

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 63 of 2000

Sachedino Kalwar v. Province of Sindh and others

Date of hearing: **13-09-2021**

Date of decision: **05-11-2021**

Mr. Tariq G. Hanif Mangi, Advocate for the Applicants.
Mr. Sarfraz A. Akhund, Advocate for respondents No.4 & 6.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

.....

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision Application, the Applicant has impugned judgment and decree dated 10-06-2000 and 15-06-2000, respectively, passed by the IInd Additional District Judge, Ghotki in Civil Appeal No.23 of 1998, whereby order and decree dated 22-06-1998 and 26-06-1998, respectively, passed by the Senior Civil Judge, Ghotki in F.C. Suit No.30 of 1997, through which the Plaintiff in Suit of the Applicant was rejected in terms of Order VII Rule 11 CPC, has been maintained.

2. Learned Counsel for the Applicant has contended that the Courts below were not justified in rejecting the plaintiff; that the Applicant had filed two separate Suits for pre-emption filed prior in time were pending, therefore, till such time the issue of pre-emption was finally decided, the Suit was maintainable; that the bar of jurisdiction of a Civil Court is not absolute; that the order dated 24.3.1997 impugned in the Suit was tainted with mala fides, therefore, the Suit was competent; hence, this Civil Revision merits consideration and be allowed by setting aside the orders of the Courts below and by remanding the matter to the trial Court to decide the Suit on merits after evidence.

3. On the other hand, respondents' Counsel has opposed this Revision on the ground that the two Courts below have given concurrent findings against the Applicant; hence no case is made out; that the Applicant had impugned order of partition which was an appealable order, therefore, the

Suit was not competent in terms of The Sindh Land Revenue Act, 1967, (“Act”). He has prayed for dismissal of this Revision Application.

4. I have heard both the learned Counsel and perused the record. It appears that the Applicant filed a Suit for declaration and injunction by impugning order dated 24.3.1997 passed by the Assistant Commissioner, Ghotki, whereby, partition of the Suit property was allowed. In the said Suit the plaint was rejected by the learned Trial Court on an application of Respondents filed under Order 7 Rule 11 CPC. The relevant finding is as under:

“I have considered the above arguments and have gone through the respective pleadings. Admittedly, Assistant Commissioner is a Revenue Officer and he in that capacity has ordered partition of the suit property between its co-owners. Section 11 of the Sindh Revenue Jurisdiction Act, provides that: a suit can be filed against the order of Revenue Officer/Court after exhausting all the remedies available. That remedies as is evident have not been exhausted. This clearly makes the suit to be barred by section 11 of the Sindh Revenue Jurisdiction Act. Not only this but the injunction sought whereby seeking restrain against the officials from implementing the impugned order is also prohibited by section 56(d) of the Specific Relief Act.

No doubt, the Civil Courts have ultimate jurisdiction to examine the acts of the forum, but only when a gross illegality is committed, that too with a mala fide. In the present suit, Assistant Commissioner Ghotki has passed an order within his jurisdiction that in absence of any substance or cogent reasons can not be termed to have been passed mala fidely.

In view of the facts and reasons as discussed above, the instant application Under Order 7 Rule 11 CPC, is hereby accepted and in pursuant to that the plaint is hereby rejected with no order as to costs.”

5. The said order was impugned by the Applicant in Appeal and the learned Appellate Court while maintaining the order of the Trial Court has held as under;

“It is true that civil court is court of ultimate jurisdiction and can entertain suits of civil nature when its jurisdiction is not barred. In this case since the appellant failed to ask for all reliefs open to him at the time of filing of the suit, as such his suit in the present forum is not maintainable according to law. The reliance is respectfully placed on a law reported in PLD 1981 AJK Page-110, Relevant Page-113 paragraph-B. To me this within discretion and jurisdiction of the Deputy Commissioner/Deputy Collector to scrutinize an order passed by his subordinate, in absence of the fact that no allegation was made against the Assistant Commissioner that he was motivated malafidely against the

appellant or his order was without jurisdiction, in such eventuality the civil courts has no jurisdiction to entertain the suit because when the statute has created a right and has also provided and machinery for its enforcement when the jurisdiction of civil Courts stands barred, the reliance is respectfully placed on PLD 1978 Karachi Page 612. The civil courts have jurisdiction only when the orders passed by Revenue Authorities under act not within their jurisdiction. It is also settled principle of law where there is a jurisdiction to decide rightly mere passing of wrong order shall not confer jurisdiction of civil courts.

The upshot of above discussion is that the suit of appellant as framed is not maintainable in law and jurisdiction of civil courts is barred under law and the suit in the present form is hit by Section 11 of Sindh Revenue Jurisdiction Act and 56 of Specific Relief Act hence the findings of the trial court for rejection of plaint are legal proper and accordance with law.

In view of above circumstances the order/judgment and decree dated 22.6.98 and 26.6.98 in FC. Suit No:30/97 passed by Senior Civil Judge, Ghotki are legal, proper and in accordance with law do not require interference. Resultantly the present appeal merits no consideration and it is hereby dismissed with no order as to costs. Let the decree be prepared for the knowledge of the parties.”

