

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. R. Application No.S-212 of 2019

Applicants: Muhammad Mithal and others,
through Mr. Tariq G. Hanif
Mangi, Advocate.

Respondents: Atif Ali and others through
Mr. Sajjad Muhammad Zangejo,
Advocate.

Date of hearing: 14.03.2022.
Date of decision: 08.04.2022.

ORDER

Zulfiqar Ali Sangi, J: This Civil Revision Application has been directed against the impugned order dated 20.11.2019 passed by learned Additional District Judge (MCAC), Kandiaro, whereby Civil Appeal No.13 of 2017, filed by the present applicants, was dismissed by maintaining the impugned order dated 11.01.2017, passed by Senior Civil Judge, Kandiaro, in F.C Suit No.57 of 2016, whereby plaint of the suit was rejected under Order VII Rule 11 CPC, hence this civil revision application.

2. The facts giving rise to this civil revision application are that the applicants filed a F.C. Suit No. 57/2016 for Declaration, Cancellation and Permanent Injunction wherein respondents/defendants No.1 to 8 filed their joint written statement and denied the allegations leveled against them. Thereafter on 07.05.2016, respondents/defendants No.1 to 8 filed an application under Order VII Rule 11 CPC, which was allowed by learned trial Court vide order dated 11.01.2017, resulting plaint of F.C. Suit No.57/2016 was rejected. The applicants preferred a Civil Appeal bearing No.13 of 2017 before learned Additional District Judge, Kandiaro, assailing the order of learned trial Court but the same was also dismissed vide order dated 20.11.2019.

3. Learned counsel for the applicants, at the very outset, submits that impugned orders passed by learned both lower Courts are neither based on facts nor on law; that learned Courts below have acted illegally and with material irregularities; that learned trial Court

has failed to properly analyze the evidence on record and wrongly rejected the suit of the applicants under Order VII Rule 11 CPC by ignoring the cogent material produced by the applicants; that impugned orders are improper and have been passed in hasty manner; that learned trial Court had failed to apply its judicious mind while deciding the application under Order VII Rule 11 CPC without affording proper opportunity of hearing to the applicants to lead their evidence as their valuable rights are involved in the matter; that learned Courts below had wrongly held that the suit of the applicants is barred by law while passing the impugned orders; that it is well-established principle of law that every matter should be decided on merits rather than on technical knock-out; that the applicants are lawful owners of the suit land as per their share by way of inheritance hence private Respondents or their predecessor-in-interest have no concern whatsoever with the suit land as their claim over the suit land is without any lawful authority; that it is settled principle of law that plaint cannot be rejected without recording the evidence of the parties; that on the basis of aforesaid factual and legal position, this revision application may be allowed by setting aside the impugned orders passed by both learned lower Courts and to remand back the matter to learned trial Court to decide the suit filed by the present applicants on merits rather on technicalities.

4. Learned Counsel appearing for Respondents argued that the learned trial Court has rightly rejected the suit of the applicants as the same was not maintainable in law as they had not produced any title documents of the land in dispute; that the applicants had only produced land revenue receipts which does not create any right, interest or title in favour of applicants; that the applicants are Hari by profession and they were cultivating the suit land on Harp basis hence they cannot claim the right of ownership; that it is also important to disclose that the documents produced by the applicants with the plaint are neither genuine nor titled documents; however in order to usurp the right of respondents they have shown accrual of cause of action as there is no any cause of action as alleged and they have also no locus-standi to file suit; that proper opportunity of hearing was afforded to applicants to prove their claim but they failed to produce any cogent, reasonable or valid document to be relied upon; that both impugned orders passed by learned both lower Courts are based upon strong and cogent grounds; besides each and

every aspect of the case has been discussed elaborately; that no illegality or irregularity has been committed by the courts below while passing the impugned orders therefore, the same are liable to be maintained as the same have been passed in proper and accurate manner. In the last, he submitted that instant civil revision application, being meritless, is liable to be dismissed with compensatory cost.

5. I have heard learned Counsel for the Applicants as well as Respondents and have carefully examined the material available on record with their able assistance.

