

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

### **1. Civil Revision No. S – 24 of 2007**

(Abdul Rasheed (deceased) through L.Rs. vs. Ghulam Qadir & others)

### **2. Civil Revision No. S – 25 of 2007**

(Abdul Rasheed (deceased) through L.Rs. vs. Province of Sindh & others)

**Date of hearing: 29.10.2021**

**Date of announcement: 10.12.2021**

Mr. Sachal Bhatti Advocate for the Applicants

Mr. Nishad Ali Mahar associate of Mr. A. M Mobeen Khan Advocate for the Respondents

### **JUDGMENT**

**Muhammad Junaid Ghaffar, J.** – Both these Civil Revision Applications have been tagged together for the reason that the Suit property involved is the same, whereas, the parties are also same, however, the impugned judgments of the Courts below are separate. The Civil Revision Application No. S-24 of 2007 impugns judgment dated 25-09-2006 passed in Civil Appeal No.73 of 1998, whereby, judgment dated 02-06-1998 passed by Senior Civil Judge, Sukkur in F.C Suit No.91 of 1983 has been maintained by dismissing the Civil Appeal and the Suit stands dismissed. Whereas, Civil Revision Application No. S-25 of 2007 has been filed by the same Applicants against judgment dated 25-09-2006 passed by the same Court, whereby the judgment dated 05-05-1998 passed by 2<sup>nd</sup> Senior Civil Judge, Sukkur, in F.C Suit No.96 of 1983, whereby, while maintaining the dismissal of the Suit of the Applicant, the Appeal has been dismissed.

2. Counsel has made submissions and have also filed written synopsis.

3. I have heard the learned Counsel and perused the record.

4. It appears that Respondents 1 and 2 (**Ghulam Qadir and Sono**) filed Suit for declaration and injunction against Respondents 3 and 4 as well as the Applicant and sought a declaration that they are owners of Suit property purchased for a value through registered sale deed dated 23-05-1983 from its lawful owners i.e. Ajeeb-ur-Rehman and Shafiq-ur-Rehman. The said Suit was contested by the Applicants and after evidence, it was decreed as prayed in favour of **Ghulam Qadir and Sono**. The said

judgment was impugned by the present Applicants in Appeal which also stands dismissed against which Civil Revision No. S-24 of 2007, has been filed.

5. Insofar as Civil Revision No. S-25 of 2007 is concerned, this has been filed by the Applicant/Plaintiff, who had filed a Civil Suit against present Respondents i.e. (**Ghulam Qadir and Sono**) as well as the original owners and the said Suit was dismissed, against which appeal also failed and the order has been impugned in this Revision. The Appellate Court in its judgment in Civil Revision No.S-24 of 2007 determined the points for adjudication in the following terms;-

1. Whether the suit land viz. S.No.495 was declared as non-evacuee property and was purchased by the ancestor of appellant before partition?
2. Whether the respondents No.1 and 2 had purchased the above agricultural land viz. S.No.495 from the respondent No.3 and 4 and were in possession thereof from the date of sale?

6. The finding of the Appellate Court is as under;-

**“Point No.1.**

Contention of the learned counsel for the appellant was that the learned lower court has not considered the copies of the registered sale deed and the copies of the Revenue Record in the impugned judgment thereby has non-read the evidence available on the record. He contended that the findings of the learned lower Court are erroneous and are liable to be set-aside. The learned counsel for the respondents No.1 and 2 has strongly opposed the contentions raised by the learned counsel for the appellant. He argued that the learned lower Court has thoroughly examined the record and the findings are unexceptionable.

Mr. Memon learned counsel for the appellant has emphasized on a copy of the order of Deputy Custodian Evacuee Property Sukkur dated 31-08-1970 and thereby S.No.495 was declared as non-Evacuee property. It is pertinent to mentioned here that Mr. Mobin learned counsel for the respondent No.1 have argued that this document has been disowned by the Department concerned and it was bogus document i.e. the order of Deputy Custodian Sukkur speaks that S.No.495 was wrongly declared as Evacuee Property and this order was recalled. In a civil Suit No.96/88 filed by the appellant, the order Exh:68 has been held by the learned lower court as a bogus document and without lawful authority. Burden was on the appellant to prove that the property was non-evacuee property and in the circumstance. Learned counsel for the appellant did not controvert the contention of learned counsel for the respondent No.1 and 2.

