

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 127 of 2005

Muhammad Hussain Unar & another v. Niaz Hussain & others

Civil Revision No. S – 128 of 2005

Muhammad Hussain Unar & another v. Niaz Hussain & others

Civil Revision No. S – 129 of 2005

Muhammad Hussain Unar & another v. Muhammad Ali & others

Date of hearing: **20-12-2021 & 25-04-2022**

Date of announcement: **13-05-2022**

M/s Abdul Naeem and Faisal Naeem, Advocates for the Applicants.

M/s Bhajandas Tejwani and Manoj Kumar Tejwani, Advocate for legal heirs of Respondents No.3 & 4 in Civil Revisions No. S-127 & 128 of 2005 and for legal heirs of Respondent No.1 in Civil Revision No. S-129 of 2005.

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ORDER

Muhammad Junaid Ghaffar, J. – These Civil Revision Applications have been filed by the Applicants impugning a common judgment dated 14-09-2005 passed by Additional District Judge, Kandiaro in Civil Appeals No.29, 30 and 31 of 2003, whereby while dismissing the Appeals, the two judgments dated 28-02-2003 passed by Senior Civil Judge, Kandiaro; one consolidated judgment in F.C. Suit No.30 of 1971 (New No.70 of 2001) & F.C. Suit No.161 of 1971 (New No.71 of 2001) and another separate judgment in F.C. Suit No.211 of 1971 (New No.285 of 1982) have been maintained, through which the first Suit filed by one of the Respondents namely Muhammad Ali has been decreed with costs and the latter two Suits filed by the present Applicants have been dismissed with costs.

2. F.C. Suit No.30 of 1971 was filed by Muhammad Ali, Plaintiff (Respondent No.3 herein) through his legal heir Sawayo (Respondent No.4 herein) for declaration and injunction. His claim was that he purchased 7 annas share of agricultural land consisting of Survey Nos.173 (6-24), 174 (6-00), 175 (7-00), 176 (4-31), 177 (6-30), 181 (5-38), 215 (4-04), 312 (5-22), 218 (3-16) and 217 (7-30), situated in Deh Jaipotra Taluka Kandiaro from legal heirs of Lal Bakhsh i.e. Muzaffar Ali (son), Mst. Naz Bano (daughter) and Mst. Gul Jan (widow) under sale consideration of Rs.20000/- against registered sale deed dated 07-11-1970, which is not under dispute in the present Suit. It is his case that Niaz Hussain, Defendant (Respondent No.1

herein) was the owner of remaining 9 *annas* share in the aforesaid property and it was also sold to him at the rate of Rs.1000/- per acre by Defendant / Respondent No.1 for self and on behalf of his nephew Muzaffar Ali (Respondent No.2 herein). Such agreement of sale dated 03-08-1967 was executed by Defendant / Respondent No.1, acknowledging receipt of an amount of Rs.2000/- as sale consideration. Thereafter, Rs.9000/- were also paid by the Plaintiff / Respondent No.3 to Defendant / Respondent No.1, and in this regard, a separate agreement dated 28-06-1968 was also executed, acknowledging receipt of the said amount as well as earlier amount of Rs.2000/-. Thereafter, an amount of Rs.2643/- was also paid under various receipts. It is his further case that earlier Defendant / Respondent No.1 by mortgaging the aforesaid land with him under writing dated 09-03-1966 had received Rs.6000/-, which amount was also adjusted towards the sale consideration. In all Rs.19643/- were received by Defendant / Respondent No.1 and possession was handed over to the Plaintiff / Respondent No.3. It is the case of the Plaintiff / Respondent No.3 that he always remained willing to perform his part of contract but Defendant / Respondent No.1 avoided to do so and the final sale deed could not be executed; hence, he prayed for declaration of agreement of sale as valid and directions to legal heirs of Defendant / Respondent No.1 for execution of sale deed by performing their part of contract.

