

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

IIInd Civil Appeal No. S – 09 of 2010

Date of hearing: 11-10-2021

Date of decision: 11-10-2021

Mr. Ghulam Murtaza Korai, Advocate for the Appellants.
Mian Abdus Salam Arain, Advocate for Respondents No.5 to 7.
Mr. Ali Raza Baloch, Assistant Advocate General Sindh.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this IIInd Appeal, the Appellants have impugned judgment dated 30-06-2010 passed by the 1st Additional District Judge, Ghotki in Civil Appeal No.75 of 2000, whereby while dismissing the Appeal, the judgment of the Trial Court (the Senior Civil Judge, Ghotki) dated 23-05-2000 passed in F.C. Suit No.135 of 1993 (Old No.112 of 1988) dismissing the Suit of the Applicant has been maintained.

2. Learned Counsel for the Appellants submits that both the Courts below have erred in law by holding that the Suit was not maintainable in view of provisions of Section 14 of the West Pakistan Evacuee Properties (Management and Disposal) Act; that the orders passed by the Deputy Commissioner, Additional Commissioner and Member Board of Revenue were incorrect in law and had failed to appreciate the facts as pleaded; that the entry of the Respondents was also disputed, which fact has not been considered by the Courts below; hence, the impugned orders are liable to be set aside or at least matter be remanded to lead proper evidence. In support, he has relied upon the case reported as *Shafi Muhammad alias Muhammad Shafi v. Government of Sindh through Deputy Commissioner and 2 others* (PLD 1993 Karachi 401).

3. Respondents' Counsel has supported the orders passed by the Courts below and submits that in the entire litigation before the Revenue Authorities, the Appellants failed to prove their case, whereas, property was declared as Evacuee property and could not have been purchased through sale deed as contended. According to him the revenue entry in the name of the predecessor in interest of the Applicants was found to be a forged entry; hence, no case is made out.

4. I have heard both the learned Counsel and perused the record.

5. It appears that the Appellants had filed a Suit for declaration, possession, mesne profit and injunction, and the precise declaration was to the effect that the orders passed by the Revenue Authorities were null and void, whereas, the *foti khata badal* already effected in the record of rights in favour of the Appellants was valid. The further prayer was made in respect of restoration of the Revenue entry and so also possession from private Respondents. It is a matter of record that initially, the Deputy Commissioner concerned was approached by the Appellants and vide order dated 06-12-1980, it was held that the statement of sale recorded in the Revenue record in favour of the Appellants was forged and manipulated. The finding of the learned Deputy Commissioner, which is relevant for the present purposes, is as under:

“As regards entry No.60 of V.F.VII of deh Bhetoor dated 12.11.1946, S.Nos.175, 176, 185 and 188 are shown to have been purchased by Mahboob s/o Bijar Mahar in the sum of Rs.1800/- from M/s Jamnadas and others all sons of Tikiomal vide statement dated 12.11.1946 at leaf 44 of the Book of statement, whereas further perusal of the Book of statement shows that the statements at leaves No.45 to 52 were recorded from 21.4.1946 to 27.10.1946. The statement under dispute was recorded on the space left at the bottom of leaf No.44. Similarly the original entry No.60 dated 4.11.1946 in V.F.VII of deh Bhetoor had been corrected as 60-A and in the space available between original entries Nos.59 and 60 an unauthorized entry had been made with serial No.60 dated 12.11.1946 in favour of Mahboob Mahar in pursuance of the said statement available at leaf 44. There appears therefore absolutely no reason as to why the statement and mutation entry in question in favour of Mahboob Mahar of the later dates were available before the statements and mutation entry of earlier dates. This goes to prove that the mischief has been played in the space available in the said registers. This has caused wrongful loss to the claimant and wrongful gain to Mahboob. Attempt has also been made to attest to bogus entry No.60 of V.F.VII under the signature of the Special Mukhtiarkar R/Rs who has actually attested entries No.60 & 61 now renumbered as 60-A and 61. But it is clear to the naked eye that the signature is a forged one. There is also no signature of the Supervising Tapedar R/Rs available on this entry while the original entries 60 & 61 bear his signatures.

