

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

1. Civil Revision No. S – 29 of 2000

(Shafi Muhammad (deceased) through L.Rs. vs. Mst. Janat (Deceased) through her L.Rs & others)

2. Civil Revision No. S – 30 of 2000

(Muhammad Shafi (deceased) through L.Rs vs. Karamuddin & others)

Date of hearing: 13.12.2021
Date of judgment: 28.01.2022

Mr. A.R Faruq Pirzada Advocate for the Applicants
Mr. Kalander Bakhsh Phulpoto Advocate for the Respondents

JUDGMENT

Muhammad Junaid Ghaffar, J. – Both these Civil Revision Applications have impugned a common judgment dated 08-02-2000 passed by the Additional District Judge, Kandiaro in two Civil Appeal Nos. 70 and 71 of 1998, whereby a consolidated judgment dated 15-10-1998 passed by Senior Civil Judge, Kandiaro in F.C Suit Nos.33 of 1994 (filed by Respondents) and 21 of 1996 (filed by the Applicants), has been maintained / upheld through which the Suit of the Applicants was dismissed and that of the Respondents was decreed.

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

3. The brief facts as reflected from the record are that Respondents 1 to 5 had filed a Suit against present Applicants for declaration and injunction (F.C Suit No.33 of 1994) to the effect that the Suit property is held in the name of the deceased father of the Applicants (Suleman) as *benamidar*. Subsequently, the Applicants also filed a Suit for possession, mesne profits and permanent injunction (F.C Suit No.21 of 1996) against Respondents 1 to 5, wherein, they prayed that possession of the suit land be handed over to them and mesne profits be also awarded. The learned trial Court settled the following common issues in both the Suits, whereas, the Suit of Respondents being earlier in time was made the leading Suit.

1. Whether the suit land is in possession of the plaintiff and enjoying its produce as owner?
2. Whether the deceased Muhammad Suleman was brother of Plaintiffs husband Bhoora?

3. Whether the Suit land directly granted to late Mohammad Suleman the father of defendant No 1 to 6 on harap conditions or as a Benamidar if so its effect?
4. Whether the Plaintiff with the help of her son committed fraud with defendants in order to usurp the suit land?
5. Whether the Suit No.21/96 and 33/94 are time barred?
6. What should the decree be?

4. Both the Suits were consolidated and the learned trial Court through a common judgment dated 15-10-1998 decreed the Suit of the Respondents and dismissed the Suit of the Applicants. The relevant finding of the learned trial Court is as under;

“Issues No.1 to 4.

I would like to discuss all these issues together for the reasons that these issues are interrelated and required same appreciations of evidence.

PW-1 Mst. Jannat, the plaintiff has deposed that the suit land was allotted to her husband. After partitioned thereafter her husband was cultivating suit land, after 4, 5 years he expired and Government ordered for payment of installments of disputed land, which she deposited 2, 3 installments with the Government thereafter Revenue Officer asked her to pay the installment through some other male members of family then she stated that Muhammad Sulleman was the brother of her husband living in District Kharipur. Then she stated that name of Muhammad Sulleman was noted down by the Revenue Officer in the Record and disputed land was brought to the notice of Muhammad Sulleman by Mst. Jannat. Who in returned replied her notice for changing Khata in the name of Mst. Jannat if and when required. Further it is stated that Muhammad Sulleman executed such undertaking before Mukhtiarkar and F.C.M Khairpur as Ex.81-A. She has stated that disputed land is in possession and she paid land revenue assessment to the Government and produced such receipts. She has further disclosed that defendant Shafi Muhammad after death of Muhammad Sulleman tried to dispossess her and she approached Commissioner Sukkur Division, who advised her to file civil Suit. She has said that she could not got suit land registered in her name from Muhammad Sulleman because she was Parada observing lady. In cross-examination she has denied suggestion that her sons illegally possessed suit land, she has also denied that she has no concern with the suit land. PW-2 Allah Bux has also certified the possession of the plaintiffs since last 40 years. PW-3 Saindad has also stated that suit land is in the possession of the plaintiff and defendants have never remained in the possession of the suit land. PW-4 Muhammad Yousif has deposed that in the year 1952 suit land was allotted to his father and Mother by Central Government,

