

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Application No.S-31 of 1996

Applicant: Himat Khan and others, through Mr. Abdul Hameed Khan, Advocate.

Respondents: Allah Warrayo and others, through Mr. Rafique Ahmed Abro, Advocate

State: Mr. Naimatullah Bhurgari, State Counsel

Date of hearing: 06.12.2018

Date of decision: __.01.2018

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KHADIM HUSSAIN TUNIO, J. - The present Revision Application has been filed by the legal heirs of the applicant, Himat Khan, against the impugned judgment and decree 27.06.1996 passed by the learned Additional District Judge, Rato Dero in Civil Appeal No. 4 of 1994, whereby the learned Judge set aside the judgment dated 10.12.1990 and decree dated 18.12.1990, passed by learned 3rd Sr. Civil Judge, Larkana in FC Suit No. 33/1987.

2. Relevant facts of the prosecution case are that the applicant Himat Khan filed FC Suit No. 33 of 1987 against the present respondents for declaration and permanent injunction, claiming therein that his grand maternal father, Umaid Ali, who was displaced from a settled area of India, was allotted 185-11 acres of agricultural land and the applicant being the grand maternal son and the only legal heir of Umaid Ali, looked after the abovementioned land. Umaid Ali executed a Power of Attorney in favour of the applicant to manage the affairs of the land. Umaid Ali passed away by the end of the year 1965 and left behind his agricultural land, from which 24-39 acres were mutated in the name of the applicant on 23.05.1972, however, since the remaining

land measuring 117-20 acres was disputed, it was mutated on 17.05.1984 under previous No. 984 of Rehabilitation of mukhtiarkar Larkana, vide entry No.985 in the name of the deceased. It is claimed that while the deceased was alive and even after his death, the applicant had been dealing with the aforesaid lands and pursuing various cases in respect of the lands including the matters before the Settlement Authorities. It was alleged that the respondents on the basis of a bogus Identity Card, bearing No. 422-86-163853 dated 11.05.1986, fraudulently obtained by them in the name of the deceased, prepared a fabricated Power of Attorney on 24.06.1986 in favour of the respondent No.3 by showing the residence of the deceased to be in village Balramo, although, the deceased never resided in the said village throughout his life. It was further alleged that on 09.08.1986, the defendants, on the basis of the abovementioned forged documents executed a sale deed in favour of the respondents No.1 & 2 whereby the defendant No.3 purportedly sold 108-20 acres of the aforesaid land for a consideration of Rs.100,000/-. It is contended that no amount was paid by the defendants No.1 & 2 as Umaid Ali had already passed away in 1965 and the sale deed is a sheer fabrication and forgery, since it had created no right or interest in favour of the respondents No.1 & 2 and the applicant only came to know regarding the above in 1986 and obtained a true copy of the aforesaid sale deed on 17.11.1986. It is prayed that the learned Court be pleased to declare that the applicant is the rightful owner of the suit land and that the Identity Card No. 422-86-163853 dated 11.05.1986 and the Power of Attorney dated 24.06.1986 are void and unlawful and the sale deed executed on the basis of the aforesaid documents, too, is void and creates no right or entitlement.

3. The respondents filed their written statements wherein they denied the various allegations made by the applicant. It was denied that Umaid Ali was the grand maternal father of the applicant. It was also

denied that the land in Deh Garello was allotted to the deceased in 1959. It was alleged that the land in Deh Garello was not allotted by the deceased personally in or about 1983 and that he, himself, got the suit land mutated in the Record of Rights in the year 1964. It was also denied that the defendant was a legal heir of the deceased or that he looked after his properties or was appointed Attorney by the deceased. The respondents also denied that the deceased ever resided with the defendant in village Arija or that he expired in the year 1965. It was claimed that Umaid Ali himself was in possession of the suit land and has lived in village Bakrani till the end of the year 1986. It was further denied that Umaid Ali ever obtained any land in Deh Chandka, Taluka Dokri or was in possession of any allotment in that regard and that such allotment, if any, is a managed and fabricated document. It was further alleged that the document relied upon by the applicant in support of his claim are false, fabricated and forged documents. The respondents also denied that the Identity Card dated 11.05.1986 and Power of Attorney dated 24.06.1986 are fabricated. It was alleged that on 18.05.1986, the deceased himself executed the agreement of sale in respect of the suit land in favour of respondents No.1 and 2 and he, himself, received the entire sale consideration of Rs.100,000/- and delivered possession of the land to the said respondents and appointed respondent No.3 as his Attorney for executing a registered Sale Deed and for compliance of the requisite formalities in that regard. It was claimed that the respondent Nos. 1 and 2 are bona-fide purchasers for valuable consideration without notice of the alleged title of the applicant and are in possession of the suit land.

