

**IN THE HIGH COURT OF SINDH, BENCH AT
SUKKUR**

Civil Revision Application No. S-64 of 2017

Date	Order with signature of Judge
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For hearing of main case

Mr. Raj Kumar D. Rajput, Advocate for applicant.

Mr. Noor Hassan Malik, Assistant Advocate General

Date of hearing : 10.12.2021

Date of decision : 10.12.2021

ORDER

KHADIM HUSSAIN TUNIO, J- Through captioned civil revision application, the applicant has impugned judgment and decree dated 20.04.2017, passed by Additional District Judge Ubauro in Civil Appeal No. 13 of 2016 whereby the learned Judge set aside the judgment and decree dated 15.03.2016 passed in FC Suit No.113/2015, by the learned Senior Civil Judge Ubauro whereby the suit was dismissed, hence this revision application.

2. Precisely, facts of the present case are that the applicant was in possession of agricultural land bearing Survey No.749 (0-36 acres) which was allegedly allotted to him in an open *katchery*. However, the Colonization Officer Gudu Barrage Sukkur granted the land to respondent No. 1 in 1997/1998. Gaining knowledge of this fact, the applicant moved a land grant appeal before the Additional Commissioner II Sukkur in 2012 who allowed the appeal of the applicant and declared the grant of land to respondent No. 1 as false. Being aggrieved, the respondent No. 1 filed FC Suit No. 113 of 2015 for declaration and permanent injunction which was dismissed on 15.03.2016, whereafter he appealed the same via Civil Appeal No. 13 of 2016, judgment and decree of which is impugned herein, whereby the appeal was allowed and judgment and decree passed by the learned Senior Civil Judge was set-aside.

3. The learned counsel for the applicant has argued that the judgment passed by the learned appellate Court is unwarranted by the law and facts; that the respondent No.1 had not challenged the order passed by the additional Commissioner II Sukkur before the Member Board of Revenue

Sindh, Hyderabad and instead filed a suit before the Senior Civil Judge; that the civil courts' jurisdiction was barred under S. 172 of the Land Revenue Act 1967; that there are no documents available with the respondent to prove that a grant was made in his favour; that therefore the impugned judgment and decree is illegal and is liable to be set-aside.

4. Learned Assistant Advocate General on the other hand, while supporting the impugned judgment, has contended that the impugned judgment and decree is good in law and facts; and that there is no bar on the jurisdiction of civil Courts in cases where the judgment/order impugned is illegal and void ab-initio.

5. I have heard the learned counsel for the parties and perused the record available before me.

6. Since the prime contention here is regarding bar on jurisdiction of civil courts, it would be rather advantageous to discuss the same first. **Section 9** of Pakistan's **Code of Civil Procedure 1908** confers jurisdiction on civil courts to adjudicate upon all suits of a civil nature, except such suits the cognizance of which is either expressly or impliedly barred. In the present case, **Section 172** of the **Land Revenue Act 1967** has placed an embargo over the powers of civil court to adjudicate upon any matter in which the powers of adjudication have been given to the revenue authorities, but this is not an exclusive embargo and there are exceptions to this general rule. The exception was considered by the Hon'ble Apex Court in the case of *University of Punjab Vs. Miss Wajuha Arooj* (**2008 SCMR 1577**) wherein it was held that:-

“Where the action or order passed by the public officer, tribunal or authorities is within the four corners of jurisdiction, the civil court cannot entertain the *lis*. But where the order passed or act done was void, or without jurisdiction, or mala fide, or in excess of jurisdiction, or otherwise not in accordance with law, or based on fraud, the civil courts would have jurisdiction to interfere with the same.”

