

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

R.A. No. 260 of 2018
[Abdul Hameed v. Mst. Irshad Begum and others]

Applicant : Abdul Hameed through Mr. Pervaiz
Ahmed Pirzada, Advocate.

Respondent-1 : Mr. Muhammad Sachal R. Awan,
Advocate

Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing & decision 19.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J.- The applicant through this Civil Revision Application has called into question the judgment and decree dated 22.11.2018 passed by learned 2nd Additional District Judge, Shaheed Benazirabad in C.A. No. 29 of 2018 whereby the learned Judge while dismissing the appeal maintained the Judgment and Decree dated 15.02.2018 passed by learned 1st Senior Civil Judge, Nawabshah in F.C. Suit No. 206 of 2016.

2. Brief facts of the case are that respondent No.1 filed suit for declaration and injunction stating therein that her father late Muhammad Usman had left agricultural land bearing S.No. 1787/6, 1788/5,6, 1789/ 1 to 4 and 1790/1,7 total area 26-28 acres situated in Deh Chak No.10 Suhailo, Taluka Daur District Shaheed Benazirabad. After foti khata Badal she became owner of 20 paisa; however, his two brothers namely Akram Ali and Muhammad Jabbar became owners of 40 paisa each; that applicant fraudulently produced a fake lady by name Mst. Irshad Begum before Mukhtiarkar and Sub-Registrar concerned and got registered the suit land in his favour through sale deed dated 1.4.2016 and thereafter occupied the suit land; that the applicant also managed false sale agreements dated 4.5.2015, to the extent of share of both the brothers of respondent No.1 and filed Suit against them bearing F.C. Suit No. 114 of 2016 which is pending. Hence the suit was filed seeking the following relief(s):-

- a. It be declared that the plaintiff is co-sharer in the land viz. S.No.1787/6, S.No.1788/5,6, 1789/ 1to 4, 1790/1,7 an area 26-28 acres situated in Deh Chak No.10, Suhailo Taluka Daur, District Shaheed Benazirabad, which has not been partitioned officially.
- b. That the Defendant No.1 be directed to hand over possession of 5-13 $\frac{3}{5}$ acres land to plaintiff;
- c. That sale deed No.16, dated 01.04.2016 in respect of S.No.1787/6, S.No.1788/5,6 S.No. 1789/ 1to 4, 1790/1,7 an area 26-28 acres situated in Deh Chak No.10, Suhailo, Taluka Daur, District Shaheed Benazirabad, allegedly executed through fake lady by name Irshad Begum in favour of Defendant No.1 be ordered to cancel being collusive, fraudulent and illegal and necessary correction entries in relevant record in the office of register and Mukhtiarkar Revenue may be also made.
- d. Permanent injunction be issued against the Defendant No.01, not to alienate the suit land viz 5-13 acres out of S.No. 1787/6, S.No.1788/5,6 S.No. 1789/ 1to 4, 1790/1,7 an area 26-28 acres situated in Deh Chak No.10, Suhailo, Taluka Daur, District Shaheed Benazirabad, to any other person or to alienate the suit land by any mode of alienation to any person directly or indirectly in any manner whatsoever.

3. That applicant filed written statement denying the case and claim of respondent No.1 on the ground that the suit is not maintainable and that the original owner sold out the suit land to him through registered sale deed.

4. On the pleadings of the parties, learned trial court framed the following issues:-

- i. Whether the plaintiff Mst. Irhsad Begum has not executed registered sale deed before Sub-Registrar in favour of defendant No.01?
- ii. Whether registered sale deed letter No.01.04.2016 allegedly executed by plaintiff Mst. Irshad Begum in favour of the Defendant No.01 and subsequent entry (if any) on the basis of above registered sale are liable to be cancelled?
- iii. Whether the defendant No.01 has illegally occupied the share of suit land of plaintiff?
- iv. Whether the plaintiff is entitled for the relief claimed?
- v. What should the decree be ?

5. Learned Trial Court after examination of the parties and their witnesses, and after hearing them decreed the suit. The applicant being aggrieved by the said Judgment preferred appeal which was also dismissed, hence the instant Civil Revision Application.

