

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 85 of 1989

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| Date of hearing | Order with signature of Judge |
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Hearing of case

For hearing of main case

06.12.2021

None for the Applicants.
Mr. Mukesh Kumar G Karara Advocate for Respondents.
Mr. Ahmed Ali Shahani AAG.

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Through this Civil Revision, the Applicant has impugned judgment dated 29.6.1989 passed by IInd Additional District Judge, Sukkur, in Civil Appeal No.65 of 1985, whereby the judgment passed by Senior Civil Judge, Ghotki, dated 10.2.1985 in Civil Suit No.98 of 1978, through which the Suit of the Applicants was decreed has been set-aside by dismissing the Suit.

No one has turned up on behalf of the Applicant, whereas, earlier this Civil Revision Application was dismissed for Non-prosecution on 23.10.1998; but was restored conditionally vide order dated 29.10.2001; however, despite this, the Applicants Counsel has not proceeded with the matter diligently. On 10.9.2020, the Counsel then appearing for the Applicant informed the Court that the Applicant has taken away the brief; and the Court showing grace, instead of dismissing the same once again for Non-prosecution, adjourned the matter and thereafter, another Counsel was engaged who has been absent for the last two consecutive dates. Since the matter pertains to the year 1989; hence, cannot be kept pending any further, therefore, the same is being decided on the basis of available record and with the assistance of the Respondents Counsel.

It has been contended by Respondents Counsel, that the trial court had failed to appreciate the facts and the evidence led by the Applicants; that as per plaint the Applicants themselves had claimed to be haris / tenants; hence, had no legal right to challenge the ownership of the Respondents, including the Will of their predecessor in interests; that neither the orders impugned in the plaint were ever annexed; nor any other reliable evidence was led, therefore, the Suit could not have been decreed; that the Appellate Court was justified in holding that the Suit was not maintainable as the Civil Court lacked jurisdiction in the matter; that the Will

even without a Probate was valid and executable in the said period of time within the jurisdiction of Sukkur district; hence, no case is made out and the Revision Application merits no consideration and is liable to be dismissed.

I have heard the learned Counsel for the Respondents and perused the record.

It appears that the Applicants filed Suit for Declaration and Injunction and sought prayer to the effect that the Will dated 16.3.1967 is void and fraudulent; that proceedings and orders dated 10.8.1969, 3.12.1974, 11.10.1970, 2.5.1973, and 22.8.1974 passed by official defendants and Revenue authorities from time to time are illegal and of no legal effect. It is their case as stated in the plaint that they are Haris / Tenants in Suit Land, whereas, the same was owned by the Government. At the same time, it was also stated that the Suit land was allotted to Daryanomal. In fact, in evidence, all the averments so made in the plaint were never owned or proved. The Plaintiffs attorney in his cross examination replied that *“the disputed land was allotted to one Daryanomal on the Darya Khurdi right to the extent of 75-pasia share and remaining 0.25 paisa share was allotted to Karampel. Daryanomal expired about 14 years back. Daryanomal died without heir. Fateh Chand defendant No.1 is not related to Daryanomal.* Now the moot question is once it is admitted that land in question was allotted to Daryanomal, then notwithstanding the allegation that Daryanomal had no legal heirs; how the said land was claimed to be a Government Land and what rights accrued to the Applicants to challenge the Will executed in favor of the predecessor in interest of the contesting Respondents. Apparently none; whereas, the learned trial Court never adverted to this important and legal question. The Applicants, perhaps had no locus standi to maintain their Suit. They being Haris could not challenge the Will only for the reason that they have suit land in possession. In fact, their case is belied by their own pleadings inasmuch as it has come in evidence that the land was allotted to Daryanomal; hence, could not be a Government land anymore in which a Hari or Tenant can claim any rights, even under a land grant policy of the Government. It has been admitted in the evidence that *“it is a fact that the plaintiffs used to give batai share of the disputed land during the life time of Daryanomal and Takomal”.* It has been further admitted in the evidence that *“It is a fact that after enquiry conducted by Deputy Commissioner the kata was changed I name of Fateh Chand. It is a fact that at present the record of rights stand in name of Fateh*

Chand and Krampal". It has been further said that "It is a fact that we are not giving batai share of disputed land to Fateh chand and Krampal since 1971-1972". Lastly it was replied that "it is a fact that we have not verified the revenue record as to how the disputed land has been granted to Daryanomal and Tekomal on darya khurd".

It is not only surprising but so also shocking for this Court that the trial Court had decreed the Suit on the basis of above evidence, which is neither confidence inspiring; nor is supported by material or documents; but in fact admittedly not even the revenue record was checked by the Applicants. Admittedly, no order so impugned by way of the Suit and mentioned in the prayer clauses was ever brought on record. Moreover, no right had accrued to the Applicants in respect of the suit land once it was stated that they were Haris / tenants; were paying batai share earlier; and when the suit land was already allotted to Daryanomal, them admittedly it was never a Government land on which they could lay any claim under any policy of the Government. In fact, the entire judgment of the trial court is a repetition of the averments so made in the plaint, whereas, the conclusion arrived at appears to be devoid of any application of an independent mind.

As to the impugned judgment of the Appellate Court; though it has dismissed the Suit of the Applicants; but it was done only on the ground of lack of jurisdiction of the Civil Court; however, in view of the above, while maintaining the finding as to the dismissal of the Suit; the same is done on merits as no case was made out on behalf of the Applicants / Plaintiff.

In view of such position, this Revision Application is misconceived and is hereby **dismissed**.

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