

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

**Civil Revision No. S – 112 of 2002**

**Nihal Khan Mahar and another v. Lal Bux Mahar and others**

Date of hearing: **08.11.2021**

Date of announcement: **10.12.2021**

Mr. Nishad Ali, Advocate, holding brief for Mr. A. M. Mobeen Khan, Advocate for the Applicants.

Mr. Abdul Naeem, Advocate for Respondents No.1 & 2.

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, the Applicants have impugned judgment and decree dated 06-09-2002 and 11-09-2002, respectively, passed by the District Judge, Ghotki in Civil Appeal No.53 of 2001, whereby the judgment and decree dated 23-08-2001 and 27-08-2001, respectively, passed by the Senior Civil Judge, Ubauro in F.C. Suit No.170 of 1988 (old) / No.42 of 1995 (new), through which the Suit of the Applicants was decreed, has been set aside and by allowing the Appeal, the Suit has been dismissed.

2. Learned Counsel for the Applicants has filed written arguments, wherein it has been contended that the Appellate Court has given contradictory findings in respect of points No.3 and 4; that no cogent and convincing reasons have been recorded for setting aside a well-reasoned judgment of the Trial Court; that the Applicants were lawful and bonafide purchasers of disputed land for valuable consideration, whereas, pass book was also issued in their favour; that the Appellate Court has failed to consider the admission of Respondent No.4 to the effect that he had procured and managed registered sale deed in the name of Respondent No.3; that proper sale consideration was paid; that while filing 12(2), CPC application in an earlier proceeding, no proper parties were joined; that the Appellate Court has failed to consider the mutation entries in favour of the Applicants; that the admission of Respondents No.3 & 4 has been ignored, and therefore, the Appellate Court has wrongly set aside the judgment of the Trial Court; hence, this Revision Application be allowed.

3. On the other hand, Respondents' Counsel has also filed written arguments and has supported the impugned judgment on the ground that no proper evidence was led on behalf of the Applicants including Respondents No.3 & 4, who never turned up for deposition; hence, the Revision Application merits no consideration.

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

5. It appears that the Applicants filed F.C. Suit No.170 of 1988 (old) / No.42 of 1995 (new), and apparently, in the first round of litigation plaint was rejected, and thereafter in Appeal, it was remanded with directions to record evidence and pass a judgment on merits. Subsequently, the Trial Court passed its judgment dated 23-08-2001, whereby the Suit of the Applicants was decreed as prayed. The Respondents No.1 & 2, being aggrieved, preferred Civil Appeal No.53 of 2001, which has been allowed through impugned judgment dated 06-09-2002 by the District Judge, Ghotki by setting aside the judgment of the Trial Court.

6. From perusal of the record, it appears that the Applicants had filed Suit for declaration and permanent injunction in respect of the Suit property on the ground that it was purchased by them from Respondent No.3 on the basis of some oral statement before Mukhtiarkar, Ubauro, which was recorded, and thereafter, agricultural pass book was also issued in their favour. It appears that the Suit property was initially granted by Guddu Barrage authorities to Respondent No.3, and after issuance of a T.O. Form, mutation was effected in Revenue record on 12-07-1987. It is further stated in the plaint that thereafter on 26-10-1987, Respondent No.4 fraudulently and by impersonating succeeded in getting a sale deed registered of the Suit land in its name through Respondent No.3, which was then challenged in Appeal by Respondent No.3 before Assistant Commissioner, Mirpur Mathelo; whereas, Respondent No.4 filed a Civil Suit bearing No.44 of 1988 before Senior Civil Judge, Ghotki. The said Suit was then compromised between these two Respondents i.e. Respondent No.3 and Respondent No.4, whereby it was agreed that the Suit property be re-transferred in the name of Respondent No.3, which was also done through a compromise decree dated 06-07-1988, and was also recorded through mutation.

7. It is a matter of record that thereafter Respondents No.1 & 2 filed an application under Section 12(2), CPC, in Suit No.44 of 1988 which was allowed vide order dated 30-08-1988, and the compromise decree was set

aside; whereas, on the basis of such order, the mutation entries were also corrected as available prior to passing of the compromise decree. It is also a matter of record that ultimately the said Suit was never proceeded and was dismissed for want of evidence, against which, no appeal was preferred and the order of dismissal of the Suit attained finality. To sum-up, the Applicants' case appears to be that they had purchased the Suit property from Respondent No.3, who was though the original owner, but had sold the same to Applicants after passing of a compromise decree and reversal of mutation record in his favour, whereas, prior to this the property had already been sold to Respondents No.1 & 2 by Respondent No.4; hence, the case of the Applicants, if any, could not have been against Respondents No.1 & 2, but only against Respondents No.3 & 4 for allegedly committing fraud, if any. The Applicants had no right or lawful excuse to challenge any proceedings on behalf of Respondents No.3 & 4, who admittedly never came forward to lead any evidence and/or support the Applicants' case. In fact, it appears from perusal of the record that the Suit bearing No.44 of 1988 was a collusive Suit, and after obtaining a compromise decree, the Property was then sold to the Applicants / Plaintiffs, and when the compromise decree was set aside on an application under Section 12(2), CPC, no further assistance was provided by Respondents No.3 & 4 to the present Applicants in support of their case. At the most, the Applicants had a case, if any, for compensation against Respondents No.3 & 4, but in no manner they could have challenged the sale deed and ownership of Respondents No.1 & 2, who had nothing to do with the Applicants / Plaintiffs. The sale and ownership of Respondents No.1 & 2 could have only been challenged by Respondents No.3 & 4, if any, but as noted they never came up to lead any evidence; rather the best possible evidence was withheld by them as well as by the Applicants, who could have summoned them as Court witnesses for its own assistance. They managed a collusive Suit amongst themselves; obtained a compromise decree; got the entry of mutation reversed; but that is it. Once the decree was set-aside, including the dismissal of Suit finally for want of evidence, the mutation entry and all rights so conferred upon Respondent No.3, if at all, vanished as soon as the decree was recalled. Any sale to the Applicants by Respondent No.3 cannot be sustained on the basis of any compromise decree and purported ownership rights, if any, so conferred upon Respondent No.3 even bay way of a mutation. Once the compromise decree was set-aside, the entire superstructure built on it also has to fall.

8. In view of hereinabove facts and circumstances of this case, it appears that the Appellate Court has arrived at a fair and just conclusion, which is based on the evidence and the applicable law; whereas, the learned Trial Court was misdirected in decreeing the Suit of the Applicants. Therefore, this Civil Revision Application does not merit any consideration; hence, the same stands **dismissed** with pending application.

Dated: **10.12.2021**

Abdul Basit

J U D G E