

# **IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Civil Revision No. S – 130 of 2010**

**(Moulvi Hassan Jan (deceased) through his L.Rs v.  
Muhammad Hayat and others**

**Date of hearing: 19.05.2022**  
**Date of Judgment: 19.05.2022**

Mr. Nisar Ahmed Bhanbhro, Advocate for the Applicants  
Mr. Raj Kumar D. Rajput, Advocate for the Legal-heirs of  
Respondent No.4  
Mr. Ahmed Ali Shahani, Assistant Advocate General

## **JUDGMENT**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision Application, the Applicants have impugned judgment dated 05-04-2010 passed by III-Additional District Judge, Mirpur Mathelo in Civil Appeal No. 54 of 2007, whereby, while dismissing the Appeal, Judgment dated 20-09-2007 passed by Senior Civil Judge, Ubauro in F.C Suit No.83 of 1997, has been maintained, through which the Suit of the Applicants was dismissed.

2. Heard learned Counsel for the Applicants as well as Respondents and perused the record.

3. It appears that the Applicants had filed a Suit for declaration and injunction seeking the following prayers;-

- a). Declare that the plaintiff is legal and lawful owner of the suit plot and he is entitled to enjoy the same and maintain it's peaceful possession as an owner without any interference from any side.
- b). Declare that the sale of the area of 5 ½ Ghuntas from S.No.284 of deh Daharki Taluka Daharki by the defendant No.8 in favour of the defendants No.1, 3 and 4 through Registered sale deed No.1361 dated 21.07.1997 is false, fake, collusive, fraudulent, illegal, null and void nullity and not binding upon the plaintiff in any manner what so ever may be.
- c). Declare that the acts of the defendants are in violation of the law, justice & equity.
- d). To grant permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff over the suit plot and denying the title and ownership of the plaintiff over the suit plot.
- e). To award the costs of the suit.

- f). Award any other equitable relief which this Honourable Court may deem just and proper the circumstances of the suit.

4. The learned trial Court after exchange of pleadings, settled the following issues;-

**AMMENDED ISSUES.**

1. Whether the suit of plaintiff is maintainable?
2. Whether suit of plaintiff is barred by any law?
3. Whether plaintiff is legal and lawful owner of suit plot/property?
4. Whether registered sale deed No. 1361 dated 21.07.1997 in favour of defendant No.1, 3 and 4 is false, fake, collusive, fraudulent, illegal, null and void, nullity and not binding upon the plaintiff?
5. Whether defendants are illegally interfering with the possession of plaintiff?
6. Whether plaintiff is entitled to the relief claimed?
7. What should the decree be?

5. After evidence the Suit was dismissed, whereas, the Appellate Court has also maintained the said finding of the trial Court.

6. It would be advantageous to refer to the finding of the learned Trial Court on issue No.3 and 4 which is the crux of the matter between the parties, which reads as under;-

**Issue No.3**

To prove above issue burden lies upon the plaintiff. The plaintiff examined their attorney Mohsanjan. He deposed that his father purchased the suit land from Muhammad Jameel S/O Umar Deen in the year 1977 through registered sale deed, he produce it as Exh:151/2 and further deposed that mutation effected in the Revenue Record, he produced form-VII at Exh:151/3, such entry was kept in the Town Committee Daharki, he produced such entry for the year 1979-80 issued by Chairman Town Committee Daharki as Exh:151/4 and further deposed that since the date of purchase of suit land they are in possession till today.

The plaintiff examined previous owner Muhammad Jameel P.W-1 who sold out suit land in favour plaintiff through registered sale deed. He deposed in his deposition Exh:152 that he sold out 0-5½ ghuntas land to late Moulvi Hassanjan from S.No.284, but he had no knowledge about deh, through registered sale deed in the year 1977, he

purchased the suit land in the year 1967 from one Khuda Bux Kasai, he saw registered sale deed Exh:151/2 and say that it is same correct and bears his L.T.I. He further deposed that Khata also mutated in his name by Khan Muhammad. Khan Muhammad have land, another survey numbers i.e 470 and 471, Khan Muhammad also sold out land S.No.470 and 471, he purchased 0-14¼ ghuntas from S.No.284, 470 and 471. In cross examination he stated as under:

