

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No. S – 50 of 2005

(Ghulam Sarwar through LRs and others vs. Ghulam Rasool through LRs and others)

Date of hearing: 20-12-2021

Date of Order: 20-12-2021

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

Mr. Mushtaque Ahmed Shahani, Advocate for the Respondents

Mr. Noor Hassan Malik, Assistant Advocate General

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned judgment dated 29.01.2005 passed by 3rd. Additional District Judge, Sukkur, in Civil Appeal No.10 of 2002, whereby, judgment dated 15-12-2001 passed by 2nd. Senior Civil Judge, Sukkur in F.C Suit No.146/1994 (Old Number 156/1990), has been maintained through which the Suit filed by the Applicants was dismissed.

2. Heard both the learned Counsel and perused the record.

3. It appears that the Applicants filed a Suit for declaration, injunction and claimed ownership of the Suit property on the basis of transactions dated 24-08-1972, 14-05-1974 and 19-11-1974 along with further declaration that orders dated 21-06-1990 and 28-06-1990 passed by the Assistant and Deputy Commissioner, Rohri respectively, were void, illegal and without any lawful authority. The Applicants' Suit was premised on two pleas. The first one was of adverse possession and the second was claim of ownership on the basis of statement of sale. The learned Trial Court came to the conclusion that insofar as the very basis of filing of the Civil Suit and seeking declaration as well as cancellation of orders and entries in favour of the Private Respondents is concerned, the same is contradictory in nature, as apparently on the one hand ownership was being claimed on the basis of adverse possession and at the same time, though alternatively, ownership was also being claimed on the basis of statement of sale. Apparently, both these pleas, as to the ownership of the property cannot be taken at the same time. It in fact it destroys the very foundation of the Applicants' case on the basis of which they had sought

the declaration with a consequential relief of cancellation of orders and entries in favour of private Respondents. The learned Trial Court as well as the Appellate Court both have come to this conclusion that the Applicants' cannot take this contradictory plea and their claim is belied on this basis as well.

4. As to cancellation of entries and the orders impugned in Suit, it has also come on record that the same was done by the concerned Mukhtiarkar Pano Akil after proper procedure was adopted and the land in dispute was mutated in the name of legal-heirs of Khuda Dino in a "**Jals-e-Aam**", whereas, the impugned orders were passed by the officers having jurisdiction to do so, then merely alleging that the said orders are illegal, would not ipso facto make them as tainted with malafide or without jurisdiction so as challenge the same before a Civil Court. Therefore, the plea of such orders being without lawful authority and jurisdiction is without any legal basis.

5. As to approaching the Revenue officials for cancellation of mutation belatedly after a lapse of more than 17 years, it may be observed that if the orders obtained are based on fraud as is available in this case, wherein, the legal of heir of a deceased was shown as expired, coupled with the fact the claim of respondents is based on inheritance and devolving of rights pursuant to demise of their father; then even if there was delay, it could conveniently be condoned in the given facts and circumstances of this case; hence, this argument is also hereby repelled.

6. The Judgments of the Trial Court as well as of the Appellate Court have been examined and I do not see any justification to interfere with these Judgments, as apparently they have been passed in accordance with law and on the basis of the evidence led by the parties, whereas, even otherwise it is not appropriate in this revisional jurisdiction to upset the concurrent findings of the Courts below, when no such case is even otherwise made-out. In view of these facts since the Applicants had failed to make a case for indulgence, this Civil Revision Application was dismissed by means of a short order in the earlier part of the day and these are the reasons thereof.

Judge

ARBROHI