

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

IIInd Appeal No.81of 2021

Appellants	Mst. Sahiba Khatoon since deceased through her legal heirs through Mr. Allah Dino Dayo, Advocate.
Respondents	1. Muhammad Soomar Memon. 2. Bashir Ahmed Memon both sons of Muhammad Siddique Memon through Mr. Imdad Ali Memon.
Respondent No.3	Province of Sindh through Secretary Revenue Department.
Respondent No.4	Sub-Registrar, Hala.
Respondent No.5	Mukhtiarkar (Revenue) Taluka Hala.
Dates of hearing	10.01.2022 and 17.01.2022
Date of judgment	07.02.2022

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JUDGMENT

SHAMSUDDIN ABBASI, J:- This IIInd appeal under Section 100, C.P.C. arises out of judgment dated 03.07.2021 passed by learned Additional District Judge Hala, whereby he upheld judgment dated 27.02.2021 and Decree dated 05.03.2021 passed by learned Senior Civil Judge in F.C No. 119 of 2021 whereby Suit was decreed.

2. Short but relevant facts of the case are that the respondents No.1 & 2 filed a suit against Mst. Sahiba Khatoon (since deceased through her legal heirs) for declaration, possession and permanent injunction contending therein that residential property bearing City Survey No.2220, measuring 600 square yardequivalent to 5400 square feet, situated at Ward "A" Talib-ul-Moula Colony, Hala New Taluka Hala, District Matiari, was owned by their deceased father Gul Muhammad, who expired on 09.07.2015 and after his death half an area viz 2802 square feet was transferred and mutated in their names by way of inheritance having equal share of 1401 square feet each on which they made construction. Mst. Sahiba Khatoon (appellant No.1) was the real sister of their deceased father, who in his lifetime (2015) allowed her to reside therein till she acquires her own accommodation. She resided in the suit house till her last breath (2018). After her death, the appellants No.1(a) to (e) being her legal heirs continued to reside in the suit house and failed to

vacate the same. It was in the first week of October, 2019 they refused to vacate the suit house and demanded to get the said house sold to them. This led to filing F.C. Suit No.119 of 2019 with the following prayer:-

- i) *“Declaration that the plaintiffs severally and jointly are the absolute, exclusive and lawful owners of suit house i.e. Residential Property bearing City Survey No.2220, total admeasuring an area of 600 Square Yards i.e. 5400 Square Feet, situated at Ward “A” Talib-ul-Moula Colony Hala New Taluka Hala District Matiari to the extent of an area of 1401 Sq. Feet each in equal two shares i.e. total admeasuring an area of 2802 Square Feet i.e. constructed house as per law.*
- ii) *To direct the defendant No.1 (a to e) to restore/handover the vacant and physical possession of the suit house i.e. Residential Property bearing City Survey No.2220, total admeasuring an area of 600 Square Yards i.e. 5400 Square Feet, situated at Ward “A” Talib-ul-Moula Colony Hala New Taluka Hala District Matiari to the extent of an area of 1401 Sq. Feet each in equal two shares i.e. total admeasuring an area of 2802 Square Feet i.e. constructed house severally and jointly to the plaintiff as their exclusive, absolute and lawful owners.*
- iii) *For permanent injunction restraining the defendants from changing the entries in the record of rights, issuing and claiming sale certificate, selling, alienating, transferring and encumbering the suit property in any manner whatsoever, till the same in partitioned according to law.*
- iv) *Costs of the suit be borne from the defendant No.1 (a to e).*
- v) *Any other relief which this Hon’ble Court may deem fit and proper be awarded to the plaintiff”.*

3. The appellants contested the suit and filed written statement through Muhammad Usman (appellant No.1(a)) as their attorney wherein they have denied all the allegations leveled against them by respondents No.1 and 2 and submitted that their mother Mst. Sahiba Khatoon in her lifetime had purchased an area of 1000 square feet from her brother Muhammad Siddique (father of respondents No.1 and 2) in 1979 verbally @ Rs.500/- per square feet and paid him the entire sale consideration and they constructed a pakka house in 1993. They have further asserted that Muhammad Siddique kept the appellant No.1 on good hopes for execution sale deed in her favour but he did not do so till his death. Thereafter, the respondents No.1 and 2 with malafide intention got their property mutated in their names. They claimed themselves to be the owners of the suit property by way of inheritance from their mother and emphasized that electric and gas meters are installed in the name of their father Muhammad Qasim, which established their case.

