

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

Civil Revision No. S – 110 of 2010

**Shahnawaz & others v. Province of Sindh & others**

Date of hearing: **15-11-2021**

Date of decision: **15-11-2021**

Mr. A. R. Faruq Pirzada assisted by Mr. Ghulam Hyder Daudpoto,  
Advocates for the Applicants.

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 Civil Revision, the Applicants have impugned judgment dated 16-02-2010 passed by the 2<sup>nd</sup> Additional District Judge, Khairpur in Civil Appeal No.142 of 2009, whereby the judgment dated 14-11-2009 passed by the Senior Civil Judge, Gambat in Civil Suit No.55 of 2004, through which the Suit of the Applicants was decreed, has been set aside.

2. Learned Counsel for the Applicants has argued that the impugned judgment is not sustainable as it has failed to formulate points for determination as required under Order XLI Rule 31 CPC; that the learned Trial Court, after a threadbare examination of the evidence, had correctly decreed the Suit; that the Applicants were holding a registered sale deed and a presumption of correctness and sanctity is attached to such sale deed, which was never challenged since 1955; that the *roobkari* relied upon by the Appellate Court is a bogus document and was never obtained and produced officially; nor any witness was produced; that all documents of the Applicants had gone unchallenged, therefore, the Appellate Court has erred in law and the judgment is liable to be set aside, whereas, the judgment of the Trial Court be restored. In support, he has relied upon *Mirza Muhammad Sharif and 2 others v. Mst. Nawab Bibi and 4 others* (1993 SCMR 462), *Muhammad Idrees and others v. Muhammad Pervaiz and others* (2010 SCMR 5) and *Muhammad Iqbal and others v. Fakhar-ul-Islam and 3 others* (2004 MLD 888).

3. On the other hand, learned AAG has supported the impugned judgment and has argued that firstly the Revision is incompetent as it has

not fulfilled the requirements of Section 115 CPC, as various documents have not been annexed; that the objection regarding failure to settle points for determination is misconceived; that Order XLI Rule 31 CPC only requires adjudication of the case on merits, and if the entire controversy is decided as a whole, then there is no need to always settle points for determination; that the Plaintiff in his own deposition, has admitted that the Suit land is a Forest land, hence, no case is made out; that private Defendants / Respondents were unnecessarily joined to seek support and appears to be a case of connivance as they filed their written statement supporting the case of the Applicants; but never turned up for evidence. He has prayed for dismissal of this Revision Application, and in support, he has relied upon *Umar Din v. Ghazanfar Ali and others* (1991 SCMR 1816), *Said Ghani v. Mst. Bibi Aman* (2007 CLC 1075), *Naimat Khan and others v. Hamzullah Khan and others* (2006 CLC 125) and *Hashtamand v. Habib Khan and others* (2006 MLD 1262).

4. I have heard the learned Counsel for the Applicants as well as learned AAG and perused the record.

5. It appears that Plaintiffs filed a Suit for declaration and permanent injunction, and sought the following prayers:

- a) *That this Honourable Court may be pleased to declare that the plaintiffs are bonafide and rightful owners of the suit land 400-0 acres of deh Moosa Bughio, Taluka Sobhodero, District Khairpur on the basis of revenue record lying in the name of their fathers, and the defendants have no right to interfere with the peaceful possession and enjoyment of the plaintiffs over the suit land in any manner.*
- b) *To grant Permanent Injunction restraining the defendants, their agents and subordinates from directly or indirectly interfering with the peaceful possession and enjoyment of the plaintiffs over the suit land in any manner.*
- c) *To award costs of the suit and other relief deemed fit and proper in circumstances.*

6. The learned Trial Court, after exchange of pleadings, settled the following issues:

1. *Whether the late Gul Muhammad and late Muhabbat Khan Kalhoro, the predecessor in interest of plaintiffs were owners of the un-survey land 400 acres in Deh Keti Moosa Bughio, Taluka Sobhodero vide mutation entry No.51 dated 22.8.1960?*
2. *Whether the plaintiffs are in peaceful, cultivating possession of suit land?*