3. Similarly, F.C. Suit No.161 of 1971 was filed by the Plaintiffs / Applicants for specific performance, possession, *mesne* profits, declaration and injunction. Their claim is that they purchased Survey No.215, 177 and 181 measuring 16-32 acres situated in Deh Jai Pota Taluka Kandiaro from Niaz Hussain and Muzaffar Ali, Defendants (Respondents No.1 & 2 herein) through sale agreement dated 07-10-1967 for total sale consideration of Rs.16800/-. It is their case that they paid Rs.270/- at the time of negotiations of sale and Rs.3000/- at the time of execution of sale agreement. The balance amount was to be paid in the installments as mentioned in the agreement and the same was also paid to the sellers / Respondents No.1 & 2, but they failed to execute the sale deed so also to handover possession of the land. It is their further case that they did not deny the claim of Muhammad Ali and his legal heir Sawayo, Defendants (Respondents No.3 & 4 herein) that they had purchased 7 *annas* share of Muzaffar Ali and others i.e. legal heirs of Lal Bakhsh through registered sale deed dated 07-11-1970.

4. On the other hand, Defendant / Respondent No.1 did not appear before the Trial Court and was proceeded *ex parte*; whereas, Defendants No.3 & 4 / Applicants though admitted the claim of the Plaintiff (Respondent No.3 in connected F.C. Suit No.161 of 1971) that he had purchased 7 *annas* share of Muzaffar Ali and others i.e. legal heirs of Lal Bakhsh through registered sale deed dated 07-11-1970, but refused his further claim regarding purchase of 9 *annas* share of the land including survey numbers claimed by them in their Suit and requested the Trial Court for joining them as parties in F.C. Suit No.30 of 1971, and pleaded their case as in F.C. Suit No.161 of 1971. Finally, F.C. Suit No.30 of 1971 filed by Respondent No.3 has been decreed with costs; whereas, F.C. Suit No. 161 of 1971 filed by the Applicants has been dismissed with costs. Being aggrieved, the Applicants preferred two separate Appeals, which have also been dismissed; hence, these Civil Revisions.

5. F.C. Suit No.211 of 1971 was also filed by the Plaintiffs / Applicants for possession and *mesne* profits. Their claim is that they are the owners of whole Survey Nos.217 & 218 and 8 *annas* share in Survey No.169 situated in Deh Jai Pota Taluka Kandiaro. Such ownership is being claimed through inheritance in respect of Survey Nos.217 & 218; whereas, by way of sale deed executed on 26-04-1971 by Defendants / Respondents No.2 & 3 with respect to 8 *annas* share in Survey No.169. It is their case that Muhammad Ali (Defendant / Respondent No.1), being local *zamindar* and having great number of *haris* and relations, had occupied the Suit land by force and as a trespasser and had not paid produce of Suit land to the Plaintiffs / Applicants; hence, they prayed for possession and *mense* profits for Survey Nos.217 & 218 from 14-09-1968 and for Survey No.169 from 26-04-1969 till delivery of possession.

6. On the other hand, Muhammad Ali, Defendant / Respondent No.1's case is that Niaz Hussain was owner of 8 *annas* share and remaining share was belonged to Lal Bakhsh (deceased), who was brother of Niaz Hussain. It is his further case that Niaz Hussain was looking after his share as well as share of legal heirs of Lal Bakhsh. Niaz Hussain, in need of money, had mortgaged the entire Suit land with him for Rs.6000/- on 15-07-1966. Such mortgaged deed was executed by Niaz Hussain for self and on behalf of legal heirs of Lal Bakhsh. Thereafter, Niaz Hussain sold the Suit land to him under sale agreement dated 02-08-1967 and subsequent sale agreement dated 28-09-1968. Said agreement was also signed by Muzaffar Ali, one of

the legal heirs of Lal Bakhsh; whereas, Defendant / Respondent No.3 admitted all assertions of the Plaintiffs / Applicants. However, Defendant / Respondent No.2 asserted that he has no concern with Survey No.217 & 218, but Plaintiffs / Applicants are owners of 50 *paisa* / 8 *annas* share in Survey No.169, which he purchased from Niaz Hussain and later on sold to the Plaintiffs / Applicants. The Suit has been dismissed with costs and the Appeal has also failed; hence, this Civil Revision.