(emphasis supplied)

7. The next question arising is whether a person who is aggrieved by the order passed by a special tribunal is bound to first assail that order under the special law by filing an appeal or revision before the designated functionary or whether he can bypass the same and approach the civil

court on any admissible ground without exhausting all remedies under the special law. As per the general rule, the aggrieved person is bound to avail all the remedies provided under the special law before approaching the civil court, however there is yet an exception to this rule as well which was considered by the august Supreme Court in the case of *Mohd. Latif v. Province of West Pakistan (PLD 1970 SC 180)*, wherein it has been observed that:-

There is no doubt that under Section 11 of the Sindh Revenue Jurisdiction Act 1876, ordinarily the party in revenue matters should exhaust all remedies by way of appeal before invoking the aid of civil court. But *there are different considerations where the allegation of the party is that the impugned order is a nullity in the eye of law. The civil courts have jurisdiction to examine into cases where statutory provisions have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.*

(emphasis supplied)

8. Therefore, it is abundantly clear now that civil courts *can* take cognizance of the matter irrespective of the barring clause in the special enactment, if the order or action is not qualified according to the criteria laid down by the apex court in the above-mentioned cases. In the recent case of *Searle IV Solution (Pvt) Ltd and others v. Federation of Pakistan and others (2018 SCMR 1444)*, the Hon'ble Apex Court reiterated these long-standing principles by observing that where the jurisdiction of the Civil court is challenged on the ground of ouster of jurisdiction it must be shown that, (a) the authority or tribunal in the Statute creating such a bar is validly constituted (b) where the order passed or action taken by the authority is not tainted with mala fide; (c) where the order or action taken was such which could be passed or taken under the law which conferred exclusive jurisdiction on the authority or tribunal; or (d) where in passing the order or taking the action, the principles of natural justice were not violated, and if one or more of these four conditions are violated an exception is carved out for the Civil Court to assume jurisdiction. Therefore, the bar on jurisdiction under S. 172 of the Land Revenue Act, not being an absolute bar, has rightly been surpassed by the learned Appellate Court and the learned Senior Civil Judge was incorrect in holding that Civil Courts had no jurisdiction to deal with the matter. Even otherwise, S. 172(2) only provides a bar on jurisdiction to the extent of

correction of entries in the revenue records and not on declaration of rights by the Civil Court.

9. Now coming to the merits of the case, the Additional Commissioner II Sukkur in his order dated 29.04.2015 categorically observed that the respondent failed to produce any revenue receipts to substantiate the claim that he was cultivating the land, however it is a matter of record that multiple revenue receipts dating back to the year 1973 are exhibited at Ex-15/C to Ex-15/I before the trial Court which the Additional Commissioner II Sukkur remained oblivious of. Quite the contrary, while the present applicant was required to prove his right by producing any document of grant or revenue receipt failed to do so, but was still granted possession of the land. The respondent also produced the original allotment order dated 12.02.1998 at Ex-15/A, malkhana receipt dated 12.02.1998 at Ex-15/B and certified copy of Robkari Deh Kundri Wao at Ex-15/J. None of these documents were ever challenged by the applicant before the trial Court or the Appellate Court. No document whatsoever is available with the applicant to dispute the grant of the respondent over (00-36) acres of Survey No. 749 which was granted to him by the Colonization Officer of Guddu Barrage Sukkur and the same was wrongfully cancelled by the Additional Commissioner II Sukkur. More so, the Additional Commissioner II Sukkur has not condoned the delay in filing of time barred appeal of the appellant without filing the application under Section 5 of Limitation Act, 2005, if any, nor the Additional Commissioner II Sukkur has recorded reasons in his order that the delay has been condoned by him, though he has illegally cancelled the grant of applicant after about 18/19 years of its grant.

10. For what has been discussed above, instant civil revision application was dismissed vide short order dated 10.12.2021. Consequently, impugned judgment and decree passed by the learned Additional District Judge Ubauro dated 20.04.2017 in Civil Appeal No. 13 of 2016 was upheld and the order of the Additional Commissioner II Sukkur dated 29.04.2015 for cancellation of grant of respondent/plaintiff was set aside and the original land granting order dated 12.02.1998 was restored.

These are the reasons for the short order even dated.

J U D G E