3. *Whether the suit land is situated in northern side land of Bughia and Government, in southern side the land of Pir Makhdoom, in eastern side land of Moosa Khan Bughio and in western side land of Government?*
4. *Whether the defendants No.4 & 5 with collusion with defendants No.6 to 8 with malafide intention tried to dispossess the plaintiffs?*
5. *Whether the suit land is part and parcel of reserved forest land admeasuring 1500 acres in Deh Ketu Moosa Bughio through Govt notification of 8<sup>th</sup> July 1960?*
6. *Whether the suit is not maintainable in law?*
7. *Whether the plaintiffs are entitled for relief claimed?*
8. *What should the decree be?*

7. The Trial Court, after recording of evidence, came to the conclusion that the Applicants had made out a case, and therefore, the Suit was decreed as prayed. The finding of the learned Trial Court, in respect of Issues No.1, 2 and 5, which were relevant, is as follows:

*“I have considered the submission of learned counsel for both parties and have gone through the R & Ps of the case file.*

*The case of the plaintiffs is that the suit land belonged to their ancestors who died and the suit land inherited by the plaintiffs being their legal heirs. The plaintiffs are in possession of suit land. The plaintiffs have produced copy of registered sale deed and entry from revenue record at Ex-81/A and 81/B. Perusal of ex-81/A shows that it is a registered sale deed dated 2.3.1955 executed by one Muhammad Mouso in favour of Gul Muhammad and Muhabbat Khan in respect of suit land, while Ex.81/B shows that it is an entry No.51 dated 22.8.1960 maintained in revenue record in the name of Gul Muhammad & Muhabbat Khan on the basis of registered sale deed Ex.81/A. Both these documents clearly shows that the suit land was owned by Gul Muhammad and Muhabbat Khan plaintiffs claimed to be the legal heirs of said persons and this fact has not been disputed by the defendants, hence, it appears that by operation of law, the plaintiffs being legal heirs of Gul Muhammad and Muhabbat Khan have become owners of suit land as regards the possession of the plaintiffs over the suit land the P.Ws Ali Dad Muharram Ali have deposed that the plaintiffs are in possession of the suit land since their forefather. The D.W.s Shamsuddin Tapedar of the beat also deposed that there is Qabooli land of private persons near the Forest Land.*

*In rebuttal the defendants have based their claim over the suit land on the basis of notification dated 8.6.1960. I have already observed that the ancestress of the plaintiffs namely Gul Muhammad and Muhabbat Khan become over the suit land through registered sale deed 2.3.1955. Thus it appears that prior to issue of notification on dated 8.6.1960. The suit land was Qabooli land and this notification does not show the land of the suit land was treated as Na-Qabooli land nor it shows that the suit land was acquired by the Forest. This notification also does not show that it belongs to the suit land on the contrary it shows that there is*

*Qabooli land of private person near by the said Forest land notified in the said notification. The defendants have failed to prove that the land notification in notification dated 8.6.1960 is suit land.*

*Under the above circumstances and in view of documentary evidence available on record, I am of humble view that the plaintiffs being legal heirs of Gul Muhammad and Muhabbat Khan are owners and in possession of the suit land and that the suit land is not part and parcel of Forest land. The issue No.1, 2 & 5 are answered accordingly.”*

8. Insofar as the Appellate Court is concerned, the Appellate Court formulated the following two points for determination:

- i. *Whether un-surveyed area of 400 acres situated in Deh Ketī Bughio taluka Sobhoderō is the “forest area” belonging to the Government under the control of appellants/defendants No.2 to 4 and the respondents No.1 to 4/plaintiffs have no lawful right and title over the same?*
- ii. *What should the decree be?*

9. The relevant finding of the learned Appellate Court is as under:

**“Point No.1.**

10. *The P.W-1 Shahnawaz Abbassi (respondent No.1/plaintiff No.1) has deposed in his examination-in chief (Ex-81) that his father and his uncle purchased 400-acres area in Deh Ketī Mooso Bughio from Moosa Khan s/o Allah Bakhsh Bughio through registered sale deed dated 02.03.1955 and that Forest Department (appellants/defendants No.2 to 4) have no concern over the suit land. He has deposed that the area of 1500-acres mentioned in the notification dated 8.7.1960 is for different land and the land belonging to respondents No.1 to 4/plaintiffs is quite different.*

11. *The P.W-1 has produced the Government of West Pakistan notification dated 8.7.1960 at (Ex-81/C) and according to this notification 1500-acres area with following boundaries and was declared as “Protective Forest”.*