he has produced such allotment at Ex.86-A thereafter suit land was allotted to Halani Darbar at that his father was also in possession during Martial Law period in the year 1962 suit land was resumed and it was allotted to the sitting tenant during those days, his father expired and installments were paid by the Government through his uncle. He has produced such copies of challan 1971 in the period of Mr. Zulfiqar Ali Bhutto, Prime Minister of Pakistan in the Scheme of landless haries, it was granted to Muhammad Sulleman who is sworn affidavit before Mukhtiarkar Khairpur in favour of plaintiff. He has stated that plaintiffs are in possession in the capacity of owners and defendants have no concern with the suit land. D.W-1 Muhammad Shafi has deposed that disputed land was allotted to the his father. Muhammad Sulleman and he was cultivating the same and death of the Muhammad Sulleman he went to the plaintiff for Batai share but he was kept on false hopes. He has stated that suit land in the Revenue record is in the name of deceased Muhammad Sulleman and plaintiff have got no right over the disputed land. He has produced Revenue record in favour of his case. DW Jan Muhammad has deposed that in the faisla on Holy Quran, it was decided between Muhammad Shafi and plaintiff are in illegal possession.

In my considered view the plaintiffs are the real owner of the suit land for the reasons that allotment order Ex.86-A issued by Assistant Rehabilitation Commissioner, Kandiaro in the year 1952/53 shows the name of the plaintiff Mst. Jannat and others and the documents have been not challenged seriously by the defendants. Moreover challan copies of payment of the year 1970/71 are in the name of Mst. Jannat. Regarding suit land these documents were also been challenged. The plaintiff are in possession since very beginning and the possession of the plaintiff is admitted by the defendant.

In the view of the strong documentary evidence in the favour of the plaintiff while relying upon PLD 1983 F.S.C 28, I hold that plaintiffs are actual owner of the suit land so also in possession. Therefore, above issues are answered in the favour of the plaintiffs accordingly.

Issue No.5.

Issue No.5 is framed on the basis of plea raised by the defendant but it is not pressed by the counsel for the defendants. Moreover from evidence it appears that suit of the Mst. Jannat is not barred, therefore, this issue is answered in negative.

Issue No.6

In the light of my findings on the above issues, I have come to the conclusion that plaintiff had proved their case by cogent evidence. Hence suit of the plaintiff "Mst. Jannat and others" (F.C Suit No.33/94 is decreed as prayed for) consequently SC Suit No.21/96 is filed by Muhammad Shafi and others is dismissed with no order as to costs."

5. In Appeal the said judgment was maintained; hence the Applicants have come before this Court through these Civil Revision Applications. The relevant finding of the Appellate Court is as under;

“Issues No.2 to 4.

I would like to discuss all these issues together, as such the issues No.2 to 4 are connected with each other, therefore, they are disposed of accordingly.

The plaintiff has produced the allotment order viz. At Ex.86 issued by the Assistant Rehabilitation Commissioner in the year 1952/1953 and the names of the entire family of the plaintiff's / respondent's Mst. Janat are mentioned viz. Bhoo Mst. Fati daughter of Bhoora and his son namely Fuldi.

During the course of arguments, the learned Counsel for the plaintiffs/respondents has drawn my attention to the decision reported in C.L.C 1999 Page 110-A, in which it is very clear that under Article 100 and 79 of the Qanun-e-Shahadat the presumption of correctness is attached to the signature and contents of 30 years old document produced by the party. The person relying upon the said document was not required to prove, its question, unless presumption was rebated. Provision of Article 79 of Qanun-e-Shahadat would not come in to believe if benefit of Article 100 of 1984 of Qanun-e-Shahadat was available to the person having 30 years old document. However, the aforesaid allotment order at Ex.86-A was issued on 27.3.1952 in favour of Bhoora, husband of the respondent/plaintiff Mst. Janat and others and the same is old by 44 years.

I have also perused the challan copies of payment of the suit land for the year 1970/1971 are also in the name of Mst. Janat. From the perusal of evidence of defendant/appellant has admitted at Ex.92 by Muhammad Shafi son of Muhammad Sulleman that deceased Bhoora was his uncle and husband of Mst. Janat. In cross-examination, he has admitted that he does not know that his uncle Bhoora was died. He further admitted that he does not know whether the suit land was allotted in the name of his uncle Bhoora and Mst. Janat the (respondent/plaintiff).

The appellant/defendant Mohammad Shafi was examined at Ex.92, he has not uttered the word of fraud if any committed by the respondents/plaintiffs, but on the contrary, he has admitted in his cross-examination that he does not know the time of allotment when the disputed land was allotted to his father Sulleman. Further, he admitted that the installments of land were also paid by his father and Mst. Janat. In this respect again, we have to believe that the land in question was owned by Mst. Janat (plaintiff/respondent) and she being Parida Nashin, the suit land was managed and deal in official dealing viz. paying the land revenue and installments through the challans etc. on behalf of Mst. Janat by Sulleman. Hence, the above issues are answered in favour of the respondent/plaintiff Mst. Janat.

