

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 22 of 2007

(Parmanand & others V/S Masood Ahmed & others)

Date of Hearing: **21-02-2022**

Date of Judgment: **21-02-2022**

M/s Bhajandas Tejwani and Manoj Kumar Tejwani, Advocates for the Applicants.

Nemo present on behalf of the Respondents.

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned Judgment dated 29.11.2006, passed by Additional District Judge, Gambat in Civil Appeal No.08 of 2003 (**Irfan Ahmed and others v. Masood Ahmed (deceased) through his legal heirs and others**), whereby, while dismissing the Appeal, Judgment dated 13.12.2002, passed by Senior Civil Judge, Gambat in F.C Suit No.13 of 1997 (**Masood Ahmed v. Irfan Ahmed and others**) has been maintained, through which the suit of the Respondents was decreed.

2. Learned Counsel for the Applicants has contended that the two Courts below have miserably failed to appreciate the evidence; that it is a case of non-reading and mis-reading of evidence; whereas, there are inherent defects in the plaint, as the Respondent No.1 never produced any title documents along with plaint or for that matter in the evidence; that the two Courts below had placed reliance on the evidence of some Clerk from Municipal Committee, Gambat, who had earlier acted as an attorney of the Respondent No.1, whereas, no official defendants were joined to substantiate the case of the Respondent No.1; that the property in question is owned and possessed by the Applicants through and under its own rights and is not the property of the Respondent No.1, as claimed and therefore, per learned Counsel both the Courts below have seriously erred in law and facts in decreeing the Suit. In support of his contention, he has placed reliance on the cases reported as *Muzaffar Khan v. Sanchi Khan and another* (**2007 SCMR 181**), *Malik Muhammad Khaqan v. Trustee of the Port of Karachi (KPT)* (**2008 SCMR 428**), *Nazim-ud-Din and others v. Sheikh Zia-ul-Qamar and others* (**2016 SCMR 24**), *Manzoor Ahmad and others v. Ghulam Nabi*

and others (2010 CLC 350), Muhammad Shafi v. Syed Chan Pir Shah and others (2018 CLC 866).

3. None present on behalf of the legal heirs of Respondent No.1; whereas, record reflects that earlier said legal heirs of the Respondent No.1 were being represented by a Counsel, who has since expired and thereafter notices were issued to them through attorney and as per Bailiff's report, furnished by concerned Senior Civil Judge, they stand duly served; whereas, service against legal heirs of Respondent No.3 had also been held good vide order dated 23.12.2015.

4. From perusal of the record, it appears that the Respondent No.1 had filed a Civil Suit for declaration and possession along with injunction and the gist of the case of the Respondent No.1 was that house No.2370, which belonged to his brother i.e. Respondent No.3 and was sold by him to the present Applicants, but he handed over possession of house No.620 by taking undue advantage of his absence. This is the entire case of the Respondent No.1.

5. The Trial Court after recording evidence came to the conclusion that a case was made out and accordingly Suit was decreed. Relevant findings of the trial Court are as under:

"ISSUE NO:9.

On this issue there is evidence of plaintiff's attorney Muhammad Yakoob Kharal who has deposed that the suit property bears the S.No: 620 in M.C Gambat which is in the name of Masood Ahmed who has given him the power of attorney to appear in this suit and plead the sane. Masood Ahmed shifted to London while giving the suit house in the supervision of his brother Zafar Ahmed. Lateron Zaffar Ahmed also shifted to London while giving the sane suit house in the supervision of third brother Irfan Ahmed (defendant No.1). He also deposed that Irfan Ahmed defendant No:1 distributed his S.No: 2370 into two parts viz, 2370 and 2370-A. He sold out a part of S.No.2370-A to one Chandermal and the defendant No:1 shifted away from his own S/No.2370 to the suit house S.No.620. He also sold out his remaining portion viz 2370 to Permand Hindu and given the boundaries of suit house S.No.620 which was the property of the plaintiff Masood Ahmed. Permand Hindu took the possession of suit house S.No.620 instead of S.No. 2370. Irfan Ahmed has given the possession of S.No.620 showing the same plot to be 2370, illegally. I have also perused the sale agreement executed by defendant No.1 in favour of defendant Nos.2 and 3. There is evidence of Muhammad Aslam Jr. Clerk M.C Gambat who has deposed that the property No. 620 in the record of M.C Gambat belongs to Masood Ahmed son of Abdul Rahim Shaikh while the property No: 2370 belongs to Irfan Ahmed. There is another number so 2370-A which is the property of Chander son of Radhomal Hindu. He has given the bounders of S.No. 620 as under:-

East: House of Ali Bux Shaikh,
West:- House of Irfan Ahmed viz,2370,
South: Common street and
North: Open plot of Zafar Ali.

But from the perusal of the sale agreement the boundaries of the property sold to the defendant No. 2 & 3 does not tally with the S.No.2370 which is sold out to the defendant No:1 & 2 as per version of the defendant No.1. Hence it is proved that the defendant No.1 handed over the possession of S.NO. 620 to the purchaser defendants instead of S.No.237C. The issue No.9 is therefore replied in affirmative.

ISSE.NO 10.

I have gone through the evidence of plaintiff side. None of the plaintiffs have claimed the property M.C 2370 to be the property/premises of M. C No.620. The version of the plaintiff is that the defendant No.1 sold out the S.No.2370 and handed over the possession of the S.No 620 to the purchaser defendants instead of 2370. Hence the issue is replied in negative.

ISSENO:11.