Appellant examined only witness Badaruddin before the learned lower Court and he produced compared copy of sale deed executed by Thanwormal in favour of Muhammad Qasim on 18<sup>th</sup> August 1942 and further produced an attested photocopy of sale deed dated 8<sup>th</sup> August 1946 executed by Muhammad Qasim in favour of Hafiz Abdul Hamid and three others. He further produced attested copy of Form VII reflecting mutation of agricultural land bearing S.No.495 in favour of Hafiz Abdul Hamid and others. According to Article 72 of Qanun-e-Shahadat Order, 1984 the contents of the document may be proved either by primary or by secondary evidence. Article 73 defines the primary evidence and Article 74 clarifies secondary evidence.....

It is obvious from the face of document produced by Badaruddin that these are not within the definition of primary evidence. According to Article 74, certified copies defined in Sub-Article 1 to 5 are admissible in evidence and in the circumstances, the documents produced by the appellant before the learned lower Court does not match with the qualification of the secondary evidence. Neither he filed any application for summoning the original record nor produced the documents as per article 73 referred above. It was for the appellant to prove his assertion that S.No.495 was purchased by his ancestors before partition but he has miserably failed to discharge his burden and the documentary evidence produced before the learned lower Court bears no value.

With regard to the order dated 31-08-1970 allegedly passed by the Deputy Custodian (Evacuee Property), Sukkur, it is mentioned here that this document has been disowned by the Superintendent of DCO that this was not issued by the Deputy Custodian and no such case was pending there.

In the light of above, it is obvious that there is no sufficient evidence on the record to believe that the property viz. S.No.495 was declared as Non-Evacuee property and it was purchased by ancestors of appellant before the partition, therefore, this point is replied in Negative.

**Point No.2.**

The respondent No.1 produced the certified copy of sale deed executed by the respondents No. 3 and 4 in their favour and produced the entries of Revenue Record maintained in consequence of the sale deed. He further produced the land revenue receipts. These all documents reflects that the transaction of mutation in consequences of the sale deed have been maintained in favour of the respondent No.1 and 2 and they were enjoying the peaceful possession of the suit property. It is pertinent to mention here that the appellant have not produced any sort of evidence, which could rebut the evidence of respondent No.1. Therefore, I feel no hesitation to hold that respondent No.1 and 2 were bonafide purchaser of the suit land and were in possession of the same since its purchase.

In the light of above circumstances, I reached to the conclusion that the appeal in hand merits no consideration and is hereby dismissed with no order as to costs.”

7. Perusal of the aforesaid finding of the Appellate Court, wherein the judgment of Trial Court in Suit of **Ghulam Qadir and Sono** has been maintained, reflects that the entire case of the Applicant was dependent on an order of the Deputy Custodian Evacuee Property, Sukkur dated 31-08-1970, through which purportedly, the Suit property was declared as Non-Evacuee Property. It is on this basis that the Applicant had claimed possession and had also filed his Suit for cancellation of sale deed against **Ghulam Qadir and Sono** and the original owners. Insofar as this order of the Deputy Custodian Evacuee Property is concerned, in the evidence it has come on record that it was a bogus document, whereas, the said order was obtained in collusion and was subsequently recalled. The evidence to this effect was recorded in Applicant's Suit No.96 of 1988 (Exh.68), whereby, it was held that the said order of the Deputy Custodian Evacuee Property was a bogus document and had no legal effect. The Applicant miserably failed to prove it otherwise. It has further come on record that even otherwise, the Applicant also failed to prove the ownership documents including sale deed of 1942 on the basis of which the ownership was claimed and mutation entry was recorded in respect of the Suit property. In view of such position, I do not see any reason to interfere with the judgment passed by the two Courts below in Civil Revision No. S-24 of 2007 and hence it merits dismissal.

8. Insofar as the other Civil Revision Application No.S-25 of 2007 is concerned, again the main reliance of the Applicant was on the order passed by the Deputy Custodian Evacuee Property, which he has failed to establish and prove, as it was a bogus document, therefore, the entire superstructure of the purported sale deed and other documents also fails. The Trial Court as well as the Appellate Court have given concurrent findings against the Applicant in Civil Revision No.S-25 of 2007. Nothing has been brought on record before this Court so as to interfere with these concurrent findings, which are based on appreciation of the evidence led by the Applicant himself, therefore, no case is made-out in this Civil Revision Application as well.

9. In view of hereinabove facts and circumstances of this case, both these Civil Revision Applications do not merit any consideration and are, therefore, dismissed.

Dated: **10.12.2021**

**Judge**