

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 81 of 2005

Province of Sindh and others v. Mian Qurban Ali and others

Date of hearing: **06-12-2021**

Date of decision: **06-12-2021**

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh for the Applicants.
Mr. Asif Ali Bhatti, Advocate for the Respondents.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision Application, the Applicants have impugned judgment and decree dated 16-06-2005 and 23-06-2005, respectively, passed by IIIrd Additional District Judge, Khairpur, in Civil Appeal No.13 of 1997, whereby, the judgment and decree dated 26-05-1997 and 31-05-1997, respectively, passed by 1st Senior Civil Judge, Khairpur in F.C. Suit No.45 of 1990 has been maintained, through which the Suit of the Respondents was decreed as prayed.

2. Heard learned AAG and Respondents Counsel and perused the record. It appears that the Respondents being aggrieved by the action of the Applicants whereby they started construction of some road / way from the land of the Applicants, without first acquiring the same in accordance with the Land Acquisition Act, filed a Suit for declaration and injunction. The said Suit was decreed by the trial court which has been maintained by the Appellate Court as well.

3. Learned AAG vehemently argued that both the courts below have failed to appreciate the evidence in a correct manner, whereas, the Respondents were never entitled for any relief as granted; however, was not able to refer to any documents, material or even evidence so led by the Applicants to dislodge the claim of the Respondents. His only contention was that in an earlier round of litigation, the Suit filed by the same Respondent on the same cause of action was withdrawn; hence, no further case could have been filed and maintained. However, to this it may be observed that the said Suit was withdrawn on the assurance of the Applicants that they would not enter into or construct the road / way from the land of the Respondents, whereas, the road was being constructed on the existing katcha road. This was not adhered to, therefore, a second Suit

was competent, as the earlier Suit was never adjudicated on merits. moreover, the evidence of the concerned Tapedar who is a Government official has gone against the stance taken by the Applicants. It would be advantageous to refer to his deposition and cross examination which reads as under;

Ex.49 – Deposition of Nisar Ahmed S/o Niaz Muhammad Soomro

“To, Advocate for plaintiff.

I surveyed the S.NO: which is property of the plaintiffs from which the road is passing. I prepared such report and sketch. I see the survey report and two sketches the same bear my signatures. I produce the survey report and two sketches as Ex:49/A, Ex: 49/B and Ex: 49/C.

XXX To AGP for defendants NO: 1 to 4.

It is incorrect to suggest that the road is going to be constructed on old Karia. In old map the karia is in existence. At present there is no karia in our record. I do not remember the survey number through which the old karia is passing. It is correct to suggest that road is passing from the S.NOs: of the plaintiffs. I have already shown the survey numbers in my report and sketches which I have produced in the court. According to record there is no government Bhada land near the survey numbers of the plaintiffs. It is incorrect to suggest that the road is passing on the old karia and I have deposed falsely. It is incorrect to suggest that plaintiffs have encroached upon government land. Tapedar and Surveyor of the Roads Department were present when I measured the suit land and prepared the sketches.”

4. Perusal of the aforesaid deposition and cross examination of the concerned Tapedar clearly belies the stance so taken by the Applicants, whereas, no cogent or confidence inspiring evidence was ever led by them to rebut the same or remotely suggest the facts as being otherwise. Once it has come on record after a survey that the road in question is being constructed and is passing on / from the land of the Respondents, whereas, his evidence has not been shaken despite best efforts, then the two courts below were fully justified in decreeing the Suit of the Respondents, and no exception can be drawn to such findings.

5. in view of hereinabove facts and circumstances, the Applicants have failed to make out a case so as to upset the concurrent findings of the two Courts below, and therefore, by means of a short order dated 6.12.2021, this Civil Revision Application was dismissed and these are the reasons thereof.