applicant also purchased 0-18 paise share (9-13 acres) from Mst. Nazi daughter of Bachal Talpur through registered sale deed and such entries/khtata have also been mutated in the name of applicant in revenue record as entry No.71 and 72. It is also averred that the applicant since the date of purchase of the subject land being lawful owner is in cultivating possession of the same and he is regularly paying revenue Taxes to the Government. It is further stated that a week back, prior to the filing of suit, respondents No.1, 3 and 4 (defendants Nos.5 to 7 in Suit 110/2013) came at the land of the applicant and disclosed that they have purchased the subject land from one Ali Muhammad Talpur (respondent No.5) whereupon, the applicant / plaintiff went to the office of respondent No.9 (defendant No.4 in suit 110/2013) where he came to know that respondents No.1, 3 and 4 fraudulently obtained sale certificate of the subject land in collusion with revenue staff from the office of respondent No.8 (defendant No.3 in suit 110/2013) and got registered false sale deed 1674 dated 05.11.2012 in their names. The applicant upon coming to the above purported sale, when enquired from the revenue department, it revealed that defendants Nos.5 to 7 fraudulently managed false sale certificate of suit land in collusion with Ali Muhammad son of Bachal Talpur and supervising Tapedar Jan Muhammad Khoso and got registered sale deed No.1674 dated 05.11.2012. Faced with such a situation, the applicant filed F.C. Suit No.110 of 2013 for declaration, cancellation of sale deed and permanent injunction against the respondents / defendants with the following prayers:-

- A. Declaration that the plaintiff is lawful owner of the suit land and registered sale deed No.1674 dated 05.11.2012 in favour of defendant No.5 to 7 is illegal, null, void and against the law and same fraudulently prepared by the defendants Nos.5 to 7 and is liable to be cancelled.
- B. To grant permanent injunction against the official defendants No.1 to 3 restraining them from making further change in the record of rights on the basis of sale deed No.1674 dated 05.11.2012 and also defendants No.5 to 7 be restrained from interfering into the peaceful possession of the plaintiff over the suit land directly or indirectly.
- C. The costs of the suit be borne by the defendant No.1.
- D. Any other relief which this Honourable Court deems fit and proper be awarded to the plaintiff.

3. The respondents No.1 to 5 contested the above suit and filed their written statements respectively whereby they denied the averments made in the plaint and further stated that Mst. Nazi was not owner of the land and such entry No.71 and 72 have been shown falsely in the revenue record and Mst. Nazi was neither share holder in the subject land nor any registered sale deed was executed by Mst. Nazi in favour of any person and the registered sale deed is false, bogus, fraudulent and is not binding; that the applicant / plaintiff though is a joint khatedar in the subject land but he is not in possession of the total area; that Mir Ali Muhammad Talpur had never sold out his share to Muhammad Ishaque and the entry No.51 dated 24.01.1993 is also false, fabricated and manipulated one; that they purchased the share in the suit land after issuance of sale certificate, through registered sale deed from one Mir Ali Muhammad Talpur who was share holder in the revenue record and he rightly sold out his share admeasuring 9-00 acres to them (defendants No.5 and 6 in suit) and the other defendants. According to defendants / respondents Nos.1 to 5, the applicant / plaintiff had no cause of action to file the suit and he was not entitled to any relief as claimed by him and the suit of the applicant / plaintiff was not maintainable under the law therefore, the same was liable to be dismissed with cost.

4. Out of the pleadings of the parties, following issues were framed by the trial Court:-

#### **ISSUES**

1. Whether the plaintiff had purchased 0-19 paisa share of land admeasuring (9-19) acres from one Muhammad Ishaque Pijaro through registered sale deed No.562 dated 25.10.1993?
2. Whether the registered sale deed No.562 dated 25.10.1993 and entry No.51 dated 24.01.1993 is false and fabricated document and liable to be cancelled?
3. Whether Mst. Nazi daughter of Bachal Talpur was the owner or share holder in the suit land?
4. Whether Mir Ali Muhammad son of Bachal Talpur had sold out his share to Muhammad Ishaque and the entry No.51 dated 24.01.1993 is legal and valid?
5. Whether the defendants Nos.5 to 7 had purchased the suit land from one Ali Muhammad Talpur through registered sale deed No.1674 dated 05.11.2012?
6. Whether the registered sale deed No.1674 dated 05.11.2012 is illegal, void and the same is liable to be cancelled?
7. Whether the defendant No.9 had leased out the suit land to plaintiff for the period of five years?
8. Whether Ghulam Muhammad Tapedar, brother of plaintiff made false and concocted sale deed in respect of suit land in favour of plaintiff?

9. Whether the plaintiff is entitled for relief as claimed?
10. What should the decree be?

5. After framing of issues, both the parties led their evidence. Subsequently, learned trial Court after hearing learned counsel for the parties, vide its judgment dated 10.02.2017 decreed the suit of the applicant, which was challenged in appeal bearing No. 31 of 2017 by respondents No. 1 to 5 which appeal was subsequently allowed and the decree of learned trial court was modified, hence the applicant preferred this Revision Application against conflicting findings of the Courts below.

