IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 65 of 2004

Rafique Ahmed Safi Munshey & Others v.

Abdul Sattar Munshey (deceased) through his legal heirs and others

Date of hearing: **24.01.2022**

Date of judgment: **24.01.2022**

Mr. Nishad Ali Shaikh, Advocate / Associate of Mr. A. M. Mobeen Khan Advocate for the Applicants.
Nemo for 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 dated 28.3.2004 passed by the Additional District Judge, (Hudood), Sukkur, in Civil Appeal No.46 of 2002 (Old No.07 of 1990) whereby, while dismissing the Appeal, the judgment dated 28.2.1990, passed by the 2nd Senior Civil Judge, Sukkur, in Suit No.42 of 1988 through which the Suit of the Applicant was dismissed has been maintained.

2. Applicants Counsel has filed written arguments, whereas, despite being served no one has turned up on behalf of respondents. I have gone through the written arguments and perused the record.

3. The Applicants filed a Suit of pre-emption and mense profit, against the Respondents in respect of the suit land which was sold by Respondents No.1 to 4 to Respondent No.5. The Respondent No.1 to 4 were declared ex-parte, whereas, Respondent No.5 contested the matter. The suit was ultimately dismissed by the trial court which order has been maintained by the Appellate Court. The relevant finding of the Appellate Court reads as under;

> "**Issue No.1.**
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> In the cases of suit for pre-emption it is very essential that the appellants have made Talab-e-Nowasibat and Talab-e-Ishhad in the presence of witnesses and in the present case the appellant examined himself and as well as his two witnesses namely Syed Abid Hussain Shah and Muhammad Ramzan. The witness Syed Abid Hussain Shah admittedly friend of appellant while witness Muhammad Ramzan admittedly hari of

the appellant. The appellant stated in his evidence that he made Talabs on his behalf and on behalf of appellants 2 to 3 as appellant No:2 is brother while appellant No:3 is the mother of the appellant. The witnesses of the appellants are neither owners of the adjacent land nor they are permanent residents of the area where the suit land is situated. It is also admitted fact that appellant himself taken the witness Syed Abid Shah towards the land while his other witness who is his hari was already present there and appellant did not try to call any other adjacent zamindar of the area or any other respectable person of the locality at the time of making Talabs, therefore, hardly it is believed that the appellant has made talabs in presence of witnesses as the evidence of the friend and hari can be managed easily when particularly the respondent No:5 denied that the appellants made any talab in the entire proceedings, it had also not come on record that appellant even tried to call other haris of the adjacent lands or any other residents and neither it has been brought on record that any body refused to be witness of Talabs of the appellant. The respondent No:5 has submitted that the land in question was purchased by him with the consent of all the parties and the owners of the land sold out their land to him being as cultivator of this land since partition of Pakistan. It is also submitted by the respondent in his written statement that he developed land by expensing of huge amount and when the land gave good produce then the present appellants have come forward and file the present suit with malafide intention, his witnesses namely Muhammad Mithal and Wali Dino also supported the version of the respondent No: 5, one witness Muhammad Mithal is zaimindar of the adjacent land while his witnesses Wali Dino is hari of one Mian Abdul Karim who is owner of the adjacent of the suit land. The appellants have failed to prove that his Talabs were made before the witnesses in accordance with law, therefore, finding of the trial court on this issue is well reasoned and I am also of the view that appellants are not entitled for the possession of the land on the basis of Talabs under the pre-emption laws hence this issue is decided in negative.

Issue No.2.

In view of the above discussion at issue No:1 I have found no illegality and irregularity in the judgment of the learned lower court passed on 28-2-1990 in civil suit No: 42/1988. The judgment is well reasoned and not bad in law justice and equity and not required any interference. Therefore, this issue is also decided in negative.

Issue No.3.

In view of the above discussion at issues Nos:1 and 2 the appeal of the appellants is hereby dismissed with no order as to costs. The R & Ps be sent to the learned lower court immediately."

4. On perusal of the record it appears that the Applicant had miserably failed to lead any confidence inspiring or cogent and reliable evidence in support of his claim as to pre-emption. It is a matter of record that the evidence of the Applicant and his two witnesses was contradictory against each other, whereas, the stance taken in the pleadings was belied by the said witnesses, as to time, place and presence of people when the alleged claim of Talab-e-Muwasbat and Talab-e-Ishhad was made. Both the courts below have given a concurrent finding of fact on this issue against

the Applicant, for which no plausible or justified argument has been made before this Court. As per the learned trial court even the time of making such claim was incorrect inasmuch as the date as per the pleadings was 13.4.1986, whereas, it is the case of the Applicant that it was done while cutting unwanted grass from the wheat crop, and at that point of time, under normal circumstances, the wheat crop was ripe and there is no occasion for cutting of any unwanted grass as alleged. It has further come on record that there was some family arrangement, between the Applicant and Respondents No.1 to 4, whereby the land was privately partitioned, and separate portion of the land was being cultivated by them through respective haries. Therefore, in such circumstances there was no occasion or immediate need for Respondent No.5 to approach the Applicant on the same day when the land was sold to him and demand partition and separate possession which allegedly gave rise to the claim of pre-emption as alleged in the plaint. The witnesses who appeared for and on behalf of the Applicant were also interested witnesses being his friend and hari, whereas, no other independent witness was produced to prove the claim of pre-emption as alleged. All these circumstances have prevailed upon the two Courts below not to accept the plea taken in the pleadings as they have not been proved to their satisfaction. In that case, this Court under its Revisional jurisdiction, merely for the reason that a wrong conclusion has been drawn from the reading of evidence, cannot upset such findings of the two courts below, and it is only when a case of lack of jurisdiction, or improper exercise of jurisdiction is made out that this Court can intervene under section 115 CPC.

5. In a finding of fact where such findings were based on appraisal of evidence, raising of inferences in its discretion could not be interfered with under S.115, C.P.C. merely because a different view was also possible to be taken[1]. It is also settled law that a mere fact that another view of the matter was possible on appraisal of evidence, would not be a valid reason to disturb concurrent finding of fact in a Civil Revision[2]. It is further settled that High Court cannot upset finding of fact; however erroneous such finding is, on reappraisal of evidence and take a different view of such evidence[3]. As to any misreading or non-reading or lack of jurisdiction or illegal exercise of jurisdiction, nnothing has been brought on record before

[1] ABDUL QAYUM V. MUSHK-E-ALAM (2001 S C M R 798)
[2] Abdul Ghaffar Khan v Umar Khan (2006 SCMR 1619)
[3] Muhammad Feroz v Muhammad Jamaat Ali (2006 SCMR 1304)

this Court so as to interfere with these concurrent findings, which are based on appreciation of the evidence led by the Applicant himself, therefore, no case is made-out in this Civil Revision Application. Neither it is a case of misreading and non-reading of evidence nor lack of jurisdiction, therefore, this Civil Revision Application merits no consideration; hence, was dismissed by means of a short order in the earlier part of the day and these are the reasons thereof.

J U D G E