

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

**Civil Revision No. S – 161 of 2011**

(Ghulam Qadir & others vs. Qaim @ Qaimuddin & others)

**Date of hearing: 25.10.2021**

**Date of announcement: 10.12.2021**

Mr. Abdus Salam Arain Advocate for the Applicants  
Mr. Sarfraz A. Akhund Advocate for Respondents 1 to 3  
Mr. Deedar Ali M. Chohan Advocate for Legal-heirs of Respondent No.4

## **JUDGMENT**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicants have impugned judgment dated 28-09-2011 passed by District Judge, Ghotki in Civil Appeal No.76 of 2010, whereby, the judgment dated 19-06-2000 passed by Senior Civil Judge, Ubauro in F.C Suit No.162 of 1985 (New) decreeing the Suit of Respondent No.1, has been maintained.

2. Learned Counsel for the Appellants has contended that both the Courts below have failed to appreciate the facts as well as law; that the mutation entry of 1945 was challenged in the year 1980 for the first time; that the Suit of Respondents was hopelessly time barred and even the proceedings initiated by them under the Land Revenue Act were also time barred; that the Respondents were never proved to be legal-heirs of deceased Khaliq Dino, hence this Civil Revision Application merits consideration and be allowed. In support, he has relied upon the cases of Ghulam Haider vs. Hafiz Allah Bakhsh (**NLR 1985 Revenue 133**); *Mst. Zeba and 12 others vs. Member-III Board of Revenue Baluchistan and 2 others* (**NLR 1986 Revenue 157**); *Wasiqan Begum vs. Syed Khursheed Ahmed Shah and others* (**2012 YLR 1119**); *Lal Khan through Legal-heirs vs. Muhammad Yousaf through Legal-heirs* (**P L D 2011 SC 657**) and *Riaz Hussain and others vs. Mst. Aisha Bibi and others* (**2015 YLR 1903**).

3. On the other hand, Respondents Counsel has supported the judgments of the Courts below and has contended that the mutation entry came into knowledge of the Respondents in the year 1980 when their rights as legal-heirs was denied; that in view of such position the Suit was within limitation; that the Suit was filed after availing appropriate remedy

under the Sindh Land Revenue Act, 1967; that independent evidence has come on record including the orders passed by the revenue authorities; that the impugned mutation entry was bogus and interpolated which has been corroborated with sufficient material and record; that as the mutation entry was in fact re-constituted and there is serious discrepancy in the signatures and the record Book of the department; that both Courts below have arrived at a just and fair conclusion; that as to the objection regarding non-joinder of various officials, the same is also misconceived as even on such ground of non-joinder a Suit cannot be dismissed; that the allegation to the effect that mother of Respondents was divorced was never proved, hence this Civil Revision Application merits no consideration and is liable to be dismissed.

4. I have heard the learned counsel for the parties and perused the record.

5. It appears that the private Respondents filed a Suit for declaration, partition, separate possession, accounts and recovery and sought relief of declaration that they are legal-heirs of deceased Khaliq Dino and co-owners with the Applicants in the Suit land according to their share with a further declaration that all alienations made through entry No.66 dated 27-08-1945 of the register of disputed cases and all subsequent transactions in the register of *Dakhal-e-Kharij* are illegal and fraudulent. It was further prayed that the defendant No.1 by way of mandatory injunction be directed to record and mutate the relevant revenue entries in favour of the Respondents. After exchange of pleadings, the learned Trial Court settled as many as 18 (Eighteen) issues and thereafter came to the conclusion that the Respondents have made-out a case, hence the Suit was decreed. However, the said decree was except to the relief of partition and separate possession for which it was left open to the Respondents to seek appropriate remedy before the competent Revenue Authorities. Insofar as the other relief regarding taking of accounts and share is concerned, further directions were issued and a preliminary decree was also passed in favour of these Respondents. The Applicants being aggrieved filed Civil Appeal No.76 of 2010 which also stands dismissed through impugned judgment.