Issue No.5

Neither the appellants nor the respondents had attacked on this issue in respect of limitation, whether the suits of the parties were barred under the limitation act or not. Hence, issue No.5 is decided as not pressed.

Issue No.6

I have also minutely gone through the memo of appeal and the proceedings of learned lower court and heard the learned counsel for parties and the law relied upon.

The decisions relied upon by the learned counsel for the appellants are not identical with the present matter in the circumstances, I bow my head before the above decisions of Honourable Superior Courts. In the decisions relied upon by the appellant's side in which the learned trial Court has disposed of first five issues by simply observing that "all those issues have no substance and force. In view of findings given under issue No.6", whereas, in the present Judgment of learned lower court, it is mentioned that the issues No.1 to 4 are interrelated and connected with each other, therefore, they are discussed together. The learned lower Court has given the findings and reasons in respect of possession, allotment and also on other points. This view is getting support from the decision reported in SCMR 1991 Page 1816-A.

In view of my above discussion, and the law relied upon by the learned counsel for the respondents/plaintiffs, I have come to the conclusion that the learned lower court was justified to decree the Suit No.33/1994 (Mst. Janat and others Vs. Shafi Muhammad and others) and dismissed the Suit No.21/1996 (Muhammad Shafi and others Vs. Karamuddin and others) as a result whereof, I do not find any merit in the appeals, which are hereby dismissed and the Judgment and decree passed by the learned lower Court is maintained. There shall however be no order as to costs."

6. Insofar as the case of the Applicants is concerned, the learned Counsel has argued that both the Courts below have erred in law inasmuch as the Suit land was never an evacuee property; but was a resumed property and was then granted by the Land Commissioner, therefore, reliance on the original allotment in favor of deceased husband / father of Respondents was of no consequence. It has been further argued that there was no question of the Suit land being a *benamidar*, as it was allotted and was always in the name of the father of the Applicants, whereas, the Respondents fraudulently got mutation in their names by showing them as legal-heirs of their father and by concealing true facts which was then rectified and corrected at the request of Applicants vide order dated 10.8.1994 by the Assistant Commissioner concerned, and, therefore, the Respondents Suit was also barred under Section 11 of the Sindh Land

Revenue Act. It was further contended that at best, the Respondents ought to have availed the remedy of Appeal and Revision as provided in the Revenue Laws and no direct Suit could have been filed and entertained. He has also disputed the original allotment of Respondents predecessor in interest as being vague and not relevant to the Suit land. Lastly, an objection has also been raised that the judgment of the trial court was not in conformity with Order 20 Rule 5 CPC, and that of the Appellate Court with Order 41 Rule 31 CPC.

7. On the other hand the Respondents case as argued by their learned Counsel appears to be that the land was originally allotted to their father / husband in the year 1952 vide allotment order dated 27.3.1952 as a refugee land by the Assistant Rehabilitation Commissioner, which was being cultivated and during such process their father expired, whereas, there being no major person, the father of the Applicants was requested to pursue their matter and he then got the land allotted in his name, however, it is their case that all along possession was with them and in support they have led their evidence along with revenue receipts for the entire period to establish that not only the possession was with them; but the land was also being cultivated by them. It is their further case that when the children attained the age of majority, their mother requested the father of the Applicants to transfer the land and he accordingly appeared before the Mukhtiarkar and signed a proper affidavit to this effect which was also placed on record in original through their evidence. Their cause of action for filing of the Suit was the order dated 10.8.1994 whereby, their mutation entries were disturbed at the behest of the Applicants.

8. Insofar as the Applicants case is concerned, it has gone unexplained as to why it is only in 1994 that they approached the concerned Mukhtiarkar / Assistant Commissioner for change of *foti khata badal* when admittedly their father had expired in 1978. It is a matter of record that the transfer of suit land in favor of Respondents was done somewhere in 1980. It has also gone unexplained as to why they never filed any Civil Suit for claiming possession and it is only in 1996 i.e. after two years of the filing of Suit by the Respondents that they realized and claimed possession of the Suit land. A mere statement to the effect that this was only done when the battai share was refused to be paid to them is of no help. This crucial aspect of the matter has gone unexplained all the way and creates serious doubts as to the claim

and stance of the Applicants. The Applicant led their evidence through Muhammad Shafi (DW-1) who in his deposition has stated that ***“I do not know the time of allotment when the disputed land was allotted to my father Suleman”***, he has further replied ***“The Suit land was allotted in way of installment. Two installment were paid by my father and thereafter the other instalment were paid by Mst. Janat and other instalment were waived by the Government. It is a fact that we have not proof for payments of instalments by our father Suleman.”*** Again says that ***“The Suit land is in possession of defendants, Muhammad Yousif and other and they are paying land revenue to the Government till today.”*** The Applicants other witness DW-2 (Jan Muhammad) Exh-93 in his examination in chief has deposed that a faisala was held amongst the parties and he was present wherein it was decided that the disputed land would be handed over to Applicants so *also battai share of last years would be paid to them*; however, in his cross examination he says ***“in my presence no any discussion was made between the parties about battai”***. Now how this witness could be relied upon and believed who is answering against his own deposition. Besides this, the Applicant did not examine any other witnesses. The said evidence led on behalf of the Applicants is neither confidence inspiring; nor convincing so as to believe their version of the story.