On this issue there is evidence of one Muhammad Aslam Jr. Clerk of M.C Gambat. He has deposed that he is working as Jr. Clerk in the office of M.C Gambat. The property No. 620 in the record of M.C Gambat belongs to Masood Ahmed son of Abdul Rahim Shaikh. P.W Ali Bux at Ex.19 has deposed that there is a constructed house No.620. One Zafar was residing in the suit house and thereafter he distributed some portion of sane house to his brother Irfan the defendant No.1. He has deposed that defendant No.1 started residing in suit house since 5/8 years. Their version further gets support from the evidence of Lal Bux. He has deposed at Ex.18 that he has seen the suit house No. 620 which is adjacent to his house. They saw Zaffar, Masood in the house and thereafter one Irfan also came in the suit house. He came to know that defendant Irfan has sold out suit house to one Hindu. Against this evidence there is nothing on record that the suit property No.620 is open surrounded by wall. Hence, it is proved that the suit property No. 620 is not the open plot but it was a house and it was in the possession of the plaintiff. The issue is replied in negative”.

6. The Judgment of the trial Court was challenged in Civil Appeal by the Applicants, but again they were unsuccessful. Perusal of the aforesaid findings of the Trial Court reflects that without having any basis or support from any expert as to the demarcation or a site plan, a conclusion has been drawn that the property in possession of the Applicants bearing No.2370 is in fact house No.620, which was owned by the Respondent No.1. How the Trial Court arrived at the said conclusion is unclear and is not supported with any reliable evidence either in the shape of any report from the concerned authorities nor through any other document. In fact, this conclusion could not have been arrived at in absence of any expert opinion. It is also a matter of record that the Respondent No.1 had not

joined any of the official of the departments so as to seek support to establish his case. Respondent No.1 in his evidence has admitted that he has no concern either with the house No.2370 or 2370-A owned by the Applicants, but his entire case was that one of the houses in possession of the Applicants was his property numbered as House No.620.

7. At the same time, the Appellate Court has even gone beyond the case, as setup in the pleadings, and while formulating points for determination erroneously settled point No.2 that *“Whether the Respondent No.1 is the owner of house No.620 of Gambat town?”*. This was never in dispute or challenge; rather the only dispute was in respect of proper identification and verification of the property in question. The evidence led by Respondent No.1 was word against word and it has never come on record that in fact the house owned by the Respondent No.1 was the same as was being held in possession by the Applicants. The findings of the Appellate Court on point No.2 is as under:-

“Point No.2

PW 1 Muhammad Yakocb has deposed that house No. 620 is property of Masood Ahmed respondent/plaintiff). During cross examination he admitted the suggestion as under (line 22 to 25 of page 3 of Exh. 17:-

“It is fact that at the first instance the name of house owner No.620 was mentioned in some record as Maqsood Ahmed but thereafter it was corrected and original name of Masood Ahmed was corrected”

The above suggestion, as given itself amounts to the admission that house No. 620 is owned by respondent/plaintiff Masood Ahmed.

15. The DW 1 Mohammad Siddique has been examined as attorney of appellant/defendant No. 1 namely Irfan Ahmed. He has deposed in his examination-in-chief (line 14 and 15 of page -2 of Exh.123 as under:-

“The plot No. 620 is property of plaintiff, which is lying vacant in shape of plot surrounded by compound wall”.

The above statement clearly admits ownership of respondent/plaintiff Masood Ahmed over the house No. 620.

16. The learned advocate for appellant/defendant made the reference to the report of Survey Superintendent available in the R.&Ps of trial court. The report of Survey Superintendent available on record shows that on 14-9-2002 the side in question was visited by staff of

Survey Superintendent was visited by and some measurement was conducted. This report does not show non existence of house No. 620.

17. For the reasons recorded in paragraphs No.14 to 16, I am of the considered view that the house No.620 has been prove to be property of respondent/plaintiff Masood Ahmed and point No.2 is replied in Affirmative”.

8. Perusal of aforesaid findings clearly reflects that the Appellate Court also erred in law as well as in facts in coming to the above conclusion and has in fact relied upon the evidence in piecemeal; but not as a whole which has led the Appellate Court to believe that the Respondent No1 was correctly claiming the property in possession of the Applicants. Until and unless the Courts below had taken recourse to some survey or demarcation or inspection of the properties, no such findings could have been arrived at by mere reliance on the oral evidence of the parties. As to evidence of certain witnesses in support of the case as set up by Respondent No.1, it would suffice to say that the same was at best hearsay; as well as irrelevant in the facts and circumstances of the case.

9. In view of hereinabove facts and circumstances of this case, and notwithstanding the concurrent findings of the two Courts below, which are an outcome of misreading and non-reading of the evidence, therefore requires interference by this Court while exercising its revisional jurisdiction, in view of the dicta laid down by the Hon’ble Supreme Court in the case of, ***Nazim-Ud-Din v Sheikh Zia-UI-Qamar (2016 SCMR 24)***, ***Islam-Ud-Din v Mst. Noor Jahan (2016 SCMR 986)*** ***Nabi Baksh v. Fazal Hussain (2008 SCMR 1454)***, ***Ghulam Muhammad v Ghulam Ali (2004 SCMR 1001)***, & ***Muhammad Akhtar v Mst. Manna (2001 SCMR 1700)***; hence, by means of a short order passed in the earlier part of the day, this Civil Revision was allowed and the impugned Judgment of the Trial Court dated 13.12.2002 and that of the Appellate Court dated 29.11.2006 were set aside and these are the reasons thereof.

JUDGE

Ahmad