6. The judgment of the trial Court is not only lengthy; but has also discussed various non-essential issues, including case law, whereas,

Learned Appellate Court has settled the seven following points for determination, which covers the entire controversy and dispute between the parties, which reads as under;-

1. Whether the respondents/plaintiffs came to know about mutation entry dated 27-08-1945 in the year 1980?
2. Whether the dispute arise between the parties on the partition of land in suit in the year 1980 and appellants/defendants denied the right of respondents/plaintiffs by interfering with their possession?
3. Whether the S.No.50/5, 301/1, 302/1, 352 and 458 are qabuli land of deceased Khalique Dino?
4. Whether the suit is time barred?
5. Whether the suit is not maintainable under the law?
6. Whether the appellants/defendants are entitled to the relief prayed for?
7. What should the order be?

7. The entire gist of the case is covered under Point No.1, and it would be advantageous to refer to the findings of the learned Appellate Court on this point, which reads as under; -

**“Point No.1;-**

On this point, respondents/plaintiffs have pleaded in their pleadings as well as deposed in their evidence that; the property in suit is inherited by them from ancestor Khalique Dino. They have also stated that; the suit property remained in joint possession of the parties up to October, 1980. They have further stated that; the dispute has arose between the parties as and when the appellants/defendants on the demand of land denied the title of respondents/plaintiffs and interfered with their exclusive possession over S.No.50/5, 301/1, 302/1, 352, 455 and others. Thereafter respondents/plaintiffs got verified the record of rights and came to know about adverse entries No.66 dated 27-8-1950 in the record of disputed cases and entry No.337 dated 27-8-1945 in the mutation register deh Form No.VII based on Dakhal Kharij so also based on earlier entry No.337 dated 27-8-1945 of deh form No.VII. According to the respondents/plaintiffs being aggrieved and dissatisfied with the said adverse entries they preferred appeal before the then Deputy Commissioner Sukkur thereby challenged the said entries to be unfounded fraudulent as well as null and void therefore sought for correction of record of rights in respect of foti khata badal of their father including their names along with other legal heirs of deceased Khalique Dino but appeal was dismissed by the Deputy Commissioner vide order dated 11-6-1981 on the point that intricate and legal points are

involved in the matter which is quite old thus advised aggrieved parties to seek their remedy before proper Court of law having jurisdiction. Later on respondents/plaintiffs challenged the said order before Additional Commissioner Sukkur by filing revision application which too was dismissed vide order dated 08-3-1982 for want of jurisdiction and respondents/plaintiffs were advised for seeking their remedy before civil court. The respondents/plaintiffs went in revision before Senior Member Board of Revenue against said order which was also dismissed being not maintainable according to law by giving rise to file civil suit. Respondents/plaintiffs after death of Khalique Dino, the appellants/defendant No.1 being clever man tried to get mutate foti khata of land as mentioned in schedule-A in his name as well as in the name of appellants/defendants No.2 and 3 as their real mother malafidely by excluding the respondents/plaintiffs from the inheritance on the pretext that; Mst. Qaima was not wedded wife of deceased Khalique Dino. Mst. Qaima contracted her marriage with Khalique Dino after her divorce from her previous husband Allah Dad Kosh. Respondents/plaintiffs along with their brother Abdul Wahid born from wedlock of Mst. Qaima after her marriage with Khalique Dino, due to dispute between the parties the foti khata badal of Khalique Dino was not finally decided between the parties. On the intervention of the brotherly people matter was privately settled and they remained in joint possession and enjoyment of the land in dispute according to their respective shares. The appellants/defendant No.1 being elder and literate among the brother managed and looked after the affairs of land. Conversely appellant/defendant No.1 denied the case of respondents/plaintiffs in their evidence. The witness namely Ghulam Rasool has deposed that; deceased Khalique Dino left his legal heirs namely appellants/defendants No.1 to 3 and Mst. Khairi is only legal heir and claim of respondents/plaintiffs to be legal heir of deceased Khalique Dino was rejected by the Mukhtiarkar Ubauro vide order dated 27-8-1945 and record of rights was mutated in their favour along with Mst. Khairi through entry No.337 dated 27-8-1945. They further deposed that; deceased Khalique Dino contracted his marriage with Mst. Khairi and Mst. Qaima never remained as his wife but she was kept as (Surait), therefore, respondents/plaintiffs have not inherited any share out of land left by deceased Khalique Dino and his entire land shown in the schedule-A, inherited by the appellants/defendants No.1 to 3 and Mst. Khairi, according to the order of Mukhtiarkar Ubauro dated 27-8-1945 thus the suit land is owned possessed and enjoyed by them according to their knowledge w.e.f August 1945. With regard the mutation entries dated 27-8-1945 shown in the entry No.66 in the record of disputed cases and entry No.337 of mutation register/Deh Form No.VII. The last paragraph of said order was reproduced by the learned trial Court under the findings on issues No.2, 8 and 11 therefore there is no need to reproduce the same. According to said order the then Deputy Commissioner has opined that the Mukhtiarkar Ubauro held enquiry in the matter and recorded statements of aged persons of the locality. According to which Mst. Qaima was wedded wife of Khalique Dino and Mst. Qaima and others were brothers of Ghulam Qadir and others. After holding enquiry Mukhtiarkar Ubauro have opined that Mst. Qaima and his brothers were legal-heirs of Khalique Dino and they were

