IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 46 of 2007

(**Rajib Ali & others V/s Syed Asghar Shah & others**)

Civil Revision No. S – 70 of 2007

(**Syed Asghar Ali Shah & others V/s Rajib Ali & others**)

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

Mr. Mukesh Kumar G. Karara, Advocate for the Applicants in Civil Revision No.S-46/2007 and for Respondents in Civil Revision No.S-70/2007.

Syed Jaffar Ali Shah, Advocate for Respondents No.1 to 5 in Civil Revision No.S-46/2007 and for Applicants in Civil Revision No.70/2007.

J U D G M E N T

Muhammad Junaid Ghaffar, J. **–** Through these two Civil Revisions the Applicants of Civil Revision No. S-46 of 2007 ("**The Applicants**" hereinafter) as well as the Applicants of Civil Revision No.S-70 of 2007 ("**The Respondents**" hereinafter) have impugned a common judgment dated 30.6.2007 passed by the Additional District Judge, Gambat, whereby, while dismissing the Appeal of the Applicants, the judgment dated 30.11.2002 passed by Senior Civil Judge, in F.C. Suit No.04 of 1994 (***Rajib Ali v Asghar Shah***), through which the Suit of the Applicants was dismissed has been maintained; and at the same time some adverse findings have also been recorded against the present Respondents.

2. Head learned Counsel for the parties and perused the record. Insofar as Civil Revision No.70 of 2007 is concerned; the same was earlier dismissed for Non-prosecution vide order dated 31.5.2021 against which an application for restoration has been filed; which for the reasons so stated in this opinion is hereby allowed and the Civil Revision stands restored and is being decided along with the Revision of the Applicants which is the main Revision against the findings of the two Courts below, whereby the Suit of the Applicants has been dismissed.

3. As per record the Applicants had filed a Suit for declaration and injunction to the effect that the Khata of the land transferred in the name of Central Government is fake and not applicable or binding on the Applicants and the Defendants / Respondents had no right or claim over

the said land. The Suit of the Applicants was dismissed by the trial court which judgment has been maintained by the Appellate Court; however, at the same time a finding in respect of Point No.3 has been recorded against the Respondents who are aggrieved to that extent from the impugned judgment.

4. The case of the Applicants is that the suit land was owned by them pursuant to a Gift Deed duly executed by the actual owners of the land which was done in favor of the predecessor in interests of the Applicants in the year 1939, whereas, on the basis of such Gift various entries had been recorded in record of rights; hence, the Applicants be declared as owners of the suit property.

5. It is a matter of record that the donor or the executant of the alleged Gift was never made a party to any of the proceedings. Similarly, the Central Government whose allotment was impugned and against whom a decree was sought; was also not joined as a party. While confronted, learned Counsel for the Applicants has argued that it was not necessary, and per settled law no suit could be dismissed otherwise for non-joinder or mis-joinder of the parties. Insofar as the legal proposition is concerned, there is no cavil to this; however, it can only be applied when the attending circumstances of the case so demand or require. The purported Gift is of the year 1939, whereas, it is has come on record that the subsequent entries in the record of rights are fake and managed one. In that case, the original ownership of the Donor had to be proved. Even otherwise, per settled law the mutation entries are not a title, whereas, once they are in dispute, then the entire chain of the ownership and on the basis of which a subsequent donee or purchaser is claiming its rights, have to be proved. This cannot be done without the presence of the original owners as it is they who can defend and assert the right on the basis of which a subsequent owner is claiming its rights in the said land.

6. Nonetheless, even otherwise the case as set up by the Applicants was that the Suit property was owned by one Mir Ghulam Hussain Talpur of Kotdiji who gifted the same to one Bakhshan Khan Bhutto the ancestors of the Applicants in the year 1939 and in support had also produced true copies of Form-VII, whereby the purported Gift was made at Serial No.48 dated 13.9.1939, whereas, the said true copies were obtained on 6.6.1995

and 7.6.1995. However, this fact is belied by Robkari dated 12.8.1999 (Exh-92) issued by the Mukhtiarkar Sobhedero which shows that there is no entry of Suit property at Serial No 48 in the name of Bakhshan Khan Son of Allah Warayo Bhutto from whom the Applicants claim ownership being his legal heirs. Resultantly, the documents being relied upon are proved to be forged and fabricated even otherwise. As per the Khasra Girdwari (Exh-85) the owner of the property is shown as Central Government; which documents was produced by the Applicants themselves. Moreover, the Applicants have also failed to establish and prove the three ingredients of the Gift; and the main reason is naturally that the Donor was never joined as a party; hence, in law it could not have been proved in any manner. In nutshell, notwithstanding the failure of the Applicants in proving the purported Gift in their favor; the revenue record so relied upon by the Applicants also does not support their case; hence, the trial court as well as the Appellate Court were justified in dismissing the Suit of the Applicants; hence their Revision Application is liable to be dismissed and it is so ordered.

7. As to the Revision of the Respondents it appears that the learned Appellate Court had formulated point for determination while deciding the Appeal, and point No.3 was that *whether the respondents / defendants have any right and title in the suit property*; and by placing reliance on certain orders of the Settlement authorities, produced in evidence by the present Applicants has held that the Respondents have failed to prove the allotment of the suit land; hence, point No.3 is answered in negative. Without touching the merits of the said determination, it would suffice to hold that the learned Appellate Court had no reason or justification; nor in fact any jurisdiction to first formulate the said point for determination and then answer it against the present Respondents. From the prayer clause of the Suit it emerges that no cancellation of the ownership documents (based on a Khatooni) was sought by the present Applicants. The Suit admittedly stands dismissed in favor of the present Respondents; then how and in what manner, this finding could have been arrived at by the Appellate Court is not understandable; nor any lawful justification for exercising such powers and jurisdiction has been recorded in the impugned judgment by the said Court. When the issue was never raised as to cancellation; nor the Suit had been decreed in favor of the Applicants (if that was so, then perhaps, a question of any consequential relief could have arisen),

then there was no lawful justification for the Appellate Court to record such adverse finding against the present Respondents. Therefore, the said portion of the impugned order in respect of point No.3 cannot be sustained and is liable to be set-aside, and it is so ordered.

8. In view of hereinabove facts and circumstances of the case in hand, the restoration application of the Respondents in Civil Revision No. S-70 of 2007 was allowed by restoring the Revision, and thereafter by means of a short order in the earlier part of the day, Civil Revision No. S-46 of 2007 was ***dismissed***; whereas, Civil Revision S-70 of 2007 was ***allowed*** by setting aside the finding of the Appellate Court in its judgment dated 30.6.2007 to the extent of point No.3; and these are the reasons thereof. ***Office to place copy of this judgment in captioned connected matter.***

J U D G E