

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No. S – 44 of 2004

(Muhammad Hussain & others vs. Malik Iftikhar & others)

Date of hearing: 21-02-2022

Date of decision: 21-02-2022

Mr. Nishad Ali Shaikh associate of Mr. A. M Mobeen Khan,
Advocate for the Applicants

Mr. Ahmed Ali Shahani, Assistant Advocate General

Nemo for the Private Respondents

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned judgment dated 6.4.2004 passed by 4th Additional District Judge, Mirpur Mathelo, in Civil Appeal No.81 of 2002, whereby, judgment dated 10.2.1993 passed by Senior Civil Judge, Ghotki, through which the Suit of the Applicants was dismissed has been maintained and the Appeal has been dismissed.

2. Learned Counsel for the Applicants has filed written arguments which have been perused, whereas, no one has turned up to assist the Court on behalf of the Respondents despite being served. Since, the matter pertains to 2004, it cannot be kept pending for assistance from the Respondents; hence, the same is being decided on the basis of available record.

3. It appears that the Applicants had filed a Suit for declaration, cancellation and injunction in respect of the Suit property on the ground that the same was sold by the predecessor in interest of Respondents No.1 to 4, by way of some statement, whereas, the said Respondents then sold it to Respondent No.5 and an attempt was made to dispossess the Applicants; hence, cause of action accrued to them for filing the suit in question. The trial Court after recording evidence had dismissed the Suit which in Appeal has been maintained by the Appellate Court.

4. The findings of learned trial Court are as under; -

“The defendants did not appear despite of service, therefore, it was ordered to produce exparte proof against them.

The plaintiff submitted in exparte proof wherein he repeated what is already mentioned above. It is of no use to repeat the same over and again.

Though the version of plaintiff goes un-rebutted yet he has failed to make out his case.

Firstly no proof of possession of the suit land is filed in nature of land revenue receipts or entry in khasra-girdawari. Some land revenue receipts have been filed with plaint. Some are not in the name of plaintiffs but those receipts also indicate the ownership of Malik Muhammad Gul Khan.

Secondly no agreement of sale of suit land has been filed if there was no agreement between plaintiff and Malik Muhammad Gul Khan then the person should have been produced in evidence before whom statement of sale of suit land was recorded. The plaintiffs are also silent on the point that what was necessity for them to execute power of attorney in favour of one Muhammad Ibrahim. No proof of installments have been produced as claimed that Muhammad Ibrahim had deposited all dues.

Thirdly it is admitted fact that Malik Muhammad Gul Khan was original owner of suit land and after his death khata was mutated in the name of his L.Rs, and they can sell their share that is their right. If there was any transaction between plaintiff and Malik Gul Muhammad Khan then the duty of the plaintiffs was to file suit for Specific Performance. He was the original purchaser of suit land and he was entitled for T.O Form not plaintiffs. Only filing of true copy of statement of Malik Muhammad Gul Khan for sale of suit land is not suffer without support of any authentic evidence.

Fourthly the title of suit so also prayer cause appears defective. The plaintiffs have failed to examine important witnesses of the statement of Malik Muhammad Gul Khan dated 18-6-70, without support of material evidence case of plaintiff appears engineered one and full of defects.

In view of the above reasoning I find no merits in this suit, therefore, it is dismissed with no order to costs.”

5. The learned Appellate Court has maintained the said finding in the following terms;-

“I have given my careful consideration to the contentions of learned counsel for the appellant and contested respondent and have also perused the case law cited at bar. The contentions of appellant are that it was an-exparte judgment dated 10-2-1993 passed by the learned Senior Civil Judge, Ghotki in which no

material in rebuttal was available but instead of that the trial court had dismissed this suit. I have perused the R & Ps of the case which reflects that it is admission of the appellant that Malik Muhammad Gul Khan was the real owner of the suit land, T.O Form was issued in his name and after his death the Revenue Record was also mutated in their favour by the respondent No:7. It is also admission of the appellant that no sale agreement was drawn or executed in between the appellant and late Malik Muhammad Gul Khan, the Revenue entries are in favour of the respondent No:1 to 4, therefore, obviously it cannot be said that the appellant has no legal character in the suit property. The appellant is claiming the suit property on the basis of possession but he had failed to produce any tangible documents or evidence or any P. Ws in his support before the trial court. It is further observed that the order passed by the defendant/respondent No:6 colonization officer dated 9-3-1992 and entries made in the name of legal heirs of deceased Malik Muhammad Gul Khan dated 11-3-1992 and subsequently the sale to respondent No: 5 also not challenged before the Revenue authorities, therefore, obviously it appears that the suit of the appellant was also barred u/s 11 of Sindh Land Revenue Act. The ex-parte proof evidence of the appellant filed with the trial court is not helpful as it was the affidavit of Muhammad Ibrahim the attorney of the plaintiff/appellant which is not beneficial, wherein the averments of the plaint were repeated, deh Form VII and Land Revenues receipt which were paid by the appellant through his attorney are also speaking that the Malik Muhammad Gul Khan is the owner of the suit land. I have find that the grounds taken by advocate for the appellant are in significant whereas the decision of the trial court is justified and requires no interference. Accordingly, the appeal is hereby dismissed with no order as to costs.

6. Perusal of the aforesaid findings of the two Courts as above clearly reflects that the Applicants had failed to prove its case in any manner inasmuch as, neither any agreement was produced; nor the oral sale or the statement as claimed was proved in any manner; nor any other material to establish the claim as averred in the plaint was produced. The Applicants also failed to justify as why no proceedings were ever initiated by them when the alleged seller i.e. the predecessor in interest of Respondents No.1 to 4 was alive. If there was any agreement, be it oral, it was incumbent upon the Applicants to sue him for specific performance of the same when he was alive. Not only this, subsequently, they have filed a Suit for declaration which otherwise was incompetent in the given facts and circumstances of the case. It is also a matter of record that the Applicants also failed to examine the material witnesses to prove their case. In fact, notwithstanding that the Respondents were Ex-parte, the Applicants miserably failed to establish their case.

7. In view of hereinabove facts and circumstances the Applicants have failed to make out any case for indulgence, whereas, the concurrent findings of the two Courts below appear to be correct in law and facts; hence, do not require any interference by this Court, and therefore, by means of a short order on 21.02.2022, this Civil Revision Application was dismissed and these are the reasons thereof.

Judge

ARBROHI