

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 15 of 2003

Province of Sindh and others v.

Pir Syed Muhammad Taqi Shah Jillani and others

Civil Revision No. S – 25 of 2003

Abdul Razaque (deceased) through his legal heirs and another v.

Pir Syed Muhammad Taqi Shah Jillani and others

Date of hearing: **17-01-2022**

Date of decision: **17-01-2022**

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh for the Applicants in Civil Revision No. S-15 of 2003 and for official Respondents in Civil Revision No. S-25 of 2003.

Mr. Mukesh Kumar G. Karara, Advocate for legal heirs of Respondent No.1 in both Civil Revisions.

Mr. Safdar Ali Kanasro, Advocate for the Applicants in Civil Revision No. S-25 of 2003 and for Respondent No.3 and legal heirs of Respondent No.2 in Civil Revision No. S-15 of 2003.

.....

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Both these Civil Revision Applications have be filed by the Province of Sindh and private persons impugning a common judgment and decree dated 26-11-2002 passed by the Additional District Judge, Gambat in Civil Appeal No.17 of 2002, whereby the judgment and decree dated 14-03-2002 and 20-03-2002, respectively, passed by the Senior Civil Judge, Gambat in F.C. Suit No.14 of 1997, through which the Suit of Respondent No.1 was dismissed, has been set aside and certain directions have been issued.

2. Heard learned AAG as well as Counsel for the parties.

3. It appears that being aggrieved of Applicants notice and cancellation of revenue entries, Respondent No.1 filed a Suit for declaration, injunction, restoration of possession and *mesne* profits, which was dismissed by the learned Trial Court. The Appellate Court, in Appeal, has set aside the judgment of the Trial Court, whereby the Suit was dismissed; however, at the same time, the Province of Sindh through the Wildlife Department has

been directed to approach the Revenue authorities through process in accordance with law for cancellation of entries, if any. The Wildlife department being aggrieved has approached this Court for setting aside of the said order, specially the directions post remand. It would be advantageous to refer to the finding of the Appellate Court, which reads as under:

“Heard all the learned counsels of the parties and perused the record.

The appellant/ plaintiff was filed the suit for declaration, permanent injunction, restoration of possession and Mesne profits against the respondents NO.1 to 7 in which respondents NO.3,5,6& 7, filed their written statement. In which they have denied the claim of the appellant/ plaintiff. The appellant had examined P.W-1 Muhammad Naqi Shah who is general attorney of the plaintiff and produced relevant documents on record. P.W-2 Karim Bux who is supervising tapedar of Sobhodoro, who had also placed all the relevant documents and thereafter the side of the appellant/ plaintiff was closed. D.W-1 Taj Muhammad Shaikh examined on behalf of the respondents/ defendants NO.1 to 4 and 7. They also examined D.W.2 Abdul Razak, who is respondent/defendant NO.5 in the case who had also placed on relevant documents which were as their possession and thereafter the side of the respondents/ defendants was closed.

The learned trial court had decided the matter issue wise. I am affirmed to hold that the learned trial Judge had decided the issues NOs: 3,4,5,6 and 7 without applying its mind on record. It appears from the perusal of the record that the legal requirements were not fulfilled for cancellation of entries by the revenue documents which were in the name of the appellant. The P.Ws NO.2 Karim Bux, who is supervising Tapedar of Sobhodoro, in his evidence had stated that he do not know whether any notice was issued by the Deputy Commissioner to appellant before cancellation of entry NO. 51, which shows that the same has been cancelled by the Deputy Commissioner without due course of law without giving any opportunity of hearing the appellant. About the question of possession over the suit land, it is strange to note that D.W-1 Taj Muhammad in his evidence had stated that he do not know whether the suit land is still in the name of plaintiff Taqi Shah and he is in possession of the same. They came to know that in the year 1996 that plaintiff/ appellant Pir Taqi Shah has got the suit land managed in his name. It is very strange to note that the entries were cancelled by the Deputy Commissioner even in the absence of Wild Life Management department. D.W-1 Taj Muhammad had also admitted in his evidence that Pir Taqi Shah is in possession of the suit land and they have never filed any complaint against appellant/plaintiff before any forum for illegal possession and enjoyment of produce by him. He had also admitted that the defendants / respondents NO: 5&6 Abdul Razaque and Qadir Bux are residing on the suit land and still they are haries of the suit land.

It is settled principle of law that forgery and fabrication can not be presumed certified copies of entry NO.51, which was produced in court, which was subsequently cancelled.

Article 87 of Qanun-e-Shahadat Order X of 1984 provides that “Every Public Officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part

thereof as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title and shall be sealed whenever such officer is authorized by law to use of a seal, and sign copies so certified shall be called certified copies.”

Article 88 of the said order X of 1984 provides that “such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.”

