

**THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Civil Revision No. S-30 of 2015

Applicant : Mst. Hijab Akhtar wife of Shafiq Ahmed Khoso, through Mr. Ghulam Dastagir A. Shahani, Advocate.

Respondents 1-4 : Province of Sindh through its Secretary [Revenue] Department and 03 others, through Mr. Munawar Ali Abbasi, Assistant Advocate General Sindh and Syed Fida Hussain Shah State Counsel.

Respondent 5 : Abdul Rasheed son of Umardin Arain, through Mr. T. David Lawrence, Advocate.

Dates of hearing : 14-01-2019, 14-02-2019 & 11-03-2019.

ORDER

ADNAN IQBAL CHAUDHRY J. - F.C. Suit No. 51/2014 (old F.C. Suit No. 04/2013) filed by the Applicant (plaintiff), *inter alia* for a declaration of title to immovable property against the Respondent No.5, was dismissed by the 1st Senior Civil Judge Jacobabad vide judgment and decree dated 23-12-2014. Civil Appeal No.01/2015 filed by the Applicant was also dismissed by the District Judge Jacobabad vide judgment and decree dated 13-03-2015; hence this Civil Revision.

2. The land subject matter of the suit was a Plot admeasuring 41,500 sq. ft. at Thul-Kandhkot Road, in Survey No.314, deh Bolaki, Taluka Thul, District Jacobabad. It was the case of the Applicant (plaintiff) that she had purchased the subject land from the Respondent No.5 for a consideration of Rs. 258,000/-; that the transaction was an oral sale dated 10-02-1994 recorded before the Mukhtiarkar Thul and followed by entry No.12 dated 13-02-1994 to

mutate the subject land to the name of the Applicant; that thereafter the Applicant constructed a petrol pump on the subject land; that the suit was filed when the Applicant discovered that the Respondent No.5 had moved an application to the Revenue authorities for cancellation of the Applicant's entry in the record of rights; it was alleged that the Respondent No.5 acting in collusion with the Official Respondents was trying to dispossess the Applicant; hence the prayer for a declaration of her title, for restraining the Respondent No.5 from interfering with her possession, and for restraining the official Respondents from cancelling her entry in the record of rights.

3. It was the case of the Respondent No.5 that in 2010 he had entered into a partnership with the husband of the Applicant, namely Shafiq Rehman Khoso, for running a petrol pump on the subject land, for sharing its profit, 25% to the Respondent No.5 and 75% to the Applicant; that the Respondent No.5 had never sold the subject land to the Applicant; that the Applicant's husband, Shafiq Rehman Khoso, was a high-ranking Revenue officer who manipulated the record of rights to create a false entry in favor of his wife; that subsequently Shafiq Rehman Khoso ousted the Respondent No.5 from the subject land, refused to give him his share of the partnership business and alleged that the subject land was the property of his wife, the Applicant; that that is when the Respondent No.5 came to know that the subject land had been fraudulently mutated to the Applicant and thus the Respondent No.5 moved an application to the Revenue authorities for cancellation of the Applicant's entry in the record of rights. It was contended by the Respondent No.5 that up until 1998 the subject land was part of a larger tract of land in Survey No. 314 which was then the joint property of the Respondent No.5 and one Ziauddin and therefore it was absurd to allege that the Respondent No.5 had sold a property that was not his exclusive property.

4. The above narration will show that the primary question before the Courts below was whether the Applicant had proved the oral sale of the subject land said to have been made to her by the Respondent No.5 on 10-02-1994 and said to have been recorded by the Mukhtiarkar Thul (under section 42, Sindh Land Revenue Act, 1967).

5. By CMA No.434/2015 moved in this Civil Revision, the Applicant prays for permission to produce additional documentary evidence under Order XLI Rule 27 CPC. By order dated 02-03-2018 it was observed that all pending miscellaneous applications will be decided with the main case. The application for additional evidence is of course opposed by the learned counsel for the Respondent No.5. There is no explanation by the Applicant as to why the documents now sought to be produced were not produced before the trial court, or why an application under Order XLI Rule 27 CPC was not moved before the appellate court; nor was learned counsel for the Applicant able to convince me to exercise discretionary jurisdiction to accept these documents as additional evidence at the revisional stage. Nonetheless, I have gone through the said documents and do not find any of them to be relevant to the core issue viz. the proof of the oral sale allegedly made in the year 1994. Most of the documents sought to be produced relate to events much after 1994 and to the running of a petrol pump on the subject land.

6. Mr. Ghulam Dastagir Shahani, learned counsel for the Applicant had at the outset contended that the judgment of the appellate court was contrary to Order XLI Rule 31 CPC as the appellate court had not decided all issues settled by the trial court. But Order XLI Rule 31 CPC does not require the appellate court to decide all issues settled by the trial court. In the case of *Muhammad Iftikhar v. Nazakat Ali* (2010 SCMR 1868), it was held by the Supreme Court that where the Appellate Court does not reverse the findings of the trial court, a decision on each issue may not be distinctly recorded as long as the provision of Order XLI Rule 31 CPC is

complied with in substance. Again, in the case of *Zaitoon Bibi v. Dilawar Muhammad* (2004 SCMR 877), it had been held that “where the Appellate Court decides to affirm the findings of the trial court, it would be sufficient compliance with the provisions of law if the evidence is essentially discussed and findings recorded. At any rate it would not amount to violation of law, if some issues are discussed and decided together. Real question for deciding an appeal should be whether a party has been prejudiced and there has been gross miscarriage of justice.”