4. Out of the pleadings of the parties, learned trial court framed 09 issues

5. The parties led their evidence. The learned Senior Civil Judge, Hala, District Matiari, after hearing the parties' respective counsel and assessing the record decreed the suit to the extent of prayer clause (i) to (iii) vide judgment dated 27.02.2021.

6. Feeling aggrieved by the judgment and decreepassed by the learned trial Court, the appellants filed appeal (Civil Appeal No.24 of 2021) mainly agitating that the findings of the learned trial Court may be reversed and the suit filed by the respondents No.1 and 2 may be dismissed.

7. The appeal fails and the judgment and decree passed by the learned trial Court were maintained vide judgment dated 03.07.2021, penned down by the learned Additional District Judge, Hala, hence necessitated the filing of this IInd Appeal.

8. It is contended on behalf of the appellants that the impugned judgments and decrees passed by the learned Courts below are bad in law and facts, without appreciating the evidence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in decreeing the suit acting upon the material put forward by the respondents and ignoring the neutral appreciation of whole evidence adduced by the appellants.

9. The learned counsel for the respondents No.1 and 2, on the other hand, has controverted the submissions raised by the learned counsel for the appellants and submitted that impugned judgments passed by the learned Courts below are speaking and well-reasoned, to which no exception could be taken. The appellants have failed to point out any material illegality or serious infirmity committed by the learned Courts below while passing the impugned judgments, which are based on fair evaluation of evidence and documents brought on record, hence call for no interference by this Court.

10. Arguments advanced by the learned counsel for the parties have been heard and record perused carefully with their able assistance.

11. A keen look of the record reveals that respondents No.1 and 2 are real sons of deceased Muhammad Siddique, who was exclusive owner of a residential property bearing City Survey No.2220, measuring 600 square yard equivalent to 5400 square feet, situated at Ward "A" Talib-ul-Moula Colony, Hala New Tala Hala, District Matiari, and expired on 09.07.2015, leaving behind the said respondents as his surviving legal heirs, who got mutation letter from the respondent No.4 and entered their names in the record of rights in respect of the suit house. Mst. Sahiba Khatoon (appellant No.1) is stated to be real sister of Muhammad Siddique and paternal aunt of respondents No.1 and 2, who alleged to have resided in the suit house since 1979 having purchased the same from her brother Muhammad Siddique. Appellants 1(a) to (e) are the sons and daughters of Mst. Sahiba Khatoon, who claimed themselves to be the owner of the suit house by way of inheritance from their mother.

12. The respondents in support of their claim examined Muhammad Soomar (respondent No.1), who is also attorney of the respondent No.2, and also produced Naveed Ali as their witnesses. On the other hand, Muhammad Usman {appellant No.1(a)} appeared in the witness box, who is also attorney of the other appellants and also produced Mst. Kundiyat as DW.2 and closed their side. The learned trial Court did not agree with the stance taken by the appellants as being based on oral sale transaction without producing any valid and tangible evidence and decreed the suit of respondents No.1 and 2, which was affirmed by the appellate Court. Insofar as the contention of learned counsel for the appellants that the two judgments, impugned herein, are bad in law and facts is not legally correct. I am convinced that both the Courts below have appreciated the evidence and scrutinized the material available on record in complete adherence to the principles settled by the Hon'ble apex Courts in various pronouncements and have reached a just conclusion. I am, therefore, of the view that the two judgments, impugned herein, are based on fair evaluation of evidence and documents brought on record for the following reasons.