**Keti Mooso Bughio. 1500-0**

**North-** *Boundary of Deh Ketī Kanoori.*

**East-** *Private and cultivated land of Deh Mooso Bughio.*

**South-** *Boundary of Taluka Kand:*

**West-** *Boundary of Taluka Dokri.*

*The notification dated: 08.07.1960 does not show that land claimed by respondents No.1 to 4/plaintiffs is separate.*

12. *Roobkari issued by the Mukhtiarkar taluka Sobhoderō has been produced by the D.W-1 Raza Shah, Divisional Forest Officer at Ex.98/D. The English translation of the relevant part of the Roobkari is given as under:-*

*“We have called report from Tapedar who has reported that entry No.51 dated 26.06.1960 for the area of 400-acres of Deh Ketī Mooso Bughio shown to have been*

*sold to Gul Muhammad and Muhabat Khan Kalhoro, both the sons of Soomar Khan Kalhoro is not available in our record and this entry is false, and suit land is Government and Forest Department. Apart from this we have recorded statement of retired Supervising Tapedar Munchi Ghulam Qadir Shahani who has also mentioned that entry No.51 dated 22.06.1960 bears forged signature of him as well as Mukhtiarkar Raees Hussain Kazmi. He has stated that the copy of entry shows signature dated 4.12.1968 and at that time he was posted at taluka Faiz-Gang”.*

*It is clear from the Roobkari that the said land measures 400-acres of Deh Ketu Mooso Bughio is the Government property belonging to Forest Department.*

13. *P.W-1 has produced registered sale deed at Ex-81/A, this document shows that Muhammad Moosa Khan s/o Khan Sahib Allah Bakhsh Bughio sold out 400-acres area of Deh Ketu Mooso Bughio to Gul Muhammad and Muhabat Khan Kalhoro, both predecessor-in-interest of respondents No.1 to 4/plaintiffs. In this sale deed it is mentioned that the vendor Muhammad Moosa Khan Bughio is the owner of the land but the sale deed does not show that how the Muhammad Moosa Khan Bughio became the owner of suit land, whether Government allottee or having purchased from third party. According to Transfer of Property Act the persons competent is entitled to transfer the property but here the sale deed dated 02.03.1955 does not show the competency of vendee Muhammad Moosa Khan Bughio to sell out of 400-acres land to the elders of the respondents No.1 to 4/plaintiffs.*

14. *For the reasons given in preceding paragraph No.10 to 13, I am of the considered view that the land measuring 400-acres of Deh Ketu Mooso Bughio is the property of Government under the control of appellants/defendants No.2 to 4 and it is part and parcel of the “Protective Forest” area and the respondents No.1 to 4/plaintiffs have no lawful right and title over the same property and accordingly point No.1 is replied in affirmative.”*

10. Perusal of the aforesaid observations of the two Courts below reflects that both Courts have differed in their conclusion viz-à-viz the appreciation of evidence on record. It is a matter of fact that the Applicants’ claim was that some 400 acres of land, which was un-surveyed, was owned by late Gul Muhammad and Muhabbat Khan, and the Applicants are legal heirs of both these persons. It was their further case that Revenue entry dated 22-08-1960 was recorded in favour of late Gul Muhammad and Muhabbat Khan, whereas, they became owners as legal heirs and were in possession when Defendants No.6 to 8 with *mala fide* intention tried to dispossess them. The entire case set up by the Applicants was on the basis of this Revenue entry, which purportedly was recorded on the basis of some sale deed executed by one Muhammad Moosa Khan Bughio. However, it appears to be an admitted position that in the sale deed, it is not disclosed that as to how Muhammad Moosa Khan Bughio became owner of the Suit

land, i.e. either he was a Government allottee or had purchased it from some third party. Be that as it may, it never came on record as to the genuineness and ownership of the land claimed to have been owned by Muhammad Moosa Khan Bughio.

