

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

R.A. No. 114 of 2003

Ismail & others v. Haji Ramzan

R.A. No. 115 of 2003

Ismail and others v. Allah Dino and others

Applicants : Ismail and others in R.A Nos. 114 & 115 of 2003 through Mr. Muhammad Ishaque Khoso, Advocate.

Respondents: Haji Ramzan in R.A. No. 114 of 2003 and Allah Dino and others in R.A. No. 115 of 2003 through Mr. Noor Ahmed Memon, Advocate.

Date of hearing: 05.11.2021

Date of Decision: 26.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- The applicants through the listed Revision Applications have called in question the judgment and decree dated 09.10.2003 and 10.10.2003 respectively, passed by learned 1st Additional District Judge, Badin in two consolidated Appeal Nos. 43 & 44 of 1999, whereby the learned Judge, allowed the appeals and decreed suit No. 31 of 1993 (Old No. 58 of 1989) and dismiss suit No. 131 of 1987 filed by respondents.

2. Brief facts of the case are that applicants filed F.C Suit No. 131 of 1987 stating that agricultural land bearing S.No.4 measuring 0-4 ghuntas situated in deh Panoo-Baeed Taluka and district Badin (disputed land) was purchased by the respondents from claimant Nawab Shafeeq Ahmed in the year 1978. Due to excavation of distributory in the year 1930, an area of 0-7 ghuntas was utilized, therefore a new survey No.261 was formed, 13 ghuntaz went under the distributory leaving an area of 0-4 ghuntaz for the disputed land till 1970 when the old survey No. 1, 3, 21, 39 and 261 were re-surveyed and changed

into block numbers. Block No. 34/4 was brought in existence and by the resurvey the original survey No.4 lost its existence. It was the case of applicants that respondents are trying to take some piece of their land from survey No.260 with the connivance of official respondents, hence the applicants filed suit for declaration and injunction with the following prayers:

- a. Suit land survey number 4 is not in existence in deh Panoo Baeed and further the claim or right of the defendants 5 and 6 over the suit survey number is illegal, malafide, baseless and without any force.
- b. The order/letter No.266 dated 2.4.1987 of Assistant Commissioner, Badin the Defendant No.3 sent to Mukhtiarkar Badin, the Defendant No.4 is based on bogus, illegal and baseless application/claim of the defendants 5 and 6 and the same is illegal, malafide, baseless and without lawful authority.
- c. Grant permanent injunction against the defendants Nos. 1 to 6 restraining them from making measurement etc or interfering into the peaceful cultivating possession of the plaintiff's land bearing survey No.260 and further on the strength of bogus and baseless claim of defendants Nos. 5 and 6 over suit survey number, which is not in existence.

3. It is submitted that respondent Haji Ramzan also filed suit bearing No.31 of 1993 (Old No. 69 of 1987 for possession, permanent and mandatory injunctions with the following prayers:

- a. The defendants be dispossessed and ejected from the suit land bearing survey No.4 and he be put into vacant possession of the same.
- b. The defendants be restrained permanently from removing the boundary lines of the suit survey number from making further encroachment on the suit land viz. Bhada land of Old Guni wah in Mohaga of suit survey number.
- c. The defendants be directed by way of mandatory injunction to maintain the boundary lines and marks of suit land survey number and survey No.260.

4. The respondent filed written statement with the plea that he was in cultivating possession of the disputed land till 1985 when the applicants removed the boundary wall of the disputed land, removed the Bhada of government land existing between these survey numbers. It was further asserted that the disputed survey No.4 is still in existence and only boundary lines are removed by the applicants. He denied the resurvey of disputed land with conversion into block survey.

5. The applicants also filed written statement wherein they categorically denied the allegations of plaintiff and repeated the same contents in the written statement as stated by them in their plaint in F.C. Suit No. 131 of 1987. They denied to have trespassed in the suit land and that they removed the boundary marks of the suit land and also of survey No. 260 or government bhada. They also denied the possession of plaintiff over the bhada land. They further stated that the plaintiff has no cause of action and that suit is not maintainable and the same is time-barred and further, the Honourable court has no jurisdiction to try the same. Both the suits were consolidated and Suit No.131 of 1987 was ordered to be the leading suit.

6. On the pleadings of the parties learned trial court framed the following issues:

1. Whether the defendant number 6 in suit number 131 of 1987 and plaintiff of suit number 79 of 1988 number 31 of 1993 is owner of survey number 4?
2. Whether S.No.4 of deh Panoo Baeed is not in existence in deh Map?
3. Whether the defendants of suit number 79 of 1988 a new number 31 of 1993 and plaintiffs of suit number 131 of 1987 have trespassed on the suit land viz survey number 4 of them followed by and then dismantled boundary of survey number 4 and 260?
4. Whether the claim of defendants number 5 and 6 of suit number 131 of 1987 over the suit land viz survey number 4 is illegal, malafidely and without any force?