7. Heard learned Counsel for the parties and perused the record.

8. In fact both learned Counsel have made detailed submissions and have also filed their written synopsis of arguments; however, insofar as the three Revisions in hand are concerned, they impugn a common judgment dated 14-09-2005 passed by the Appellate Court. The said judgment of the Appellate Court is in respect of three separate Appeals, and by way of a common judgment, all the three Appeals have been decided. It is an admitted position that before the Trial Court, two Suits were consolidated bearing No.30 of 1971 (New No.70 of 2001) and No.161 of 1971 (New No.71 of 2001); whereas, the third Suit bearing No.211 of 1971 (New No.285 of 1982) was never consolidated, and for that reason, the learned Trial Court had passed two separate judgments in these matters. The reason being that the subject of the third Suit was neither common; nor the parties or the relief(s) being sought, and therefore, the learned Trial Court was fully justified in passing two separate judgments. However, the learned Appellate Court for unexplained reasons has passed a common judgment notwithstanding the fact that before the Appellate Court, there were two separate judgments of the Trial Court; one in the consolidated Suits between the parties and the other in respect of one Suit which also had a separate subject. In the impugned judgment the Appellate Court has observed that *“The Suit filed by Appellants were dismissed and suit filed by respondent Muhammad Ali was decreed, therefore, all the three appeals have been preferred and since the contesting parties in all the three appeals and property involved is same, therefore these are being decided jointly”*. The Appellate Court has perhaps erred in arriving at this conclusion inasmuch as the third Suit bearing No.285 of 1982 was not between the same parties (notwithstanding that whether it was being contested by all or not); and secondly, the subject matter and the cause of action was different (again notwithstanding that property numbers are same; in fact they are not as Survey No.169 is also involved in this Suit); and lastly, both the matters had no commonality in

the evidence as it was led separately by the parties. Such conduct on the part of the Appellate Court does not seem to be a proper course to be adopted and though considerable time has passed since filing of these Revision Applications, whereas, the record is also available; however, if these Revisions are decided by way of a common judgment like the Appellate Court, then it may prejudice the rights of any of the parties against whom a decision is rendered. This would not be a proper course to be adopted for the safe administration of justice. It may also further be observed that remanding a matter at such a belated stage is also not an appreciable act; but the facts and circumstances of this case have reluctantly compelled this Court to pass a remand order; otherwise, the ends of justice would be defeated. The Appellate Court ought to have strictly complied with the provisions of Order 41 Rule 31 which provides a mechanism and guidelines for passing an Appellate Order. Though even if a judgment was not strictly in adherence to this provision, it can still be sustained if the finding was based on sound reasoning and logic; however, in this matter, the two impugned judgments of the trial court could not have been decided by a common judgment as the crux of the matter in both the judgments is not the same. Accordingly, this provision of law also does not seem to have been complied with; nor it could have been so done while deciding Appeals pertaining to different cause of action by a common judgment.

9. In view of hereinabove facts and circumstances of this case, the impugned judgment of the Appellate Court dated 14-09-2005 is hereby **set aside** and the matter is **remanded** to the Appellate Court to hear the parties afresh and decide Appeals No.29 & 30 of 2003 arising out of a consolidated judgment of the trial court separately and the other Appeal bearing No.31 of 2003 again by way of a separate judgment.

10. With these observations, these Civil Revision Applications are **allowed** and matter stands **remanded**. Since a considerable time has already lapsed, it is expected that the learned Appellate Court would decide these Appeals preferably within a period of ninety (90) days from the date of this order. Office to issue copy of this order to the Appellate Court as well.

Dated: 13-05-2022

Abdul Basit

J U D G E