It is strange to note that trial court hold that no proof has been placed on record by the appellant regarding his title over the property i.e. suit land. The rule of evidence is that the contents of the documents are proved either by primary or by secondary evidence. The primary evidence is the document itself. The secondary evidence, of course, includes certified copies given under the provisions of Qanun-e-Shahadat Order, when such copies are compared with the original one. Certified copy of a public document is admissible in evidence without further proof. The reliance is placed on 1987 CLC 1366 and 1985 CLC 1513. The revenue authorities are required to follow the procedure for cancellation of entries or otherwise as provided by Land Revenue Act 1967. It is settled principle of law that certified copies of mutation of sale mentioned according to section 42 to 45 of Land Revenue Act carries presumption of truth. NLR 1982 Revenue 217.

It has been admitted by the D.W NO.1 Taj Muhammad that appellant is in possession of the suit land. The case of the respondents NO.5 & 6 is that they are not haries of the appellant which give way to the presumption that if they are not haries of the appellant then what status they carries with the possession of second in distance. The presumption would be that they are in illegal possession of the suit land. In this case all the defendants/ respondent have filed their written statement but none on behalf of respondents/ defendants NO. 1,2,3 and 4 have been examined before the lower court. In this case the Mukhtiarkar taluka S.Dero had filed written statement but he had not examined any authorized person before the trial court to disprove the contention of appellant. Mere filing of written statement does not debarred any party to prove its case.

It is also the question in dispute that the appellant/ plaintiff had purchased the suit land from one Buksh Ali. The Buksh Ali had driven that land from State Government in the year 1983. It is settled principle of law that the averments made in the pleadings do not constitute evidence but must be proved. The reliance is placed on 1997 CLC 152. The official respondents NO.1 to 4 had failed to prove their case in the shape of evidence but they had placed reliance on evidence of other respondents. It is settled principle of law that the facts stated should clearly spell out a case of fraud. General allegations are insufficient. In these circumstances, I am of the view that the Judgment and decree of learned trial court is not sustainable in law. The cancellation of entry NO. 51 effected by the Deputy Commissioner Khairpur vide his order NO.2 dated 1.1.1997 is illegal and Arbitrary and it is further hold that the respondents NO. 5 and 6 are in illegal possession of the suit land, therefore they are directed to handover the possession of the suit land to the appellant. However Wild Life Management department (Respondent NO.7) is at liberty to move the Revenue Authorities afresh, if they deem necessary and Revenue Authorities are also directed to adjudicate upon the matter after providing full opportunities of being heard to both the parties.

The appeal stands disposed of accordingly with no order as to costs.”

4. On perusal of the aforesaid findings, it appears that insofar as the private Applicants are concerned, they by themselves had admitted that as to title or ownership, they have no claim; but are in possession on the basis of some concession by the purported owner as settlers; hence, to the extent of the above order and the dismissal of Suit, they have no *locus standi* to file this Civil Revision Application. While confronted, their Counsel has submitted that the owners from whom they are claiming possession were accordingly informed about these proceedings, but neither they came forward nor the Court had joined them, whereas, their possession is bonafide. However, this contention of the private Applicants is not tenable. They sail in the same boat as the person who purportedly has settled them. They in law have no claim or justification to seek any relief from the Court on such basis. Therefore, their Civil Revision Application does not merit any consideration and is liable to be dismissed.

5. Insofar as the case of Wildlife department is concerned, Respondent No.1 appears to be aggrieved by cancellation of their Revenue records without notice. While confronted, learned AAG was not in a position to refer to any material which could rebut the contention raised on behalf of Respondent No.1 that the cancellation was without notice. Learned AAG has referred to the evidence of witness i.e. Taj Muhammad Shaikh, Assistant Conservator Wildlife Department, Sukkur (*Ex. No. 115*); however, even on perusal of the same, it is not clear that how the mutation entries were cancelled without notice. On the other hand, learned Counsel for Respondent No.1 has referred to Exh-115-A which is a letter dated 1.1.1997 and (not an order) issued by the Deputy Commissioner, which in fact supports the contention of Respondent No.1 as neither any notice was issued nor any opportunity of hearing was provided to him before cancellation of their entries. The same was done on the ground that entries appear to be doubtful as informed by the Assistant Commissioner. In that case, the entire exercise carried out by the Applicants / officials of the Revenue Department were *coram non iudice* and without jurisdiction; hence, not only the Suit was maintainable, but an appropriate order of remand has been correctly passed by the Appellate Court against which the Province, at the very first instance, ought not to have filed this Civil Revision Application. If they have case at all, they have to take recourse to the procedure as provided in law, as apparently, the revenue entries could not be cancelled without notice and opportunity of hearing to Respondent No.1 at the behest of any complainant or an aggrieved person.

6. In view of hereinabove facts and circumstances of this case, no case for indulgence is made out as the Appellate Court's judgment appears to be in accordance with law and has only remanded the matter by setting aside the cancellation of the Revenue records of Respondent No.1; hence, no case is made out. Accordingly, both these Civil Revision Applications were **dismissed** with pending application(s) by means of a short order in the earlier part of the day and these are the reasons thereof.

Abdul Basit

J U D G E