

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 69 of 2001

(Syed Jan Ali Shah V/s Government of Sindh & others)

Date of Hearing: **07-03-2022**

Date of Judgment: **07-03-2022**

Mr. Sarfraz A. Akhund, Advocate for the Applicant.

Mr. Ahmed Ali Shahani, Assistant Advocate General-Sindh.

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicant has impugned Judgment dated 29.05.2001, passed by learned District Judge, Sukkur in Civil Appeal No.03 of 2000 (**Government of Sindh & others v. Syed Jan Ali Shah & others**), through which the Civil Appeal of the Respondents has been allowed and the Judgment dated 30.10.1999, passed by 2nd Senior Civil Judge, Sukkur in F.C Suit No.288 of 1988 (**Syed San Ali Shah V/s Government of Sindh & others**) has been set aside, through which the Suit of the Applicant was decreed.

2. Learned Counsel for the Applicant has contended that this is a case of conflicting findings of the two Courts below, whereas, the learned Appellate Court has erred in law and facts by allowing the Civil Appeal; that the revenue authorities had acted unlawfully and without jurisdiction, therefore, Suit was maintainable; that insofar as the maintainability of the Suit as a representative Suit under Order 1 Rule 8 CPC is concerned, the Trial Court was satisfied to this effect and while decreeing the Suit impliedly the said objection stands satisfied in view of the Judgment reported as *Rashid Ahmad v. Muhammad Sadiq* (**2003 YLR 690**); that the Appellate Court has erred in this regard and therefore this Civil Revision merits consideration and be allowed by setting aside the Judgment of the Appellate Court and by restoring that of the Trial Court.

3. Learned Assistant A.G, appearing on behalf of the Respondents, has opposed this Civil Revision on the ground that the Appellate Court has arrived at a correct conclusion in law and facts; that an enquiry was conducted, wherein the ownership and title of the present Applicant was found forged and fabricated; that no ownership declaration was ever

sought by the Applicant; that the Suit was not maintainable in its representative capacity; that the purported sellers of the property were never joined or examined, hence no case is made.

4. I have heard learned Counsel for the Applicant as well as learned AAG and perused the record.

5. It appears that the Applicant filed a Suit, which was claimed to be a representative Suit under Order 1 Rule 8 CPC, on behalf of the present Applicant as well as on behalf of the persons, shown in the Schedule, annexed with the Plaint. The precise prayer of the Applicant in his Suit is as under:

- i. That it be declared that the notices Dated: 1-6-85, issued by the defendant No: 2, have been issued illegally and without any lawful authority, hence null and void and of no legal consequences, as the plaintiff and the other persons shown in the schedule "A", are bonafide purchasers with valuable consideration of suit land.
- i-a. That it be declared that the enquiry conducted in respect of the suit land and the order dated:16-6-90 passed by the Senior Member, Board of Revenue and Chief Land Commissioner, Sindh, are malafide, illegal and ab-initio void, hence liable to be set-aside.
- ii. That a permanent injunction may be issued against the defendants, their sub-ordinates and agents thereby restraining them from embarking upon any enquiry taking any proceedings and passing any adverse orders affecting the rights of the plaintiff and other persons shown in the schedule "A", in the suit land in any manner.
- iii. That the costs of the suit may be awarded to the plaintiff.
- iv. That any other equitable relief deemed just and proper may be passed under the circumstances of the case".

6. The matter was contested through written statement of the Respondents and the Trial Court settled the following issues:

1. Whether the plaintiff and others as shown in Schedule 'A' are bonafide purchasers and lawful owners of the suit land?
2. Whether the plaintiff party and also their predecessor in interest have/had no right or title over the suit land?
3. Whether the notices dated 1.6.85 issued by defendant No.2 are illegal, null and void and without lawful authority?

4. Whether the enquiry and order dt.16.6.90 made in respect of suit land are malafide, illegal and abinitio void?
5. Whether the defendants or any of them have violated the orders of statusquo? If so to what effect?
6. Whether S.No.101/1 to 4 area 16-00 acres of Deh Tirrore taluka Rohri is owned by defendant No.5.
7. Whether the suit is not maintainable or is barred by law?
8. Whether this Court has no jurisdiction in the matter?
9. Whether the suit is undervalued?
10. What should the decree be?"

7. The Trial Court was of the view that the Applicants had made out a case and therefore Suit was decreed; whereas, the Civil Appeal of the Respondents has been allowed and the Judgment of the Trial Court has been set aside through impugned judgment.

8. Insofar as the Appellate Court is concerned, in its judgment it has been held that the very Suit of the Applicant was not maintainable as a representative Suit and at best was a Suit on behalf of the Applicant himself. The findings of the Appellate Court that the Suit was not maintainable as a representative Suit in terms of Order 1 Rule 8 CPC appears to be correct in law inasmuch as admittedly no request was ever made by way of any application before the Trial Court to treat the Applicant's Suit as a Suit in its representative capacity, as provided under Order 1 Rule 8 CPC. The law is very clear and it would be relevant to refer to the provisions of Order 1 Rule 8 CPC; same reads as under:-

(1). Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(2). Any person one whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the court to be made a party to such suit".