6. It is a matter of admitted fact the land in question was jointly owned by the Applicant and the Respondents. The Respondents filed an application for partition of the Suit property in terms of section 135¹ of the Act, and the Assistant Commissioner passed an order which was impugned by way of present Suit by the Applicant. This was done notwithstanding the fact that such order was an appealable order in terms of section 161(b)² of the Act. Therefore, the moot question is that whether the Suit of the Applicant was competent or not. There is no denying the fact that a Civil Court is a Court of ultimate jurisdiction and can entertain a Suit in respect of Revenue matters, and even against orders of the Revenue authorities. However, at the same time, per settled law, this exercise of jurisdiction is for exceptional circumstances and does not permit or confer jurisdiction in every run of a mill case. The Civil Court while exercising supervisory jurisdiction has the authority to interfere, if the orders are without jurisdiction, mala fide, excessive or otherwise not in accordance with law or based on

¹ Any joint owner of land may apply to a Revenue Officer for partition of his share in the land if:-

- (a) At the date of the application the share is recorded under Chapter VI as belonging to him; or
- (b) His right to the share has been established by a decree which is still subsisting at that date: or
- (c) A written acknowledgment of that right has been executed by all persons interested in the admission or denial thereof.

² 161. Appeals: (1) save as otherwise provided by this Act, an appeal shall lie from an original order or appellate order of a Revenue Officer as follows, namely—

- (b) to the Collector when the order is made by an Assistant Collector of the first grade;

fraud³. There has to be presence of very exceptional circumstances, when such jurisdiction can be exercised. If it is a case of lack of jurisdiction, or mala fides or of a nature when no other remedy could be availed or the order is so patently illegal that resort to departmental remedy would be futile, only then a Suit could be held to be maintainable or competent. In the present case none of these situations are present. Neither the order passed by the Revenue authority was lacking jurisdiction; nor any mala fide intent or action has been brought on record; nor is a case wherein the remedy provided in law could be bypassed. No such ingredients of maintaining a Suit in like manner are present in the case of the Applicant. Not only this, the Applicant first chose to contest the matter before the Revenue authority by filing its objections and attending hearings, and then once the order was passed, filed a Suit challenging the same. When an order is an appealable order in terms of s.161 ibid, which has not been availed, then the very maintainability of the Suit under section 9 CPC is big question mark; and impliedly bars jurisdiction of the Civil Court in such matters where the jurisdiction to adjudicate exclusively vested with the revenue Courts⁴. Admittedly, the Applicant failed to avail the statutory remedied of appeal and revision before the Commissioner and the Board of Revenue respectively against the orders passed by the Assistant Commissioner. The learned Counsel failed to satisfy that such remedies, even if availed, would have been an exercise in futility⁵. In other words, the Applicants had remedy to move appeal/revision before the Member, Board of Revenue which they, admittedly, failed to avail of. I accordingly, hold the view that Civil Court was not competent to interfere where Revenue Courts/ Authorities had the exclusive jurisdiction⁶. In the case of *Province of West Pakistan*⁷ it was held that Civil Courts cannot sit in judgment over the decision of the Revenue Officers acting in exercise of their jurisdiction. It was further observed that so long as a question is decided within the limits of a jurisdiction, it is immaterial, from jurisdiction point of view, whether the decision is right or wrong. Civil Courts can check errors of usurpation of power made by Revenue Courts or officers but not the errors of their judgments, which could be done within the hierarchy on the Revenue side.

³ Province of the Punjab v Haji Yaqoob Khan (2007 SCMR 554)

⁴ Administrator Thal Development v Ali Muhammad (2012 SCMR 730)

⁵ Muhammad Ali v the Province of Punjab (2005 SCMR 1302)

⁶ Alam Sher v Muhammad Sharif (1998 SCMR 468)

⁷ PLD 1960 (W.P) Karachi 908

7. As to the argument that since Suit(s) for pre-emption had been filed, therefore, no partition could be ordered is also misconceived and does not hold ground for the simple reason because it had no nexus with the issue of partition. Mere filing of a Suit without any restraining orders, interim for final, does not preclude partition of a property, if otherwise lawful. If this be permitted, then in every such like facts, the same course would be adopted, frustrating the case of the other party seeking partition. In the Suit(s) for pre-emption, the Applicant ought to have obtained some restraining orders so as to prevent partition of the Suit property. If this was not the case, then mere filing of a Suit does not suffice.

8. In view of hereinabove facts and circumstances of the case and the discussion so made, the Applicants have failed to make out a case for indulgence; and or for exercise of any discretion in this limited jurisdiction of the Court under section 115 CPC, as apparently, the Courts below have arrived at a fair, just and legal conclusion while rejecting the plaint in the Suit of the Applicants. Accordingly, this Revision Application is dismissed.

Dated: **05.11.2021**

Abdul Basit

J U D G E