6. The suit filed by the applicants claiming their ownership of disputed land on the basis of inheritance with the prayer (a) *“That this Honourable Court may be pleased to declare that the plaintiffs are lawful owners of the suit land according to their share by way of inheritance.”* The applicants neither filed any proof with regards to their entitlement as legal heirs nor made any prayer in the suit in respect of declaration as being the legal heirs of the predecessor-in-interest. Even not a single document in respect of ownership/title has been filed with the plaint which may suggest that any of their predecessor-in-interests was the owner of the property. On perusal of the para No. 04 of the plaint it further reflects that the applicants filed the civil suit wherein he challenged the entries in the revenue record. The contents of said para are *“That the private defendants illegally and with malafide intention so also in collusion with revenue authorities got misplaced the record of rights in the name of predecessor-in-interest of plaintiffs and got mutated their names in the revenue record fraudulently, the said defendants had no concerned whatsoever with the suit land and they never remained in possession of suit land at any time.”* Further the applicant in the said suit in prayer clause (b) pray that ***“That this Honourable court may be pleased to declare that entries in revenue record of rights in favour of defendants are illegal, fraudulent, null and void and liable to be cancelled.”*** It reflects that the applicant approached the civil court for cancellation of entries made in the revenue record without approaching the revenue authorities. The Honourable Supreme Court in case of Muhammad Siddique (Deceased) through LRs and others v. Mst. Noor Bibi (Deceased) through LRs and others

(2020 SCMR 483) in para No. 6 and 7 of the Judgment held that **“6.** There are concurrent findings of fact of the two learned Courts below. We have observed that there are further defects in the Suit whereby the orders of the revenue hierarchy i.e. the Assistant Commissioner and the Additional Commissioner were challenged in the Suit. In our view, orders of the Assistant Commissioner as well as the Additional Commissioner were liable to be challenged before the Board of Revenue, Punjab; therefore, a Suit before the Civil Court was not competent before exhausting the available remedy under the law. It is a settled principle of law that where a special remedy is provided for under the law, it may not be bypassed and the Civil Courts should not be approached directly without exhausting the highest forum in the authority. Reference may be made to the judgment reported as Hakam and others v. Tassadaq Hussain Shah (PLD 2007 Lahore 261), Zahid Hussain and 10 others v. Shamasuddin and 9 others (2014 CLC 1334) and Muhammad Jalat Khan v. Faisal Hayat Khan and 4 others (2003 CLC 837). Furthermore, the jurisdiction of Civil Courts is also impliedly barred where an alternate remedy has been provided under the law, provided that the authority was not exercised in excess of the jurisdiction conferred upon the authority. Reference in this regard may be made upon the judgment of this Court reported as Bashir Ahmed v. Messrs Muhammad Saleem, Muhammad Siddique & CO. (REGD) and others (2008 SCMR 1272).

7. Hence, we are fortified in our view that when an order first to review the mutation or the order sanctioning of mutation was challenged by the Plaintiffs/Petitioners, they were required to avail the remedy available to them under Chapter XIII of the West Pakistan Land Revenue Act, 1967. After having availed said remedy, if the Plaintiffs/Petitioners were dissatisfied with the result and could show that the said hierarchy had failed to exercise jurisdiction vested in them by law or had exercised the jurisdiction illegally, only then a Suit before the Civil Court would have been competent. The Petitioners have admittedly not availed the remedy available to them to challenge the orders passed by the Revenue Officer before the revenue hierarchy. Instead, the Plaintiffs/Petitioners opted to file the Suit before the Civil Court, which was not competent in the light of judgments discussed herein above.”

7. Perusal of impugned orders of the two courts bellow reflect that the plaint was rejected by holding that the suit of the applicants before the trial court appears to be barred under section 172 of the Land Revenue Act, which provides that:-

S. 172. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers.- (1) Except as otherwise provided by this Act, no Civil Court shall have jurisdiction in any matter which Government, the Board of Revenue, or any Revenue Officer, is empowered by this Act to dispose of, or take cognizance of the manner in which Government, the Board of Revenue, or any Revenue Officer exercises any powers vested in it or him by or under this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), a Civil Court shall not exercise jurisdiction over any of the following matters, namely:-

(i) xxxxxxxxxxxx

(ii) xxxxxxxxxxxx

(iii) xxxxxxxxxxxx

(iv) xxxxxxxxxxxx

(v) xxxxxxxxxxxx

(vi) the correction of any entry in a record-of-rights, periodical record or register of mutations;