"It is correct that my share was in all three survey numbers in 284, 470 and 471 as 0-14 ¼ 4 ghuntas. It is correct that area of S.No.284 is 1-19, 470, 1-19 and 471, 1-15, total area of above three S.Nos. is 4-13 acres, I have no knowledge about my share/area in each survey numbers. I have no knowledge whether I came share less than 0-5 ghuntas from S.No.284, voluntarily says that the calculation is duty of Tapedar and Mukhtiarkar. I sold out 0-5½ ghuntas to Moulvi Hassanjan. I have no knowledge about the sq. ft. in the ghuntas. I have no knowledge whether I mentioned in the registered sale deed Exh:151/2 sq. ft or ghuntas. The contents of registered sale deed Exh:151/2 not read over by Sub-Registrar Ghotki. I myself not obtained sale certificate from Mukhtiarkar Revenue, voluntarily says that Moulvi Hassanjan obtained the same. I have sold out of my share from above three S.Nos. at present I am not owner of single paisa share in the above three S.Nos. It is correct that prior to registered sale deed Exh:151/2 I sold out 3,500 sq.ft. from S.No.284 to Bihari Lal and Shushil Chand, voluntarily says that I sold out the said but their names not remember to me. It is correct that I sold out 396 sq. ft from S.No.284 but names are not remember to me. The suggestion question was with name as Bhangwandass and Shushil Chand. I have not remember whether I sold out 840 sq. ft. from all three S.Nos. to Fateh Ali. It is incorrect to suggest that I sold out 8000 sq. ft from S.No.284 to Chetan Jee. I have not remember whether I sold out 1820 sq. ft. from S.No.284 to Abdul Qadeer S/O Pehlwan Shaikh. I cannot say enhance land from my share. God knows better whether Khan Muhammad was owner or not but I purchased from Khan Muhammad and paid consideration amount to him."

According to plaintiff he purchased the suit land from Muhammad Jameel. According to Muhammad Jameel he purchased 0-14¼ ghuntas land from three S.Nos i.e 284, 470 and 471 from Khan Muhammad. Coming to the share of Muhammad Jameel in each S.Nos. i.e S.No.284 area 1-19, share of Muhammad Jameel become 4-86 ghuntas, the sq. ft. become 5292-54. In S.No.470 it's area 1-19, the share of Muhammad Jameel is same as in. S.No.284. In S No.471 it's area 1-15, the share of Muhammad Jameel become 4-53 sq.ft and sq ft. 4933-17, total share of Muhammad Jameel from all become 15518-25 sq ft. Muhammad Jameel sold out 7006 sq. ft. from 14 deh Daharki, for which Muhammad Jameel was not competent to sale enhanced land instead of his share, because he had share in S. No 284 is 5292 sq.ft, but he sold out about 1714 sq. ft in excess from S.No.284 for which he was not competent and Muhammad Jameel had no right, title to sold the same in excess except from his share. Previous owner Muhammad Jameel further admitted that he had sold out his land prior to sale deed in favour of Moulvi Hassanjan, Muhammad Jameel admitted in his cross examination regarding selling of his all land prior to registered sale deed in favour of plaintiff. As per admission of Muhammad Jameel he sold out 3500 sq. ft from S.No. 284. In these, circumstances, and discussion and admission of Muhammad Jameel, I am of humble opinion that Muhammad Jameel was not competent to sale the excess land/share of others in favour of plaintiff from S.No 284, hence the registered sale deed in favour of plaintiff is illegally without lawful authorities, not accordance with law, hence plaintiff is not legal and lawful owner of suit plot/property. Issue No 3 decided as negative.