4. The defendant, in order to prove his sole heirship of deceased Umaid produced a true copy of the extract from the register of mutation of the Settlement Department Larkana, wherein applicant's name has been recorded as the legal heir of deceased Umaid, it bears a noting of Tapedar Dokri to the effect that Umaid has

expired six or seven years back, such entry was affected on the basis of a joint settlement of some Abdul Razzaq and Naik Muhammad to the effect that they know Umaid and that he expired six or seven years back in village Arija and that he had no son and his wife had died during his lifetime and further that the applicant who is the son of the daughter of the deceased, is his only legal heir, such settlement being Ex.79 was recorded by Assistant Rehabilitation Mukhtiarkar and ACS (I) Larkana. The applicant claimed that on the basis of said statement and after publication of a public notice being Exs.77 and 78 and in pursuance of the order of the Assistant Settlement Commissioner, Larkana, the above mutation (Ex.82) was effected in his favour. Neither did the applicant file any document or material to establish that Umaid expired in the year 1965 and that he was his grandson and the only legal heir of the deceased, nor did he examine any witness in support of his said claim. On the contrary, Khatoonis Allotment orders being Ex.75 and 76 in respect of the lands in question which were issued in the name of the deceased Umaid goes to show that Umaid was alive at least the time of issuance of these documents, even the final mutation dated 29.06.1974 (Ex. 80) was issued in the name of Umaid. None of the aforesaid documents make any mention of the applicants. In terms of the Rehabilitation Settlement Scheme, framed under Pakistan Rehabilitation Act, no allotment can be made in favour of a deceased right holder. The Hon'ble Supreme Court in the case of Mst. Khurshed Begum v. Settlement Commissioner (Lands) Sargodha & 8 others (1973 SCMR 16) has been pleased to hold that the Rehabilitation Scheme does not contemplate an allotment in favour of a deceased right holder and further that the allotment is in the nature of grant under which obligations are imposed on the allotter to appear before the Rehabilitation Authority, accept the allotment and affix his thumb-impression on Register R.L.II. It is obvious that a dead person cannot do these things as required by the Scheme.

5. The extract from the register of mutation Deh Garelo (Ex.67) also shows that the land in Deh Garelo were mutated in the name of the deceased in the year 1984. The applicant has neither in his plaint nor in his examination-in-chief, disclosed the name of his mother or as to whether she is dead or alive. He has also not disclosed the name of Umaid's wife or whether she is dead or alive. Although, as admitted by the applicant his two brothers namely, Hurmat Khan and Subzal were alive, who according to the respondent were his real brothers but according to him were his step brothers, however, he avoided to examine them or his mother Mst. Malhi and thus had withheld the best available evidence in support of his claims.

6. To prove his relationship with the deceased, the applicant, in terms of Article 64 of Qanun-e-Shahadat Ordinance, 1984, should have examined his brothers and Mst. Malhi who are members of his family as the said persons possessed necessary information in that regard. Your applicant not only avoided to examine his relatives but during his cross-examination submitted that he has no relatives at village Baqarani, Arija, Garelo or in Larkana who know his family which seems rather strange. In any event, he could have examined his neighbours or any other person from his village but he failed to do so. He admitted the date, time and place of Umaid's death had not been entered in the records of any local or municipal body. Even the allotment letter issued by the Agriculture Development Bank in the year 1969 in respect of the suit lands does not bear the name of the deceased. In the Power of Attorney allegedly executed by the deceased in favour of the applicant in the year 1965, it is not mentioned that the applicant has any relationship with the deceased which is contrary to the applicant's claim of him being the maternal grandson of the deceased. The order of the Deputy Commissioner / Addl. Settlement Commissioner Larkana dated 03.07.1971 describes the applicant as a nephew of the deceased. The applicant in

the circumstances miserably failed to establish that the deceased Umaid expired in the year 1965 and that he is the sole legal heir of Umaid and is his maternal grandson and he is entitled to inherit the lands of the deceased.

7. Contrarily, the respondents have also failed to establish that the purported Power of Attorney dated 11.05.1986 (Ex.95), on the basis whereof defendant No. 2 executed the Conveyance Deed (Ex.96) in favour of the respondents No.1 and 2 and the agreement dated 18.05.1986 (Ex.92) were in fact executed by Umaid.

8. I have examined the purported thumb impression of Umaid on the said two documents being Exs. 92 and 95 with the help of a magnifying glass and found them to be distinguishable, the same do not appear to be of one and the same person. The Power of Attorney (Ex.95) has allegedly been executed by Umaid in favour of Maji Abdul Ghani, the defendant No. 3 who claims to be a *zamindar* in respect of the land adjoining the suit land in Deh Gareello. In his cross-examination, Abdul Ghanni admitted that he in addition with being a *zamindar* is running a *karyana* store in village Bungaldero and that Umaid had terms with him since just one year before the execution of Power of Attorney and further that he had no family terms with the deceased. He further admitted that he did not visit Umaid's house at Baqarani and also did not know as in which part of village Baqarani he used to reside, he also had no idea as to whether Umaid lived alone or with someone. He also admitted having no knowledge as to whether Umaid owned land other than in Deh Gareello. He further admitted that at the time of his shifting to Hyderabad, Umaid did not inform him about his address in Hyderabad. He stated that Umaid called him to Hyderabad where he executed the alleged Power of Attorney in his favour. It is quite unusual rather strange that a person would execute a general Power of Attorney in favour of someone who was neither his relative nor from his community or a neighbour who was known to him only since one year and would call him from a far