(vii) xxxxxxxxxxxx

(viii) xxxxxxxxxxxx

(ix) xxxxxxxxxxxx

(x) xxxxxxxxxxxx

(xi) xxxxxxxxxxxx

(xii) xxxxxxxxxxxx

(xiii) xxxxxxxxxxxx

(xiv) xxxxxxxxxxxx

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8. Further section 11 of Sindh Revenue Jurisdiction Act, 1876 bars jurisdiction of Civil Court to entertain any suit which is filed on account of any act or omission of any Revenue Officer unless plaintiff proves that he has presented appeal allowed by the law for the time being in force within the period of limitation of such suit. Admittedly, applicants have not filed any appeal or revision before the Revenue Authority calling in question the entries in the revenue record, therefore, the suit of the applicants/plaintiff for declaration and injunction under Specific Relief Act, 1877 was barred under

section 11 of Sindh Revenue Jurisdiction Act, 1876. Section 11 of the Sindh Revenue Jurisdiction Act, 1876, is reproduce as under:-

11. No. Civil Court shall entertain any suit 1 [against the Government] on account of any act or omission of any act or omission of any Revenue-officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

9. The contention of learned counsel for the respondents that there are concurrent findings of the two courts bellow therefore this court has no jurisdiction and the same cannot be disturbed while excreting revisional jurisdiction under section 115 of the CPC has no force. It is essential to note that under section 115 of the Code of Civil Procedure (1908), the supervisory jurisdiction of the High Court in a civil revision petition is purely discretionary and rather limited such discretion must be exercised in a lawful and valid manner on the basis of well entrenched principles of the exercise of such discretion. Therefore, the High Court shall not arbitrarily refuse to exercise its discretionary powers, rather, it must satisfy itself as to whether jurisdiction has been exercised properly and whether the proceedings of the subordinate Court suffer from any illegality or irregularity as has been held by the Honourable Supreme Court of Pakistan in case of Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar and others v. Latif Ullah Khan(2021 S C M R 829). It will be not correct in holding that once the concurrent findings are recorded by the two Courts below i.e. the Civil Judge and the learned District Judge, the reversal thereof by the High Court does not fall within the scope of revisional jurisdiction to be exercised by it under section 115, C.P.C. It is pertinent to mention here that this is not an absolute rule. The High Court is well-empowered to reverse the findings of the Courts below if those are not supported from the record or the Courts below have misread the same resulting into serious miscarriage of justice. In the case of Maj. Rashid Beg v. Rehmat Ullah Khan and 4 others (PLD 2001 SC 443) the Honourable Supreme Court while not agreeing that the concurrent findings in any case could not be reversed by the High Court while, exercising revisional jurisdiction under section 115, C.P.C. for the reason that the scope of said section was not as narrow and limited has observed as under:--

"We are of the considered opinion that where the concurrent findings are based on conjectural presumptions, erroneous assumptions and wrong proposition of law that can be reversed justifiably by High Court while exercising revisional jurisdiction as conferred upon it under section 115, C.P.C. and interference may be made in concurrent findings when the same are based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of facts, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where unreasonable view on evidence has been taken due to non-reading and misreading of evidence."

10. The above principle is also settled by the Honourable Supreme Court of Pakistan in cases of Muhammad Bakhsh and 4 others v. Province of Punjab through District. Collector, Multan (now Lodhran) and 2 others (1994 SCMR 1836), Anwar Zaman and 5 others v. Bahadur Sher and others (2000 SCMR 431), Muhammad Siddique v. Muhammad Akram (2000 SCMR 533), Samar Gul and others v. Mohabat Khan and others (2000 SCMR 974) and Muhammad Akhtar v. Mst. Manna and 3 others (2001 SCMR 1700).

11. It is observed that the object of the powers conferred upon the trial Court under Order VII, Rule 11, C.P.C. is that the Courts must put an end to the litigation at the very initial stage when on account of some legal impediments full-fledged trial will be a futile exercise. In view of the facts and the circumstances discussed above I am of the view that the trial court so also appellate court have rightly held that the suit filed by the applicants was not maintainable. No illegality or infirmity has been found in the impugned orders of the courts bellow warrant interference. Resultantly this Revision Application is dismissed.

J U D G E