6. Learned counsel for applicant has argued that the trial court has failed to appreciate the material available on record and passed the order hurriedly; that the impugned Order passed by learned lower court is against the facts and law and is liable to be set-aside; that the trial court erred in dismissing the suit of the applicant under Order 17 Rule 3 CPC; that learned trial court failed to appreciate that the suit of applicant was not liable to be dismissed under Order 17 Rule 3 CPC and the said provisions are not attracted to the case of applicant; that dismissal of suit of the applicant under Order 17 Rule 3 CPC was not maintainable at all; that the impugned Judgment and Decree suffers from serious miscarriage and the applicant has been put in critical situation; that the findings, observation and conclusion of learned lower court was erroneous and against the record and not sustainable in law; that learned lower court erred in dismissing the suit of applicant under Order 17 Rule 3 CPC illegally and unlawfully; that the impugned Judgment and Decree of learned lower court are not based upon cogent reasoning, hence not sustainable; that learned trial court has passed the impugned Judgment and Decree in slipshod manner without properly evaluating and assessing the pleadings of the parties. He lastly prayed for allowing the instant Civil Revision Application.

7. I have gone through the judgment & decree dated 22.11.2018, passed by learned IInd Additional District Judge, Shaheed Benazirabad in Civil Appeal No.29 of 2018, whereby, the learned appellate Court dismissed the appeal of the applicant and maintained the judgment & decree dated 15.02.2018 of the learned trial Court. For convenience sake, an excerpt of the judgment dated 15.02.2018 is reproduced below:

“ISSUE NO: 1.

Burden to prove this issue lies upon the plaintiffs because plaintiff has challenged the registered sale deed was executed by playing fraud to produce fake lady before the authorities. In this regard plaintiff appeared in person examined, she fully supported the contents her plaint, she further deposed that photo affixed in registered sale deed in favour of the defendant No.1 does not belong to her, she has never received single rupee as sale consideration. P.W-2, Muhammad Jabbar who is brother of the plaintiff has fully supported the contents of the plaint and deposed that present plaintiff is his sister. He further deposed that photo annexed on the sale deed does not pertain to his sister Mst. Irshad Begum. His sister did not execute sale deed in favour of the defendant NO.1 which is liable to be canceled. P.W-3, Gul Bahar local inhabitant of the area of the suit land deposed that defendant Abdul Hameed

and his uncle Ahmed Dahri have forcibly occupied the suit land infact no suit land was sold out by the plaintiff. Nothing has brought by the defendants in rebuttal of the above evidence.

It was very typically to disprove any registered document without reliable evidence, in the matter in hand plaintiff obtained certified copy of the original sale deed which containing photo of the vendor without her CNIC, there is vast difference between the photo of the present plaintiff and executants of the sale deed. The Sale deed was executed in the year 2016 and the plaintiff appears to be very weak and aged lady however, sale deed containing photo of healthy and young lady. Therefore, it can easily be opined that sale deed by any other lady except the plaintiff. Issue is answered in positive.

ISSUE NO.2.

Since it has proved that sale deed executed by a lady other than the plaintiff, therefore, same sale deed has not legal status and is result of fraud. Therefore, same is liable to be cancelled. Issue is answered in positive.”

8. Learned counsel mainly argued that the side of applicant was closed vide order dated 15.02.2018 and thereafter he could not produce the evidence. The appellate court dismissed his appeal on the same analogy; however, the learned Courts below failed to consider that if the plaintiff failed to produce evidence, it was the duty of the trial Court to record evidence of other side and could not dismiss the suit for want of evidence. This assertion of learned counsel is misconceived for the simple reason that the matter was fixed for evidence of plaintiff, who failed and neglected to testify on the issue involved in the matter. The learned Court had no option but to close the side of plaintiff under Order XVII Rule 3 CPC, which explicitly shows that where any party to a suit to whom time has been granted fails to perform any other act necessary to further progress of the suit, for which time has been allowed, the Court may notwithstanding each default, proceed to decide the suit forthwith and that has been done by the learned trial Court and that decision has been affirmed in appeal thus no case for further indulgence of this Court is made out. Accordingly instant revision application stands dismissed.

JUDGE