

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 86 of 1997**

**Mushtaque Ahmed & others v. Khalil Ahmed Khan & others**

Date of hearing: **08-11-2021**

Date of judgment: **08-11-2021**

Mr. Muhammad Imran Khan, Advocate for the Applicants.  
Mr. Ghulam Shabbeer Shar, Advocate for private Respondents.  
Mr. Shahryar Imdad Awan, Assistant Advocate General Sindh.

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**J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision Application, the Applicants have impugned judgment and decree dated 23-10-1997 and 04-11-1997, respectively, passed by the District Judge, Sukkur in Civil Appeal No.28 of 1997, whereby order and decree dated 02-09-1997 passed by the 1<sup>st</sup> Senior Civil Judge, Sukkur in F.C. Suit No.107 of 1997, through which the Plaint in Suit of the Applicant was rejected in terms of Order VII Rule 11 CPC, has been maintained.

2. Learned Counsel for the Applicants have argued that the Courts were not justified in rejecting the Plaint in Applicants' Suit under Order VII Rule 11, CPC; that the Applicants ought to have been permitted to lead evidence to establish their possession, hence, the order / judgment of the two Courts below are liable to be set aside and matter be remanded to the Trial Court to decide the same after recording evidence.

3. On the other hand, Respondents' Counsel has supported the order / judgment of the two Courts below and submits that there are concurrent findings against the Applicants; that only adverse possession was claimed, which cannot permit them to seek declaration of ownership; that they never filed a suit for cancellation of title documents of the Respondents, hence, no case is made out.

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

5. It appears that a Suit was filed by the Applicant for declaration, perpetual injunction and damages, wherein application was filed under

Order VII Rule 11, CPC by the Respondents, and was allowed by the Trial Court vide order dated 02-09-1997 in the following manner:

*“I have heard the learned counsel for the parties and also perused the relevant record.*

*It is contended on behalf of the defendant NO.1 to 3 that plaintiff does not disclose any legal and valid cause of action for filing of the present suit against the defendants NO.1 to 6. The suit is barred by Section the 42 Specific Relief Act, as the law of adverse possession has been held to be un-Islamic and against the injunction of Holy Quran by our Supreme Court as reported in 1991 S.C.M.R. 2063 and 1993 M.L.D. 2419 (b). On the other hand the learned counsel for the plaintiffs argued that none of the ingredients of order 7 rule 11 CPC are attracted in the present matter, therefore, application is not maintainable. He further argued that the plaintiffs have not claimed adverse possession. The adverse possession is a closed chapter when it ripened lastly in 1978. The Hon’ble Supreme Court pronouncement is much matter i.e. in the year 1991 and is not retrospective he relied upon 1981 S.C.M.R 750.*

*I have given careful consideration to the submissions of the parties counsel and also perused the plaint, contents of application, and counter affidavit.*

*From perusal of plaint it transpires that the plaintiffs have based their claim of ownership on the basis of adverse possession which has been declared against the Islamic Injunction by Hon’ble (Shariat Appellate Bench) vide authority reported in 1991 S.C.M.R 1963. The case law submitted by the plaintiff’s counsel is not relevant to the facts and circumstances of the present case, therefore, present suit is barred according to the case law as referred above.*

*In result the plaint attracts the provisions of order 7 rule 11 CPC as such the plaint is rejected accordingly, with no order as to costs. In view of this order the injunction application stands dismissed, accordingly.”*

6. The Applicants, being aggrieved, preferred Appeal and the Appellate Court vide judgment dated 23-10-1997 has observed as under:

*“I must mention here straight away that the appellant’s/ Plaintiff’s claim unauthorized entry upon the disputed plot. Thus the very foundation of their claim is upon the illegality. The Courts of law are to give decisions keeping in view the equity and law. The persons whose entry is based upon illegality and force do not deserve any assistance from the Court for protecting such illegal acts by way of injunction. The law requires them to show legal title or legal right. The pronouncement reported in 1993 M.L.D at page 2419 is clear on this point. Though the appellants/plaintiffs claim right on the basis of adverse possession upon the property but legality there could be no adverse possession against Settlement department to which the property belonged upto 1966. The claim*

*of adverse possession since 1955 and perfection of title in 1967 has no legal legs and is totally against the law. Even otherwise the declaration from the Hon'able Shariat Appellate Court reported in 1991 SCMR 1963 shows that the claim based on adverse possession is against the injunction of Islam. Obviously the claims coming before the courts after target date are not to be entertained.*

*In view of above discussion the plaint of the appellant/ plaintiff does not disclose legal cause of action. Needless to mention that legal cause of action pre-supposes the presence of legal right and danger to it which is absent here.*

*The result of above discussion is that the plaint of appellant's suit was liable to be rejected and has rightly been rejected. Consequently the appeal fails and is dismissed with costs."*

7. Perusal of the record reflects that the Applicants in their Suit for declaration, perpetual injunction and damages, had stated that the Suit property was in their possession as the elders had raised construction from time to time and none had objected. It was further stated that the possession of the Applicants has thus become adverse in the year 1967, however, in the same Plaint, it was stated in Para-6 as under:

*"6. As a result of this, it was found that an entry was made in the City Survey Record in favour of the **Defendants No.1 to 6 and one Mst. Zahoor-u-Nissa, on the basis of P.T.D., (Permanent Transfer Deed) No.06939 dated 20.5.1966;** by the Defendant No.7 in respect of CS No.B-2088/36 (79-1) Sukkur."*

8. It clearly reflects from the aforesaid pleadings that on the one hand the Applicants' claim some adverse possession maturing in 1967, whereas, the purported ownership and transfer of the property in question was recorded in 1966 according to the Applicants' own case. In that case, it could not be a case of adverse possession. It is also a matter of record that the Applicants even otherwise have failed to substantiate with any material or documents so as to their claim in respect of the Suit property except the purported possession with them. It has further come on record that the property belongs to Settlement Department up to 1966 when it was given by way of PTD to Respondents, hence, on this account also the claim of adverse possession since 1955 and purported perfection of title does not arise. It is trite law that a still born Suit must be buried at inception. This can be done on an application by a party; or even by Court itself after examining the pleadings. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a

judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint<sup>1</sup>. Both the Courts below were fully justified and had arrived at a correct proposition of law that that the Applicants' Suit was barred in law as they had no lawful justification to seek any such declaration.

9. In view of such position, the Applicants have failed to make out any case for exercising any discretion in this matter, hence, this Revision Application was **dismissed** with pending application by means of a short order in the earlier part of the day and these are the reasons thereof.

Abdul Basit

J U D G E

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<sup>1</sup> Haji Abdul Karim Versus Messers Florida Builders (Pvt) Limited (PLD 2012 SC 247)