Again original entry No.47 dated 10.8.1941 pertains to the transaction with regards to S.No.170 only; but subsequently unauthorized addition below the same entry has been made by which S.No.163 has unauthorizedly been mutated in favour of Amir Bux and Mst. Zarina from the owner Milkimal s/o Ram Rakhimal. The mutation entry No.47 has been made on the basis of statement dated 9.8.1941 of Milkimal leaf No.5 of Book of statement who has sold S.No.170 of deh Bhetoor only to Dharomal s/o Shewakmal. This statement has been interpolated with the additions by showing the sale of another S.No.163 of deh Bhetoor. The additions in the

book of statement as well as in the mutation register V.F.VII are in different ink and in different hand.”

6. The said order of the Deputy Commissioner was maintained by the Additional Commissioner as well as Member Board of Revenue in Revision, and thereafter, instant Suit was filed. Insofar as the learned Trial Court is concerned, after recording of evidence, the conclusion arrived at for the present purposes is as follows:

“I have gone through the order dated 6.11.1980 passed by the learned Deputy Commissioner, Sukkur, and it appears that the learned Deputy Commissioner in his order has refuted the allegation of tempering of record but has stated that the entry made in favour of plaintiff in the revenue record was based on false and bogus entries being maintained by Taj Muhammad Tapedar of Tapa Shahpur, as such, cancelled such entry and the plaintiff in his entire evidence has not established or even alleged as to how and what record was tempered by Revenue officer or settlement authorities. The plaintiff even did not call for the record from concerned Revenue Department in order to prove his allegation of tempering of record. On the contrary, the learned Deputy Commissioner while passing order dated 6.XI.1980 have gone through the Revenue Record and Rehabilitation record and after considering the same was of the view that Tapedar made unauthorized note in the record that S.Nos.146, 175, 176 and 188 were Muslims property. The learned Deputy Commissioner further held that perusal of village form VII of Deh Bhetoor shows that there was clear interpolation in entry No.47 regarding S.No.163 (1-33) which was made in favour of Amir Bux Metlo and Mst. Zarina in equal share whereas the said S.No. had already been shown as Evacuee and allotted to claimant, Shah Muhammad. The learned Additional Commissioner Sukkur in his order dt: 23.6.1986 held that the plaintiff has failed to rebut the findings of the learned Deputy Commissioner the defendant No.2 by way of any positive evidence. In view of above evidence I feel no hesitation in holding that the plaintiffs have failed to discharge the burden of proof satisfactory lies upon his shoulders therefore the same can not be shifted upon defendant.

In view of above, my findings on the issues in hand is being not proved.”

7. From perusal of the aforesaid order, it clearly reflects that the Appellants / Plaintiffs, after having lost all proceedings before the Revenue Department, could not come up with any cogent reason or confidence inspiring evidence so as to disbelieve the version of the Revenue Authorities. No attempt was ever made to summon any witness for producing the record and the genuineness of the entry as claimed. Mere production of purported titled documents cannot suffice without producing witnesses including official witnesses to seek support from any entry in the Revenue record. It has come on record that the entry on the basis of which the declaration was being sought was a forged entry, whereas, the

Appellants had completely failed in leading any evidence so as to upset the findings of three forums below; hence, the learned Trial Court as well as the Appellate Court were justified in dismissing the claim of the Appellants.

8. As to other legal issues which have been raised by the Appellants Counsel, as well as the question that whether a Revision ought to have been filed instead of IInd Appeal is not relevant for the present purposes, as apparently, the Appellants' case has been decided on merits in which the Appellants have miserably failed to convince the Courts below as well as this Court, therefore, no further finding is to be recorded on such legal issues.

9. In view of hereinabove facts and circumstances of this case, since the Appellants have failed to point out any illegality or misreading in the orders passed by the forums below, therefore, by means of a short order in the earlier part of the day the Appeal was **dismissed** and these are the reasons thereof.

Abdul Basit

J U D G E