**Issue No.4.**

To prove above issue burden lies upon the plaintiff. The plaintiff Mohsanjan deposed in his deposition Exh:151 and stated that attesting witnesses of registered sale deed dated 21.07.1997 in favour of defendant No. 1, 3 & 4 have been convicted. Azharulhaq not examined by defendants No. 1 to 5, all documents have been cancelled by Deputy Commissioner. I have gone through the contents of plaint there is no mention about registration of case against defendants No.1 to 5 and others in the Court of Anti-corruption and cancellation of documents by Deputy Commissioner, therefore, evidence adduced by plaintiff on the point of fraud is further improvements. It is settled law that party cannot go/adduce evidence against the pleadings, therefore, same cannot be considered. The documents i.e. registered sale deed No. 1361 dated 21.07.1997 in favour of defendant No.1, 3 & 4 is registered one, and according to settled law the same have weight/force against the oral evidence. It is well settled principle of law that Deputy Commissioner or Revenue Authority have no power to cancel the registered documents, only Civil Court is competent to cancel the registered documents, if proved by aggrieved person/party. In the present suit no evidence came on record that registered sale deed No. 1361 dated 21.07.1997 is false, fake, collusion, fraudulent, illegal, null and void. In these, circumstances, and discussion, Issue No.4 replied accordingly”.

7. From the perusal of the aforesaid conclusion drawn by the learned Trial Court, which has been affirmed by the Appellate Court and which also appears to be correct to this Court, it appears that the Applicants’ case before the Trial Court was that the Applicants are owners of the Suit property which is being claimed by defendants 1 to 4 as being purchased from the defendant No.8. The Applicants’ while filing their Suit admittedly failed to join the seller i.e. Muhammad Jameel from whom purportedly they derive their title. While confronted, learned Counsel for the Applicants’ submitted that though he was not joined as a defendant; however, he was produced as Applicants’ witness. Apparently, such non-joining of the seller from whom the Applicants’ derived their title was fatal to their case inasmuch as, if he was joined as defendant at least the Applicants’ could have had an alternate claim of committing fraud with them and seeking compensation and damages. Nonetheless, the said seller Muhammad Jameel was PW-1, and when he came in the witness box to various questions his answer does not seem to be confidence inspiring, as apparently he was not aware as to very relevant facts. He himself admits that he was not sure whether *Khan Muhammad* from whom he had purchased the property, and had then onward sold it to the Applicants’ was the actual owner or not. Moreover, he could also not specify as to the correct area purchased by him and then sold out to the present Applicants’. The learned Trial Court after appraisal and minute examination of his deposition / evidence, came to the conclusion that the Applicants’ have not been able to establish their case, as apparently,

Muhammad Jameel had sold-out excess area from his share for which he was not entitled to do so. He has further admitted in his cross-examination regarding selling of his land prior to the registered sale deed in favour of the Applicants'. The entire case of the Applicants was based on his testimony, and this Court is of the view that he had miserably failed to support or prove the case of the Applicants, as set-up in the plaint by them.

8. As to the argument of the Applicants Counsel that in fact the courts below have given an affirmative finding in favor of Respondents as to their sale deed without considering the fact that it was already cancelled by the concerned Deputy Commissioner as it was an outcome of fraud and fake identity of a seller, it would suffice to observe that this argument, by itself is not only untenable, but is contradictory and destructive insofar as the case of the Applicants is concerned. First they approached the Deputy Commissioner, who without any lawful authority and jurisdiction, cancelled a registered instrument, which could only be done by Civil Court. Secondly, they themselves, sought a prayer as to the validity of the sale deed of respondent; hence, the trial court had to record evidence on the same and give its finding, as to the correctness of the same. The finding of the learned trial court on this issue as well is correct and is based on appreciation of facts as well as the evidence led by the Applicants; hence, does not warrant any interference by this Court.

9. In view of hereinabove facts and circumstances of this case, no case for indulgence is made-out, whereas, there are concurrent findings of facts against the Applicants', which are not to be interfered as neither it is a case of misreading and non-reading of the evidence, nor of lack of jurisdiction, whereas, even otherwise, the Applicants' Suit was itself defective and incompetent as they failed to join the original owner / seller of property to their extent; hence by means of a short order passed on 19.05.2022, this Civil Revision Application was **dismissed** and these are the reasons thereof.

**Judge**