

01N THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 59 of 2009

Mushtaque Ahmed & others v.

Khalil Ahmed Khan (deceased) through his legal heirs & others

Civil Revision No. S – 76 of 2009

Khalil Ahmed Khan (deceased) through his legal heirs & others v.

Mushtaque Ahmed & others

Date of hearing: **28-03-2022**

Date of decision: **28-03-2022**

Mr. Muhammad Imran Khan, Advocate for Applicant No.1 in Civil Revision No. S-59 of 2009 and for Respondent No.1 in Civil Revision No. S-76 of 2009.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Both these Civil Revision Applications have been filed against the same judgment 09-05-2009 passed by the Vth Additional District Judge, Sukkur in Civil Appeal No.29 of 2007, whereby, the Appeal has been dismissed; however, the decree of the trial Court in respect of quantum of mesne profits has been modified by reducing the same. Civil Revision Application No. S-59 of 2009 has been filed by the Applicant against dismissal of its Appeal, whereas, Civil Revision Application No. S-76 of 2009 has been filed by the Applicant being aggrieved with the reduction of mesne profits.

2. None present on behalf of the Applicants in Civil Revision Application No. S-76 of 2009; whereas, I have heard the Counsel for Applicant No.1 in Civil Revision Application No. S-59 of 2009 and perused the record. For the purposes of this opinion, the Applicants in Civil Revision Application No. S-59 of 2009 are hereinafter refer to as the **Applicants**; whereas, the Applicants in Civil Revision Application No. S-76 of 2009 are hereinafter referred to as the **Respondents**.

3. The Respondents had filed a Suit for possession, mesne profits, damages and permanent injunction, which was decreed by the IIInd Senior

Civil Judge, Sukkur vide judgment dated 30-05-2007, and the said judgment has also been maintained by the Appellate Court through impugned judgment dated 09-05-2009.

4. I have perused both the judgments of the Courts below, and it appears that no exception can be drawn to such finding of facts so recorded by the two Courts below. It has come on record that all the objections so raised on behalf of the Applicants including the maintainability of the Suit as well as their ownership have been determined by the two Courts below after appreciating the evidence; whereas, the Applicants have miserably failed to justify as to how and in what manner they were holding possession and disputing the claim of the Respondents.

5. Insofar as the very maintainability of the Suit is concerned, the main issue, which was raised on behalf of the Applicants, was that all owners or Plaintiffs were not joined in the Suit. To that, it may be observed that anyone of the co-owners in common can seek ejectment or possession, and it is not that if others are not joined the Suit by itself would not be maintainable. They have a joined cause and the Suit can still be maintained without joining the co-owners. Notwithstanding, at the most the other co-owners could be directed to be joined, but the Suit cannot be dismissed on this ground. Insofar as the main issue regarding possession is concerned, the point No.2 determined by the Appellate Court and its finding reads as under:

Point No.2

Whether the respondents were not entitled to the possession of the premises bearing CS No. B-2088/36 Aisha Ghitti Bhutta Road Sukkur?

Finding

The burden of proving this issue was on the respondent. Respondent Khalil Ahmad examined himself and he deposed that the respondents No.2 & 3 were their brothers and they were lawful owners of the property bearing CS No.2088/6 and 36 Aisha Ghitti Bhutta Road Sukkur. The learned Ist Senior Civil Judge examined Zahid Hussain City Surveyor as Court witness, who produced the original City Survey Record in respect of the disputed property bearing CS No.B-2088/6 & 2088/36 Aisha Ghitti Bhutta Road Sukkur. He produced the original ruled card for property bearing CS No.B-2088/6 as Ex.96, original was seen & returned while its attested photostat copy was kept on record. He deposed that according to the said ruled card (Ex.96-A), the total area of the property CS No.B-2088/6 was 158.3 Sq. Yds out of an area 795 Sq. Ft. was transferred to Gulbahar son of Muhammad Mehar through PTD on 28.4.1967 and the remaining area is still in the name of Toormal son of Muhir chand. He produced ruled card in respect of CS No.B-2088/36 as Ex.96-B, original whereof was seen and its photostat copy was kept on record. He deposed that according to ruled card, the property bearing CS No.2088/36 admeasuring 79.1 Sq. Yds total area 79.1 Sq. Yds was property of the Jaggan Mal son of Rochomal and it was transferred in the

name of Khalil Ahmad son of Abdul Haleem, Muhammad Saleem son of Abdul Haleem, Muhammad Jamil son of Abdul Haleem, Munir son of Abdul Hakeem, Mst. Zahoornisa wife of Abdul Haleem, Mst. Iqbal Bano d/o Abdul Hakeem and Mst. Sultana d/o Abdul Hakeem through PTD No.6930 dated 20.5.1966. He deposed that Mst. Zahoornisa died and her share has been inherited by the above persons being legal heirs and such entry of Fouti Khatta has been maintained in the record. In cross examination to the learned counsel for the appellant, he deposed that the respondents were not shown as owners of the property bearing CS No.2088/6 as per ruled card and he admitted that Mst. Iqbal Bano and Sultana have been shown as co-sharer in the property bearing CS No.2088/36 as per ruled card. It is pertinent to mention here that his testimony remained unshaken and his evidence was not challenged that the respondents were not owners of the property bearing CS No.2088/36. The learned Ist. Senior Civil Judge considered the evidence of the official witness who appeared as Court witness decreed the suit of the respondents partly to the extent that they were entitled to possession of the suit property bearing CS No.B-2088/36 Aisha Ghitti Bhutta Road Sukkur.

In the circumstances, I am of the view that the respondents were entitled for possession of their property, which was proved to be their property.

6. Perusal of the aforesaid finding very clearly reflects that the evidence of the Respondents had gone unshaken; whereas, the Applicants failed to lead any confidence inspiring evidence, which could be looked into by this Revisional Court after two concurrent findings against them; hence, no exception can be drawn. Moreover, the Suit was only decreed to the extent of possession in respect of Suit property bearing C.S. No.2088/36.

7. As to the claim of *mesne* profits, it appears that the Appellate Court has modified the grant of *mesne* profits from Rs.300,000/- to Rs.50,000/-, and the same appears to be just and appropriate; whereas, the Respondents have filed their Revision Application only to the extent of reduction of the *mesne* profits. None has affected appearance to assist the Court in this regard, whereas, there appears to be no justifiable reason to interfere in the finding of the Appellate Court in respect of reduction of the quantum of *mesne* profits.

8. Lastly, it is needless to observe that in a finding of fact where such findings were based on appraisal of evidence, raising of inferences in its discretion could not be interfered with under S.115, C.P.C. merely because a different view was also possible to be taken¹. It is also settled law that a mere fact that another view of the matter was possible on appraisal of evidence, would not be a valid reason to disturb concurrent finding of fact

¹ ABDUL QAYUM V. MUSHK-E-ALAM (2001 S C M R 798)

in a Civil Revision². It is further settled that High Court cannot upset finding of fact; however erroneous such finding is, on reappraisal of evidence and take a different view of such evidence³.

9. In view of hereinabove facts and circumstances of this case, both these Civil Revision Applications do not merit any consideration; hence, both these Civil Revision Applications are hereby **dismissed** with pending applications. Office is directed to place a signed copy of this judgment in the connected file.

Abdul Basit

J U D G E

² Abdul Ghaffar Khan v Umar Khan (2006 SCMR 1619)

³ Muhammad Feroz v Muhammad Jamaat Ali (2006 SCMR 1304)