The above provision very clearly provides that where there are numerous persons having the same interest in one suit, one or more of such persons may with the permission of the Court, sue or be sued or may defend in such Suit on behalf of or for the purpose of all persons so interested. However, there is an exception to it that in all such cases, the Court shall at the expense of the plaintiff give notice of the institution of such a suit to all persons either by personal service or where from the number of persons or any other cause such service is not personally practicable; by public advertisement as the Court may direct. Insofar as the present facts of this case are concerned, apparently neither any application was ever filed under Order 1 Rule 8 CPC nor the persons, as mentioned in the Schedule to the Plaint, were ever served with any notice either personally or through publication. Today, Counsel for the Applicant has made an attempt to argue that publication was made; however, it is a matter of record that neither the same was placed before the Appellate Court nor there is any order to this effect in the entire proceedings so placed before the Court. Insofar as reliance on the aforesaid case of *Rashid Ahmed and others (supra)* is concerned, with respect, firstly the same is not binding but only persuasive; and secondly, even otherwise the final conclusion drawn by the Court is against the very case of the present Applicant inasmuch as it was held that when provisions of Order 1 Rule 8 CPC read along with the precedents, makes it clear that issuance of notice upon the persons sought to be represented in such suits is mandatory. Therefore, to this extent the Suit was incompetent under its representative capacity and could only have proceeded independently on behalf of the Applicant.

9. In the case of *Adam Khan*¹ the Hon'ble Supreme Court has settled the law that following conditions must be fulfilled in order to institute a representative suit in terms of Order 1 Rule 8 CPC; namely; (a) Persons interested in the suit must be numerous; (b) They all must have the same interest in the suit; (c) *Permission of Court under rule 8 shall be obtained and (d) Notice must be given to all the persons whom it is sought to*

¹ Adam Khan v Gulla Mir (PLD 1982 SC 120)

represent. The Indian Supreme Court in **State of Andhra Pradesh**² while interpreting Order I, rule 8, C.P.C. has laid down the principle that "To enable a person to file a suit in a representative capacity for and on behalf of numerous persons where they have the same interest, the only condition is the permission of the Court". In **Mst. Seema**³ a learned Single Judge of this Court has been pleased to hold that Obtaining permission of Court under Order I Rule 8 CPC by person suing or defending the suit is mandatory otherwise his action would have no binding effect upon person(s), whom he had chosen to represent. In **M Saadullah**⁴ a learned Division Bench of this Court while dilating upon issuance of notice by way of publication to parties joined in a representative suit under Order I Rule 8 has held that the discretion of Court about publication of notice in a representative suit can be made use of only after Court has come to conclusion that service of notice/summons were being avoided by persons sought to be served or that it was not possible to serve them in an ordinary manner. Therefore, resultantly, a mere direct notice through publication is otherwise not a correct approach. In **Anisur Rehman**⁵ it has been held that suit was filed by the plaintiff as a representative suit but none of the ingredients necessary under the law were present nor the procedural requirements were complied with as no permission was obtained from the Court which is mandatory as a consequence to which this suit cannot be regarded as a representative suit. Therefore, it can be safely held that the Suit in question was not a representative suit in terms of Order I Rule 8 CPC as contended; hence, the finding of the learned Appellate Court is unexceptionable to this extent and does not require any interference by this Court.

10. As to the very merits of the Applicant's case, if at all the Suit was competent as an independent Suit of the Applicant again learned Appellate Court has given a detailed findings and it has come on record that the very title and the basis on which the ownership is being claimed and declaration has been sought, is forged and fabricated; whereas, admittedly purported sellers of the property were never joined by the Applicant. Again while confronted in Court today, Counsel has made an attempt to argue that it was not necessary as sellers had no dispute with

² State of Andhra Pradesh v. Gundugola Venkata Suryanarayana Garu AIR 1965 SC 11

³ Mst. Seema v Millennium Developers (2003 CLC 632)

⁴ M Saadullah v Tahir Ali (1986 CLC 2643)

⁵ Anisr Rehman v Government of Sindh (1997 CLC 615)

the Applicant. With respect, such contention does not appear to be correct inasmuch as the very basis and the original title as well as chain of transfers up to the Applicant's claim has to be proved in accordance with law. By merely saying that the sellers had no issue with the Applicant would not suffice. Nonetheless, it has come on record that the very sellers being aggrieved by the issuance of notices had also filed their own Suit bearing No.119 of 1984, which was dismissed in default on 21.06.1988. This has also come on record through written statement of the Defendant No.1/Secretary to Government of Sindh and therefore in that case, the burden was shifted upon the Applicant to bring the sellers and purported owners of the property in question before the Court to at least support his contention. In the alternative, they may have a case against those sellers for committing fraud and cheating by selling the property which was not owned by them with a clear title; but not against present Respondents.

11. In view of hereinabove facts and circumstances of this Case it appears that the trial Court had erred in law and facts, whereas, the Appellate Court was fully justified in setting aside the said Judgment and Decree; therefore, by means of a short order in the earlier part of the day, this Civil Revision was dismissed and these are the reasons thereof.

JUDGE

Ahmad