In para 9 of its judgment, the appellate court has stated the points for determination required of Order XLI Rule 31 CPC, which includes the primary question of the proof of the alleged oral sale, and the learned appellate court has discussed the evidence to decide the said point. That, in my view, is substantial compliance of Order XLI Rule 31 CPC.

7. Coming now to the findings of the Courts below on the proof of the alleged oral sale. The Applicant had lead evidence through an Attorney. The register that had recorded the alleged oral sale dated 10-02-1994 had been summoned and had been produced by the Tapedar as Exhibit-64. After perusing the evidence, both the courts below held that the alleged oral sale dated 10-02-1994 had not been proved for the reasons that the record of oral sale did not bear the name or stamp of the Tapedar who had purportedly identified the Respondent No.5, nor the name and stamp of the Mukhtiarkar who had recorded the alleged oral sale; that the NIC of the seller, Respondent No.5, was also not mentioned; that only one person was mentioned as witness to the oral sale, namely Muhammad Hayat Bhatti, who was admittedly the driver of the Applicant’s husband; that in any case the said witness was never examined by the Applicant in the suit; that nothing had been brought in the evidence to prove the sale consideration alleged to have been paid by the Applicant to the Respondent No.5; that the signatures of the Respondent No.5 obtained in Court were different from his purported signatures in the statement of oral sale.

8. Mr. Ghulam Dastagir Shahani, learned counsel for the Applicant submitted that the Courts below failed to notice that in para 11(2) of his written statement, the Respondent No.5 had acknowledged that in the year 1998, Survey No.s 313 and 314, of which the subject land was a part, was the property of three persons, the Respondent No.5, one Ziauddin and one Mir Darya Khan. He submitted that Mir Darya Khan was the father-in-law of the Applicant and thus the reference in para 11(2) was to the subject land. That, in my view, is a misreading by the learned counsel of para 11(2) of the written statement. What was stated by the Respondent No.5 in paras 11(1) and 11(2) of his written statement was that prior to 27-08-1998, Survey No.s 313 and 314 were the joint property of the Respondent No.5 and Ziauddin, and on 27-08-1998 one Mir Darya Khan also became a co-owner in Survey No.s 313 and 314; in other words, in the year 1998 the Respondent No.5 and Ziauddin had sold a part of their land in the said Survey numbers to Mir Darya Khan. Even assuming that Mir Darya Khan was the father-in-law of the Applicant, for which there was no evidence, the transaction referred to in para 11(2) of the written statement was in the year 1998 and between the Respondent No.5 and 'Mir Darya Khan' (not the Applicant), whereas it was the case of the Applicant that the oral sale of the subject land was made to her in 1994, not to Mir Darya Khan in the year 1998. Therefore Mr. David Lawrence, learned counsel for the Respondent No.5 rightly submitted that the Applicant was trying to set-up a different case in this Revision, and one which I might add, was destructive of her case in the Courts below.

9. As to the proof of the alleged oral sale, Mr. Shahani, learned counsel for the Applicant submitted that though there was never any partnership of the Respondent No.5 with the Applicant or her husband with regards to the petrol pump on the subject land, the fact that the Respondent No.5 had acknowledged that the Applicant's husband had a 75% share in the said petrol pump, was

by implication an acknowledgment that he (Respondent No.5) was not the exclusive owner of the subject land. He further submitted that had the Respondent No.5 been the owner of the subject land, he would have filed a suit when he was allegedly ousted from the partnership business and the subject land. But in making that last submission, learned counsel did not notice that it was the case of the Respondent No.5 that when he learnt of the false entry made in the record of rights in favor of the Applicant, he filed an application with the Revenue authorities for its cancellation. Be that as it may, learned counsel for the Applicant wanted the Court to infer from the circumstances that the oral sale had in fact been made. But such circumstantial evidence, if evidence at all, would not be relevant when the Applicant had failed miserably to prove the alleged oral sale dated 10-02-1994. No evidence had been brought by the Applicant to show payment of the sale consideration; the statement recorded by the Mukhtiarkar to record the oral sale did not bear the names and seals of the Tapedar and the Mukhtiarkar, nor the NIC of the Respondent No.5; only one person was mentioned as witness to the oral sale who was admittedly the driver of the Applicant's husband; but even that person was not summoned/examined in the suit by the Applicant.

10. It is settled law that a mutation entry in the record of rights is not conclusive evidence of title, and that the presumption of correctness of such entry provided by section 52 of the Sindh Land Revenue Act, 1967, is a rebuttable presumption. Thus the mutation entry in favor of the Applicant in the record of rights lost its evidentiary value when the sale on the basis of which such entry was made, had not been proved. In that regard, reliance can be placed on the cases of *Muhammad Younus Khan v. Government of NWFP* (1993 SCMR 618) and *Muhammad Akram v. Altaf Ahmad* (PLD 2003 SC 688) cited by Mr. David Lawrence Advocate. In the latter case it was held by the Supreme Court that "it is a settled principle of law that a mutation confers no title. Where a mutation is challenged, the party that relies on such mutation(s) is bound to

revert to the original transaction and to prove such original transaction which resulted into the entry or attestation of such mutation(s) in dispute". Further, in the case of *Manzoor Hussain v. Khalid Aziz* (2019 SCMR 70), also cited by Mr. David Lawrence Advocate, it has been held by the Supreme Court that where none of the witnesses to the oral sale were examined in Court, the transaction of sale was not proved.

11. Since the Applicant had failed to prove the oral sale of the subject land to her, the concurrent findings of fact arrived at by the Courts below do not call for any interference and therefore this Civil Revision is dismissed along with pending applications.

J U D G E

Dated: 06-09-2019