place, for executing the same. It is also not convincing that Umaid called Abdul Ghani to Hyderabad without even disclosing his address to Abdul Ghani which, as admitted by Abdul Ghani, was not disclosed by Umaid formerly even after the alleged execution of the purported Power of Attorney. The said witness also admitted that he did not know the whereabouts of Umaid. The evidence of Abdul Hai, one of the purported witnesses to the execution of the purported Power of Attorney is equally un-convincing. Admittedly, Abdul Hai does not reside in Hyderabad and according to him, it was, per chance that he met Umaid in the Sessions Court at Hyderabad. It is rather strange that a person would go for execution of power of attorney and would not take the witnesses. In any event, Abdul Hai did not claim having signed the purported power of attorney before the Registrar and during his examination-in-chief stated that "After my meeting Umaid Khan in Sessions Court. He obtained my signature on Ex.95 and thereafter I returned back". The witness even failed to verify as to whether the photograph affixed on Ex.97 (the form on the basis whereof the alleged N.I.C of Umaid was issued) was of Umaid or of Din Muhammad of Garello. He further stated that Abdul Ghani was accompanying Umaid Khan when he met him later on at Hyderabad whereas, Abdul Ghani during his cross-examination stated that Umaid met him in the office of Sub-Registrar and Abdul Ghani came later. The veracity of Abdul Hai's and Abdul Ghani's evidence also become doubtful as both of them have alleged that the stamp paper in respect of the purported Power of Attorney was purchased by Umaid, whereas, the documents reveal that the same was purchased by Abdul Ghani. Ex.54, the original form-alif on the basis whereof Ex.87 the purported NIC of Umaid was issued does not at all mention the address of Umaid and mentions his mother tongue as Sindhi though admittedly, he was a refugee. The form describes Umaid as a labourer, whereas, admittedly he was a land holder/*zamindar* and his age has been mentioned as 25 years. The photographs

affixed on this form is not of Umaid but of one Mahmood, however the portion of the form under the photographs has been damaged and the left hand corner of the form below the photograph has fallen apart. It seems that the original photograph has been removed and replaced by the present. The thumb impression of the purported applicant and witness are so blurred that hardly any impressions are visible even with the help of a magnifying glass. Neither the form mentions the name and the designation of the attesting witness or the date of attestation nor does it bear any stamp of attesting witness. It therefore, seems that the purported identity card has been obtained fraudulently. Although, the purported agreement of Sale bears signatures of two witnesses and executant thereof has been identified by Ghulam Rasool Shaikh and Wajid Alley Surhawyo but neither of the four have been examined by the defendants to prove the execution of the said documents nor has the ascribe of the documents been examined. Although, the execution of the said document has been witnessed by some Mirza and Muhammad Taseem only, however, during his cross-examination, Khadim Hussain, the defendant No.1 has also named one Aslam as a witness to the documents. Although, Khadim Hussain, the defendant No.1 produced the extract of the electoral roll pertaining to the brothers and mother of the plaintiff prepared in 1975 but none of the defendants have filed the electoral roll pertaining to Umaid. No document has been filed by the defendants to show that Umaid was alive in the year 1986 when he allegedly executed the sale agreement and the purported power of attorney being Ex.92 and 95.

9. There are contradictions regarding the payment of the sale consideration in the documents. The purported sale agreement dated 18.05.1986 says that the entire sale consideration amount of Rs.100,000- had been received earlier and nothing was outstanding, whereas, the power of attorney dated 11.05.1986 empowers the attorney Abdul Ghani to receive the sale consideration

and sign the sale deed before the concerned Sub-Registrar. There are no discrepancies in the aforesaid three documents in respect of area/particulars of land, claimed to have been purchased by defendant No.1 and 2.

10. The defendants having failed to prove the execution of the purported power of attorney, the sale agreement and the sale deed and their claim that Umaid was alive at the time of execution of the sale deed. Above all since as noted earlier, the thumb impression on the Power of Attorney and the sale agreement which the defendants claimed are of Umaid are clearly of two different persons and show that the documents are forged and manipulated. The respondents in the circumstances cannot be declared as lawful owner of the land in question. Since in view of the foregoing, the land in question does not seem to be owner by any of the parties. I would direct the government of Sindh to take over the land and protect the same till such time its real owner or legal heirs come forward and provide the credentials. The office is directed to send the copy of this order to the Chairman, Board of Revenue and Government of Sindh forth with. The revision application stands disposed of in the foregoing terms.

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