11. It is also noteworthy that the Applicant, in his own evidence, has admitted that the Suit land is a Forest land. PW-1, Shahnawaz (Exhibit-81), in his cross-examination, has stated that *“It is correct to suggest that suit land is my ancestral property. It is correct to suggest that the suit land was purchased by my elders before my birth. It is correct to suggest that I have not produced the copy of power of attorney during my evidence. The suit land was purchased by my elders in the year 1955 from one Muhammad Moosa Bughio. It is incorrect to suggest that I arranged criminal cases and FIRs just to save my skin from forest department. I am five standard. I am doing Zamindari now. **It is correct to suggest that the suit land is forest land and such notification is issued by the Government in the year 1960. I do not know whether suit land was reconciliated by the Government through Mukhtiarkar revenue and forest department in the year 1992. It is correct to suggest that I have not challenged the notification of Government issued in the year 1960 before any competent court of law. It is correct to suggest that Mukhtiarkar issued Rubkari regarding documents. Vol. says at the instance of my enemies Bhughia community but the same was not challenged by me.** It is incorrect to suggest that I have produced false documents before this Court. It is incorrect to suggest that suit land is of forest department I have no concerned with the suit land.”*

12. Perusal of the aforesaid cross-examination clearly reflects that the witness is admitting that the Suit land is a Forest land and such notification was issued by the Government in 1960, and he has further admitted that said notification was never challenged before any Court of law. He has further admitted that the Mukhtiarkar had issued *roobkari* regarding the documents; then voluntarily said that it was done pursuant to request by his enemies, however, he had not challenged the same. Applicants' Counsel was confronted as to this contradiction regarding the ownership of the land, and he has argued that the cross-examination has to be read as a whole as the witness has also claimed that it was an ancestral property. However, this argument does not appear to be justified, as apparently, the claim of the official Respondents has always been that it was a Forest land and was never allotted to anybody nor it could have been so allotted. As to the sale deed in favour of the Applicants and the ownership of the seller, learned Counsel has further argued that it was never challenged, therefore, a registered document has to be presumed as correct. This argument may have some weight ordinarily; however, in the instant matter the land being

claimed is a forest land and therefore, this does not seem to be a justified reason inasmuch as the very sale deed has become doubtful as the executant has failed to disclose his title to the property; whereas, even otherwise, once it has come on record and admitted by the Applicant that it is a Forest land, then Muhammad Moosa Khan Bughio was never authorized to execute any sale deed of the Suit land.

13. Lastly, as to the objection regarding non-compliance of Order XLI Rule 31 CPC, it would suffice to observe that the said provision is not mandatorily applicable in each case; rather it depends on the facts of each case individually and as to how the Appellate Order has been passed by the Court. To that it may be observed that this argument is misconceived inasmuch as the Appellate Court has given findings with proper reasoning on the entire controversy and even if it has failed to settle the points for determination the same would not *ipso facto* render the impugned judgment as being liable to be set aside as the said rule is not absolute in that if the Appellate Court in terms of Order XLI Rule 31, though fails to settle specific points for determination (here the main controversy was even settled in Point No.1); but on the basis of material available on record and after going through the Record & Proceedings of the trial Court has given its cogent findings attending to the controversy and the objections so raised, then it can suffice and the provision is deemed to be duly attended to. If the Appellate Court in each and every case, has not framed points for determination, it is not that such judgment would be liable to be set aside on that ground alone, whereas, it becomes immaterial, more so, when all the questions raised have been answered by the Appellate Court. It is, but sufficient, that the Appellate Court answers the material questions in its judgment and even if no points are framed for determination it would not *ipso facto* render the judgment illegal or without lawful authority subject to, that the point or controversy has been attended to and decided on the basis of evidence available before the Court. This could only sustain when the judgment is itself without reasoning and also fails to determine the points for determination and not when it is a reasoned judgment attending to all the relevant issues / pertinent controversy between the parties. For such proposition reliance may be placed on the cases reported as ***Muhammad Iftikhar v. Nazakat Ali* (2010 SCMR 1868)**, ***Hafiz Ali Ahmad v. Muhammad Abad and others* PLD 1999 Karachi 354**, ***Ghulam Samdani and others v. Faqir Khan* PLD 2007 Peshawar 14**, ***Abdullah and 11 others v. Muhammad Haroon and 8 others* 2010 CLC 14** and

***Muhammad Azam v. Mst. Khursheed Begum and 9 others*** 2013 Y L R 454.

14. In view of hereinabove facts and circumstances of this case, I do not see any illegality or misreading or non-reading of evidence in the impugned judgment of the Appellate Court, which appears to be correct in law and is based on material evidence on record; therefore, by means of a short order dated 15.11.2021, this Civil Revision Application was **dismissed** with pending application by maintaining the impugned judgment of the Appellate Court and these are the reasons thereof.

Abdul Basit

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