entitled to inherit the property left by deceased Khalique dino and has submitted his report that inheritance already decided in favour of the respondents deserved to be cancelled. Not only this but the relevant para of order of Additional Commissioner, Sukkur has also been reproduced by the learned trial Court. According to said findings the learned Additional Commissioner has opined that original entry No.66 of register of disputed land of Deh Kotlo Taluka Ubauro which is said to have been decided on 27-8-1945 by Mukhtiarkar, signature of Mukhtiarkar is not tallying with other decisions in the same register pertaining to the month of July 1945 as well as entries of column No.1 to 7 of entry No.66 dated 27-8-1945 of register of disputed cases are written with black ink. Further Mukhtiarkar's order dated 27-8-1945 in column No.8 in said register is in blue ink. The respondent have failed to produce bills of assessments and land revenue receipts of pre-partition days or even up to 50's of 19<sup>th</sup> century therefore doubt has been created in his mind about genuineness of the decision of Taluka Mukhtiarkar regarding entry No.66 dated 27-8-1945 of register of disputed cases particularly because there was no such reason to make such entries under register of Dakhal Kharij at Sr.No.45 which has not been attested by the Mukhtiarkar Ubauro who had made note on 5.6.1973 that original voucher should be produced and Settlement Mukhtiarkar said to have passed order dated 24-8-1971 saying that entries made by him in Village Form No.VII in terms of entry No.337 dated 27-8-1945 of village form VII. In this regard D.W Gohar Ali supervisory Tapedar has admitted the suggestion made to him during cross examination by the learned counsel by the respondents/plaintiffs not only this but P.W Gul Muhammad has deposed that disputed Foti Khata was not effected in the revenue record but on the intervention of Nek Mard of parties they continued to remain in joint possession and enjoyment of the suit land upto 1980 thereafter appellants/defendants denied the right and title of respondents/plaintiffs over the suit land and tried to interfere with their possession over the disputed land the joint possession of the respondent/plaintiff has been proved through documentary evidence i.e. Dakhal Kharij produced at Ex.5 and Dhal receipts produced by them at Exh.148 to 153.

Further the version of respondent/plaintiff Gul Muhammad was also supported by P.W Eidan as well as Mst. Sabhai whose evidence was recorded on the orders of learned 3<sup>rd</sup>. Additional District Judge Mirpur Mathelo and the said P.W has admitted the claim of respondents/plaintiffs in her evidence and she was real sister of deceased Khalique Dino and said witness was not cross examined by the appellants/defendants though opportunity of cross examination was not disallowed by the Senior Civil Judge Ubauro but his order has not been challenged by the appellants/defendants before any forum.”