6. Learned counsel for the applicant mainly contended that the judgment and decree passed by the lower appellate Court is against the law, facts and equity; that the learned lower appellate Court has not framed the proper points for consideration as required Under Order 41 Rule 31 CPC; that judgment of the learned lower appellate Court is slipshod, non-speaking and without application of judicious mind hence liable to be reversed; that the learned trial court had rightly decreed the suit on the basis of its findings on issues No.2, 3, 4 and 6; that the learned lower appellate Court committed illegality by not appreciating the documentary as well as oral evidence produced by the applicant. Lastly, he prayed that the instant revision application may be allowed. In support of his contentions, learned counsel has placed reliance on the cases of Sheikh Muhammad v. Mst. Hashmat Sultana (1989 SCMR 34), Gul Rehman v. Gul Nawaz Khan (2009 SCMR 589), Pakistan Refinery Ltd. Karachi v. Barrett Hodgson Pakistan (Pvt.) Ltd. and others (2019 SCMR 1726), Muhammad Shamim through Legal Heirs v. Mst. Nisar Fatima through Legal Heirs and others (2010 SCMR 18), Manzoor Ahmed and 4 others v. Mehrban and 5 others (2002 SCMR 1391), Muhammad Nawaz Shah v. Imam Bakhsh and 4 others (2000 YLR 1456), Muhammad Yousuf and 2 others v. Muhammad Afzal and 6 others (2015 YLR 1162), Gul Muhammad v. Kaimuddin (2012 YLR 218), Khan Mir Daud Khan and others v. Mahrullah and others (PLD 2001 Supreme Court 67), Ali Noor (Pvt.) Ltd. through Authorized person v. Trading Corporation of Pakistan (Pvt.) Ltd. through Chief Executive / Director (PLD 2015 Sindh 451), Mazloom Hussain v. Abid Hussain and 4 others (PLD 2008 Supreme Court 571), Rasool Bukhsh and another v. Muhammad Ramzan (2007 SCMR 85).

7. On the other hand, Mr. Muhammad Ishaque Khoso, learned counsel appearing for respondents No.1, 3 and 4 has mainly contended that the respondents had proved their stance through the trustworthy testimony of their witnesses and the learned lower appellate Court has rightly allowed the appeal

considering all the aspects of the case including the documents produced by the parties, therefore, the impugned judgment of learned lower appellate Court does not suffer from any illegality or irregularity and it does not call for any interference of this Court. In support of his contentions, he has relied upon the cases of Farid Bakhsh v. Jind Wadda and others (2015 SCMR 1044) and Mst. Arjmand Ara Begum and others v. Ayaz Umer and others (2004 SCMR 489).

8. Conversely, Mr. Ghulamullah Chang, learned counsel for the respondents No.2 and 5 submits that although they have not preferred any revision against the order of lower appellate court yet they do not support the judgment of lower appellate court hence seeks direction of this court to remand the case to the trial court for its decision afresh. He placed reliance upon the case of Arshad Khan v. Mst. Resham Jan and others (2005 SCMR 1859).

9. Learned Assistant A.G. Sindh appearing on behalf of the official respondents supported the arguments advanced by learned counsel for the applicant and also placed his reliance on the cases reported as Sheikh Muhammad v. Mst. Hashmat Sultana (1989 SCMR 34) and Gul Rehman v. Gul Nawaz Khan (2009 SCMR 589).

10. I have heard the arguments of learned counsel for the parties and with their assistance have perused the material available on record as well as the case law cited at the Bar.

11. It is well settled that revision is a matter between the higher and subordinate Courts, and the right to move an application in this respect by the Applicant, is merely a privilege. 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 apex Court was pleased to hold that the jurisdictions under section 115, C.P.C., are discretionary in nature, but it does not imply that it is Not a right and only privilege, therefore, the Court may not arbitrarily refuse to exercise its discretionary powers, rather, to act according to law and the principles enunciated by the superior Courts. It is a well-established principle that if the findings of the two courts are at variance, the conflict would be seen to assess the comparative merits of such findings in the light of the facts of the case and reasons in support of two different findings given by two courts on a question of fact; and if findings of the appellate court are not supported by evidence on record and the same are found to be without logical reasons or are found arbitrary or capricious, same can be interfered with in Revision. Further, it is also well settled that if the trial Court and the First Appellate Court, on the

basis of same set of evidence, had reached the conflicting conclusion, the High Court, in such circumstances, in its revisional jurisdiction under section 115 C.P.C, can reappraise the entire evidence. Reliance in this regard can be placed on the case of Muhammad Din and others v. Mst. Naimat Bibi and others [2006 SCMR 586]