9. As to the objections regarding non-compliance of Order 20 Rule 5 CPC and Order 41 Rule 31 CPC by both the Court below as alleged, it would suffice to hold that since the entire controversy between the parties has been dealt with and adjudicated with reasoned order(s); therefore, even if the said provisions have not been complied with *stricto sensu*; even then it would not be appropriate to set-aside the same on this ground alone. This could only be done if the judgments are without reasons and have not dealt with the all the issues and controversy. This is admittedly not the case in hand. Therefore, this objection is not tenable and is hereby repelled.

10. Insofar as the Respondents are concerned, they have not only led evidence to establish that they were always in possession of the land; but so also produced all original documents including original allotment order of 1952; original receipts of payments made to the revenue department continuously, and so also the original affidavit of the father of the Applicants sworn before the concerned Mukhtiarkar stating therein that the land belongs to the Respondents and was only in his name for the reason that the father / husband of the Respondents had expired and his children were

minor at the relevant time. The evidence led by the Respondents has been found to be convincing and has not been shaken in cross-examination and, therefore, both the Courts below have accepted the same as being valid and true and have decreed their Suit while the Suit of the Applicants has been dismissed. This appreciation of evidence and the findings arrived at by the Courts below appears to in line with the settled principles of preponderance of the evidence, and does not require any interference by this Court.

11. As to the objection that the Respondents ought to have availed the alternate remedy, it may be observed that the order passed by the Assistant Commissioner (Ex.09/F) on examination appears to be a non-speaking order¹, without any independent reasoning and so also is without jurisdiction, inasmuch as, it does not reflect that any of the aggrieved parties were properly heard; nor any justifiable reasons were assigned. It is a two-line order, whereby, the contention of the Applicants has been accepted as stated. In that case, the jurisdiction of the Civil Court cannot be held to be barred and this is notwithstanding the fact the Respondents in their Suit had sought a declaration of *benamidar* which even otherwise cannot be granted by any Revenue Officer, therefore, the said objection does not appear to be justified.

12. As noted herein above, the conduct of the applicants in keeping silent for such a long period i.e. from 1978 to 1994 when for the first time they approached the revenue authorities for change of *Foti Khata Badal* and then they being out of possession creates serious doubts as to their ownership and claim of the land. From the record, it appears that they kept silent as apparently their father being a *benamidar* had already sworn his own affidavit, which he never challenged in his lifetime and then subsequently after lapse of considerable time, the Applicants came up with their version of the story and that too only after a Civil Suit had already been filed by the Respondents against the action of the Mukhtiarkar / Assistant Commissioner through which they cancelled the mutation entries of the Respondents and passed an order. It is also noteworthy that despite having knowledge about their father's affidavit (though belatedly through plaint of the Suit) they neither challenged it; nor led any evidence to disprove it. All these

¹ In the above circumstances Muharramdin, his brothers and sisters being heirs of Suleman S/o Dulla Mughul have every right to the land in dispute. Therefore, land is ordered to be transferred in the name of the applicants. Necessary correction in concerned record be made.

unexplained facts go against the claim of the Applicants for which no justifiable cause has been shown in the entire proceedings, leading to only one conclusion; to disbelieve their version of the story.

13. Lastly, it is needless to observe that 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 taken². 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 Revision³. 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 evidence⁴.

14. In view of hereinabove facts and circumstances of this case, it appears that the Applicants have no case on merits as well as in law as their evidence has been unconvincing, whereas, the two Courts below have recorded concurrent findings against them, therefore, in this Civil Revisional jurisdiction, neither it is appropriate to disturb them; nor these findings otherwise require any interference. Accordingly, both these Civil Revision Applications as above are hereby **dismissed**.

Dated: 28.01.2022

Judge

ARBROHI

² ABDUL QAYUM V. MUSHK-E-ALAM (2001 S C M R 798)

³ Abdul Ghaffar Khan v Umar Khan (2006 SCMR 1619)

⁴ Muhammad Feroz v Muhammad Jamaat Ali (2006 SCMR 1304)