5. Whether the plaintiff of suit number 79 of 1988 (number 31 of 1993) is entitled for possession of the suit land?
6. Whether the order/letter number 266 dated to dot 4.1987 issued by defendant number 3 is bogus, illegal, and baseless?
7. Whether both the suits or any one of them is not maintainable?
8. Whether the suit number 131 of 1987 is barred under land revenue act and a specific relief act?
9. Whether suit number (79 of 1988) 31 of 1993 is time-barred?
10. Whether the suit number 79 of 1988 (number 31 of 1993) is barred by Section 11 of land revenue jurisdiction act and a specific relief act?
11. Whether suit number 79 of 1988 (number 31 of 1993) is not maintainable?
12. Whether this court has no jurisdiction to try a suit number (79 of 4 1988) number 31 of 1993?
13. Whether parties are for either suit is entitled for any relief?
14. What should the decree be

7. Learned trial court after recording evidence of the parties on the above issues and hearing the parties partly decreed the suit of applicants and dismissed the suit of respondents 1 & 2. The said judgment and decree of trial court was challenged before learned Appellate Court, which after hearing the counsel of the parties passed the impugned Judgment and Decree, hence these revision applications.

8. I have gone through the record it appears that learned appellate court has erroneously relied upon deh Map Ex. 168 assuming that suit survey No.4 has been shown in existence of deh map 168. As per record deh map Ex.168 is pertaining before 1970. Appellant Allah Dino in his evidence has categorically admitted that he has produced all documents Ex.163 to 170, which are before the year 1970; that on the

record of learned trial court, it is admitted position that an area of 7 ghuntas out of disputed survey number was acquired in distry of Wahnai Minor, which was excavated in the year 1930. Similarly, 13 ghuntas from suit survey number was given to new-formed S.No. 261 before 1970 and out of the remaining 4 ghuntas of S.No.4, one ghunta was given to new B.No.261 which was increased and admeasuring 14 ghuntas. A new block No. 34/4 was formed out of S. No. 4 and 3 ghuntas were given to inspection boundary of Wahnai Minor and that inspection path was constructed by the irrigation distry constructed later on and as such after 1970 survey No.4 has lost its existence. The appellant obtained true copy on 26.3.1994 and learned appellate court wrongly assumed that this Ghatwadh form Ex.165 was prepared in the year 1994. Ex.165 has given position before 1970, hence learned trial Judge has rightly decided this issue in favour of applicants; that learned Appellate Court has also wrongly discussed entry No.24 of alleged form VII-B Ex.166 as of this entry Ex.166 has been prepared based on the previous record and the basis of that previous record, the appellant purchased the land of S.No.4 admeasuring 4 ghuntas; that learned appellate court has not considered the fact that in the older record said survey No.4 was mentioned as per evidence of PW Noor Muhammad, who produced a map of deh Panoo Baeed as Ex.145 & 146. It is submitted that in new map deh Panoo Baeed Survey No.4 has not been shown which has been prepared after 1970; that learned appellate court has wrongly relied upon the registered sale deed, which was produced by the appellant in respect of survey No.4 as this sale deed is based on the older record and not on the new record; that evidence of official witness namely Muhammad Ishaque, the clerk of the office of Assistant Commissioner, Badin Ex. 124, who produced letter of Land Record Office Hyderabad dated 10.2.1987 at Ex.125 wherein it is stated that S.No.4 is not in existence at deh map "F" Statement of said Deh Panoo Baeed. He also produced copy of letter dated 18.10.1987 of defendant No.4 addressed to defendant No.3 Ex.126 wherein it is stated that survey No.4 is not in existence and another official witness

Noor Muhammad examined at Ex.129 who produced copy of Record of "F" Statement in respect of suit survey number at Ex. 130 and according to this witness there is no mention of survey No.4 in the record and he produced map of deh Panoo Baeed at Ex. 145 and Ex. 146.

9. From these documents it appears that in the government record of land Revenue and survey settlement record, survey No.4 is not in existence and this position has not been challenged by the respondent/appellant; that learned lower court has wrongly reversed the issue No.2 in negative; on the contrary, learned trial court has rightly decided issue No.2 in affirmative; that learned appellate court has also erroneously reversed the finding on issue No.3 without considering the facts on record. The learned appellate court has wrongly stated that Survey No.4 owned by the respondent/appellant till 1985. The actual position was that they never remained in possession of survey No.4 after 1970 and the appellant/respondent has not produced any single-receipt showing possession of survey No.4. The learned trial court has rightly decided issue No.3 in negative whereas appellate court has not applied its mind properly and decided issue any evidence on record; that learned appellate court has also wrongly decided issue No.4 and reversed same and the findings of learned trial court on issue No.4 are very much clear and reasonable; that learned appellate court has decided appeals on wrong presumption and without any evidence on record; that learned appellate court has not properly discussed the evidence and the documents produced by the applicants and committed gross illegalities and irregularities; that the Judgment of learned appellate court is not speaking one and learned appellate court has discussed wrong facts in its Judgment and has not discussed the true facts and the documents and evidence brought on record by the applicants; that the Judgment of learned lower court is not sustainable and is liable to be dismissed.

10. Resultantly the listed Civil Revision Applications are allowed, the judgment and decree passed by learned appellate Court is set aside.

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