12. From perusal of the record it appears the applicant/plaintiff in his FC No. 110 of 2013 sought declaration in respect of his ownership over the subject land and cancellation of registered sale deed in favour of respondent no.1, 3 and 4 in respect thereof. The applicant in support of his stance in the case produced entry No.72 dated 09.10.1994 in favour of Muhammad Ishaque showing that said Muhammad Ishaque sold out the suit land admeasuring 9-19 acres to the applicant / plaintiff. In order to prove such assertion, the applicant also produced registered sale deed bearing No.562 dated 25.10.1993 [Ex.60/E]. He further stated that on the basis of said registered sale deed, the mutation in the revenue record was made bearing entry No.72 dated 09.10.1994. The applicant / plaintiff has also produced the original sale deed (Ex.60/E) and examined the petition writer Ghulam Abbas to prove the genuineness of the same. He also examined Sub-Registrar, Matli who had produced the registered sale deed at Ex.52/A. The vender Muhammad Ishaque though denied the execution of registered sale deed in favour of the applicant / plaintiff however, in his written statement, he has stated that he leased out the suit land to the applicant / plaintiff for the period of five years but the brother of plaintiff namely Ghulam Muhammad, who is Tapedar, made false and concocted sale deed in respect of the suit land in favour of plaintiff. There is no cavil to the proposition that in cases of fraud, burden to prove is upon the person who alleges fraud. The respondent No.2 alleged fraud, therefore, it was for him to prove that he was deprived of his property fraudulently. It has also come on record that said Muhammad Ishaque has failed to produce any cogent oral and/or documentary evidence to show that any fraud has been committed by the applicant and or the concerned sub-registrar in the execution of registered sale deed. No lease agreement has been produced by him before the trial court. No proof regarding payment of lease amount by the applicant has been produced in the evidence by him. Even no independent witness from the locality has been examined by said Muhammad Ishaque to prove his assertion. Conversely, the applicant / plaintiff has produced best evidence in shape of production of original registered sale deed in the Court and examination of petition writer to that sale deed to prove that the transaction was bonafide and genuine. He also produced the entries in the revenue record in respect of the transaction of suit land. These entries are old one. He has also produced the receipts of payments of land revenue to

the government showing that he is in possession of the suit land. The witness P.W-1, Ghulam Murtaza, Sub-Registrar, Matli has endorsed the veracity of the aforesaid Sale Deed. In so far as the cancellation of the registered sale deed in favour of the respondents No. 1, 3 and 4 is concerned, from the record it appears that initially one Mst. Bherai sold out her entire 75% share in the agricultural land to (i) Nazeer Ahmed son of Muhammad Bachal, (ii) Qadir Bux son of Muhammad Bachal, (iii) Ali Muhammad son of Muhammad Bachal (respondent No. 5) and (iv) Mst. Nazi daughter of Muhammad Bachal through a registered sale deed dated 06.06.1987 [Ex.60/B]. Subsequently, Ali Muhammad through oral statement of sale transferred his share (0-19 paisa/ the subject land in the case), in the agricultural land in favour of Muhammad Ishaque son of Allah Dino (respondent No.2) vide Entry No. 51 dated 24.01.1993 [Ex.60/D]. Thereafter, Muhammad Ishaque sold out the subject land to the applicant vide registered sale deed bearing No.562 dated 25.10.1993 [Exh.60/E] and thereafter, mutation was affected in the revenue record vide Entry No. 72 dated 9.10.1994. The applicant in support of his stance of the ownership over the subject land produced chain of registered documents coupled with entries of the revenue record and examined material witnesses in his evidence before the trial court. The official as well as private witnesses endorsed the stance of the applicant. In the circumstances, it is crystal clear that the applicant is the owner of the subject property and Ali Muhammad after disposing of the subject land to Muhammad Ishaque who subsequently sold the same to the applicant, had no right, title and interest in the property to sell the same again and thus the learned trial court rightly cancelled the registered sale deed of the subject land in favour of respondent No. 1, 3 and 4 .

13. After giving due consideration to the submissions made by the learned counsel and examining and evaluating the evidence with their able assistance, I am of the considered opinion that this is clearly a case of misreading and non-reading of the evidence, and ignoring material evidence on record by the lower appellate court; the findings of the trial court were in accordance with the evidence on record, and those of the lower appellate court were contrary to the admitted facts and the evidence on record. The impugned judgment and decree are contrary to the law laid down by the Superior Courts, and thus, not being sustainable in law, cannot be allowed to remain in the field.

14. The case-law relied upon by learned counsel for the private respondents have been perused and considered with due care and caution but are found distinguishable from the facts of the instant case and hence the same are not applicable. Whereas the legal precedents relied upon by the

counsel for the applicant as well as learned A.A.G support the stance of the Applicant and applies to the present case.

15. The upshot of the above discussion is that illegality, irregularity and jurisdictional error in the findings of the learned lower appellate court seems to have been committed which resulted into the impugned judgment and decree dated 24.10.2017. Consequently, by my short order dated 01.02.2021, I allowed the instant revision application and the impugned judgment and decree dated 24.10.2017 passed in Civil Appeal No.31 of 2017 were set aside and the judgment and decree dated 10.02.2017 passed by the trial court in F.C Suit No.110 / 2013 in favour of the applicant were maintained.

Foregoing are the reasons for my short order dated 01.02.2021.

JUDGE

Dated. 09.02.2021.

Tufail