8. From the aforesaid findings of the Appellate Court, it clearly depicts that insofar as the Applicants are concerned, they have miserably failed to substantiate their stance by leading any confidence inspiring evidence. As to the limitation and Suit of the Respondents being time barred, it has

come on record that all along after the death of Khaliq Dino, the Suit property was being enjoyed jointly by the respective parties as per their share and never ever any occasion arose to get any separate entry incorporated in the record and so also for any *Foti Khata Badal*. It has also come on record that this was due to the efforts of the relatives and other people by virtue of which the parties continued to enjoy their respective shares in the Suit property left by deceased Khaliq Dino. There is nothing in the entire evidence on the contrary, and therefore, the argument of the Applicants Counsel that an entry recorded in the year 1945 could not have been challenged so belatedly is without any merits. It is also a matter of record that the Suit land was owned and claimed by the parties pursuant to being legal-heirs of deceased Khaliq Dino. In that case when a dispute is between or amongst the legal-heirs and in absence of any evidence to the contrary, the action initiated in the year 1980 by the private Respondents cannot be held to be time barred. They approached the concerned officials of the department for cancellation of the entry as soon as their right was denied, therefore, to that extent there cannot be any exception to the findings of the Courts below, especially the Appellate Court which has given a reasoned and fair conclusion on the basis of available evidence.

9. As to the claim of the Applicants that mother of the private Respondents was not a legally wedded wife of deceased Khaliq Dino; again this contention is belied from the evidence on record inasmuch as the concerned Mukhtiarkar has made a detailed enquiry to this effect and it has come on record that Mst. Qaima was the wedded wife of Khaliq Dino, hence again no exception can be drawn to this effect. Moreover, the Additional Commissioner, Sukkur in his findings has clearly held that original entry No.66 of register of disputed land dated 27-08-1945 also appears to be forged and bogus as the signatures of the then Mukhtiarkar were not tallying with other decisions so recorded by him in the same register pertaining to the month of July 1945 as well as entries in column No.1 to 7 of the said register, which have been written with black ink, whereas, the entry in column No.8 of the said register is in blue ink. It has further come on record through evidence of DW Gohar Ali (Exh-178), Supervising Tapedar that entries in column No.1 to 7 of page No.48 containing Serial No.66 is written in black ink, whereas, the order of Mukhtiarkar in column No.8 is in blue ink. He has further admitted that entry No.65 of the register and order passed by the Mukhtiarkar on that

entry as compared to entry No.66 all are different, whereas, he has also admitted that the date of objection in respect of entry No.65 is 04-08-1944. It has also come on record that one Mst. Sabhai whose evidence was recorded on the orders of Additional District Judge, Mirpur Mathelo, admitted the claim of Respondents in all respect in her evidence being the real sister of deceased Khaliq Dino, whereas, the said witness was never cross-examined. This was the most important independent witness as to the claim of the Applicants, and she being not cross examined was an ample justification for the Courts below to arrive at the conclusion that Respondents were legal heirs of Khaliqdino.

10. Perusal of the record and the findings recorded hereinabove clearly reflects that insofar as the claim of the Applicants is concerned there has been serious doubts as to the insertion of entry in the year 1945, whereas, as to their claim that Mst. Qaima was never a wedded wife of deceased Khaliq Dino has also not been proved. There appears to be no justification to disrupt or interfere with the concurrent findings of the two Courts below, which otherwise appear to be correct and arrived at after perusal of the evidence led by the parties. Even otherwise, once it has come on record that the entry of the year 1945 on which the entire case of the Applicants is setup, was a forged entry and was an outcome of a fraud then even the question of limitation would never arise as it is settled law that no limitation runs against a void order, whereas, the entire superstructure built upon such a void order cannot be sustained. Further, it is needless to observe that in like cases of inheritance, such an objection is seldom sustained.

11. Accordingly no case for indulgence is made-out as neither it is a case of misreading and non-reading of evidence nor lack of jurisdiction, therefore, this Civil Revision Application merits no consideration and is, therefore, dismissed with pending Application.

Dated: **10.12.2021**

**Judge**