

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No. S – 107 of 2006

(Hafiz Qari Abdul Fateh through his LRs vs. Miss. Urooj Fatima & others)

Date of hearing: 29-11-2021

Date of Order: 29-11-2021

Mian Abdus Salam Arain, Advocate for the Applicant
Syed Abdul Latif Shah, Advocate for Respondents 2(a) to 2(e) & 6
Mr. Ahmed Ali Shahani, Assistant Advocate General

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision Application, the Applicant has impugned judgment dated 18-08-2006 passed by District Judge, Ghotki, in Civil Appeal No.48 of 2005, whereby, judgment dated 20.05.2005 passed by Senior Civil Judge, Ghotki, in F.C Suit No.27 of 1999 has been set-aside through which the Suit of the Applicant was decreed.

2. Heard and perused the record.

3. It appears that the Applicant had filed a Suit for specific performance of contract along with declaration and injunction, and sought performance of an oral agreement purportedly entered into with Respondent No.1 through her Guardian namely Syed Iftikhar Hussain Gillani in respect of the Suit land with further declaration that two orders passed by Respondents 8 and 9 dated 30-03-1998 and 05-05-1999 are illegal and based on malafides. The said Suit after exchange of pleadings and recording of evidence was decreed in favour of the Applicant and being aggrieved, the Respondents 2 to 6 filed Appeal which has been allowed through impugned order.

4. It is a matter of record; firstly, that specific performance sought was of an oral agreement as it is the case of the Applicant that Suit property was sold through oral agreement by Respondent No.1 through her Guardian Iftikhar Hussain Shah and certain amount was paid for which reliance was placed on a receipt. As far as the findings of the learned Appellate Court is concerned the said receipt was on the face of it bogus and doubtful, inasmuch as the signatures had been overwritten, whereas,

neither Respondent No.1; nor the purported Guardian was ever examined or brought in evidence. It further appears that in fact Respondent No.1 (the seller) against whom the entire case of the Applicant rests and against whom specific performance was being sought, never filed any written statement. It further appears that not only this, the Applicant / plaintiff had based its entire case that Respondent No.1 was always willing to execute the sale deed and the only hindrance was some mutation of Suit land in favor of Respondents 2 to 6 and as soon as the same came into the knowledge of the Applicant, a petition / complaint was made before Commissioner Sukkur, who referred the matter for Arbitration and an award was also passed in favour of the Applicant. Now the first question would be that how and in under what capacity the Applicant, being merely a buyer, can challenge any mutation entry, be it in the name of Respondents 2 to 6 or anybody else. While confronted, no satisfactory response came from the Applicants Counsel. Secondly, how can the Commissioner be approached by way of a petition to challenge it even otherwise. Again this has gone unanswered. And lastly, under what authority of law, matter could have been referred by the Commissioner for Arbitration. Nonetheless, admittedly neither the award was placed on record; nor the Arbitrator or anyone else was produced in evidence to prove such award. It has further come on record that thereafter an attempt was made to change the mutation entry on the basis of award; but the concerned Deputy Commissioner and the Commissioner regretted to do the same vide their orders dated 30-03-1998 and 05-05-1999 against which further prayer was also sought in the Suit.

5. After going through the record and the material available, including the judgment of the Trial Court and the Appellate Court, it appears that the Trial Court had seriously erred in law in decreeing the Suit and granting the relief to the Applicant so prayed for. Firstly, the oral agreement by itself and the receipt has not been proved, and it is merely an assertion of the plaintiff, which is on record. The said Respondent No.1 never turned up; nor was summoned as a Court witness to support the stance of the Applicant / plaintiff. Even no attempt was made to summon the Guardian of Respondent No.1.

6. Secondly, and most importantly, since the Applicant had no title with it in respect of the property, and was only relying upon an oral agreement of sale, the prayer regarding impugning orders of the Deputy

Commissioner and the Commissioner was otherwise not permissible as the Applicant's claim at the most could only be in respect of seeking Specific Performance of an agreement and not beyond that. The Applicant had no authority or *locus standi* to approach any authority to seek cancellation of a mutation entry, specially of Respondents 2 to 6. The Applicant never become an owner; and except the purported oral sale agreement, the Applicant had no lawful right existing in his favor, and, therefore, at the most, either performance of agreement could have been sought only against Respondent No.1; or in the alternative, return of money and compensation was the other remedy, which was available to the Applicant. The entire exercise of challenging the revenue entries and seeking orders from the Commissioner including the award appears to be managed and concocted, whereas, it has no legal standings in law; nor could this have been implemented by the Court. The Applicant had no relationship or contract with Respondents 2 to 6, and therefore, neither any relief could have been sought against them; nor their revenue / mutation entries were ever challenged by any one including Respondent No.1 / Seller of the Suit property. The right, if any, was only available to Respondent No.1, who never came forward to challenge the ownership of Respondents 2 to 6, whereas, it is also not the case of the Applicant that such right was ever transferred or conferred upon the Applicant by way of any registered instrument including any power of attorney.

7. In view of the hereinabove facts and circumstances no case for indulgence is made out, whereas, the Appellate Court has come to a correct conclusion in law and facts by setting-aside the judgment of the trial court and dismissing the Suit of the Applicant, therefore, by means of a short order in the earlier part of the day, this Civil Revision Application was dismissed and these are the reasons thereof.

Judge

ARBROHI