13. There is no denial of the fact that suit house belonged to Muhammad Siddique, father of respondents No.1 and 2, and after his death the same was mutated in their names by way of inheritance. The plea taken by the appellants that their mother Mst. Sahiba Khatoon had purchased an area of 1000 square feet from Muhammad Siddique through

oral transaction is unsafe to rely upon where there is no documentary as well strong oral evidence has been brought on record on their behalf. The appellants in their pleadings and evidence have taken different pleas. On one hand, DW.1 Muhammad Usman {appellant No.1(a)}, who is also attorney of other appellants, in his evidence has stated that the entire sale consideration was paid to the father of respondents by Mst. Kundiya, wife of his paternal uncle Jan Muhammad, but on the other hand, Mst. Kundiya while appearing as DW.2 has admitted that she has not produced any receipt of receiving sale consideration in respect of the suit house. No material has been brought on record on behalf of the appellants to substantiate that suit house was purchased by their mother from Muhammad Siddique against valid sale consideration. Mere production of electricity and gas bills in the name of appellants' father did not confer any title on the person in whose name such connections are installed. Even otherwise, in cases where the sale is pleaded through oral transaction, each and every detail has to be disclosed in the pleadings firstly and then the same has to be established through cogent and reliable evidence. In such like cases, the party claiming ownership beside detailing subject matter of the sale, the consideration, name of the witnesses in whose presence the said oral transaction was arrived at between the parties and other necessary details for proving such a transaction, which is not the case herein. As to the plea taken by the appellants regarding their prolonged possession, suffice it to observe that mere prolonged possession without proof of any title by itself does not establish the claim of ownership. No sanctity could be attached to an oral sale until and unless established through credible evidence, which is missing.

14. Besides, there are concurrent findings on the issue of fact against appellants. The two Courts below have concurrently refused to exercise their discretion in favour of the appellants. The impugned judgments are well reasoned and according to law, therefore, there is no reason to interfere in the concurrent findings of two Courts below, which are outcome a proper application of judicial mind to the facts and circumstances of the case, hence call for no interference. The Hon'ble Supreme Court in case of *Naseer Ahmed Siddique through legal heirs v Aftab Alam and another* (PLD 2011 SC 323) held as under:-

"Where trial Court has, exercised its discretion in one way and that discretion has been Judicially exercised on sound principles and

the decree is affirmed by the appellate Court, the High Court in second appeal will not interfere with that discretion, unless same is contrary to law or usage having the force of law."

Similarly, in the case of *Keramat Ali and another v. Muhammad Yunus Haji and others* (PLD 1963 SC 191), it has been held as under:-

"the High Court in second appeal has no jurisdiction to go into the question relating to the weight to be attracted to a particular item of evidence."

The Hon'ble Supreme Court in the case *Bashir Ahmed v Mst. Taja Begum and others* (PLD 2010 SC 906) also held as under:-

"The question of materiality, that is, whether or not an issue is of a material nature, will depend upon whether the ultimate decision of the Court of first appeal would have been different, if the omitted issue had been determined by it. Thus, in order to succeed in second appeal on ground (b) of subsection (1) of section 100, C.P.C, an appellant would have to show that the Court of first appeal would have reached a different conclusion, had it not failed to decide the issue of law or usage specified in ground (b) ibid."

Likewise, in the case of *Muhammad Iqbal and another v. Mukhtar Ahmad through L.Rs* (2008 SCMR 855) it has been held that:-

"when the two Courts below came to the conclusion that they arrived at and rightly so. This perfectly sound conclusion should not have been interfered with by the High Court in the exercise of its second appellate jurisdiction."

15. For the foregoing reasons and relying on the dictum laid by the Hon'ble apex Court in the case law (supra), I am of the view that impugned judgments and decrees passed by the two Courts below are based on proper application of judicial mind to the facts and circumstances of the case, therefore, there is no reason to interfere in the concurrent findings of facts. In view thereof, the findings recorded by the learned Courts below are upheld. Resultantly, the instant IInd Appeal is bereft of merit stands dismissed.

JUDGE