

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.122 of 2012.

Shafi Muhammad. Versus. Province of Sindh and others.

Applicant Shafi Muhammad : Through Mr. Arbab Ali Hakro,
Advocate.

Respondents No.1 to 6 : Through Mr. Wali Muhammad Jamari,
Assistant A.G.

Respondent No.7 : Through Mr. Abdul Jabbar Khaskheli,
Advocate.

Date of hearing and judgment: 03.05.2018.

J U D G M E N T

Zulfiqar Ahmad Khan, J: This revision has been preferred against concurrent findings of the Courts below where F.C. Suit No.50/2006, filed by the applicant for declaration and permanent injunction was dismissed by the trial Court and said judgment was maintained by the appellate Court.

2. The controversy at hand commenced in the year 2006 when applicant filed F.C. Suit No.50/2006 for declaration and permanent injunction against the respondents/defendants, stating therein that suit property admeasuring 22-03 acres out of S.No.21/3, 3A (3-32 acres) 21/A, 4A (3-18 acres), 25/1 (4-00 acres), 25/5 (1-00) acres 36/2, 2A (3-25 acres) and 36/3 3A (3-38 acres) situated in Deh Tapo Dasori, Taluka Jhando Mari, was owned by one Muhammad Yameen Khan S/o Mian Khan Yousufzai Pathan, who sold the same to the applicant/plaintiff through registered sale deed dated 7-12-1999 for a total sale consideration of Rs.160,000/- in presence of two witness namely Zardar Khan S/o Ibrahim and Ghulam Hyder. The applicant/plaintiff paid full amount of sale consideration of Rs.160,000/- to Muhammad Yameen at the time of execution of final sale deed and such mutation entries were also kept in Revenue Record of plaintiff and thereafter plaintiff got Government share list from Irrigation Department to cultivate the suit land because the suit land was lying uncultivated at the time of execution of sale deed. The plaintiff

paid all the Government dues, demands of the suit land to Revenue Authorities since 1999 but he received a notice (copy is available on page-139) from respondent/defendant No.3 whereon an order dated 26-8-2006 (copy is available on page-189) was passed by defendant No.2. It was prayed that the said order being exparte is illegal, malicious and void thus liable to be cancelled and treated as in-effective in view of prior allotment of Nawab Yameen Khan in respect of Evacuee agricultural land remained intact and the subsequent transfer of same land in the name of plaintiff having been confirmed.

3. The respondent/defendant No.7 contested the suit and filed his written statement, denied the contents of the plaint to the extent that land in S.No.21/3, 3A (3-20 acres) 21/4 (3-33 acres), 25/1 (4-0 acres) total 11-13 acres situated in Deh and Tapo Dasori, Taluka Jhando Mari being suit land belonged to the private defendant by way of grant made by the Barrage Department in the year 1965/66 vide Revenue Officer Sukkur Barrage Hyderabad order No.2182 dated 20-9-1965, while he had no concerned with the remaining area. It was stated that the suit land was not owned by Muhammad Yameen Khan but it was owned by defendant Murad Shah as such the sale of suit land by Muhammad Yameen to the plaintiff was illegal and he has no knowledge about the sale consideration and its mutation as well as execution of final sale deed in favor of the plaintiff and defendant Muhammad Shah was in peaceful possession and paying all the Government dues. It was also stated that order passed by defendant No.2 indicated the full picture of the case, in which it has been held that suit land was originally allotted to one Colonel Sajjad Ali S/o Azam Ali Khan as per A-Form No.12693 and later on transferred to the defendant Murad Shah under order 2182 dated 20-9-1965 while entry No.81 dated 05-07-1993 in the name of Yameen does not indicate the order, date and authority by which the land in question was granted and this entry appeared to be manipulated and arranged one and defendant No.1 vide his order directed Mukhtiarkar to cancel notice in relevant record, hence, entry in the name of Yameen and its further sale to plaintiff was

illegal and bogus one. It was also stated by defendant No.7 that he filed F.C. Suit No.29/2010 before the trial Court for declaration, cancellation of documents and permanent injunction, therefore the instant suit of plaintiff being not maintainable was liable to be dismissed.

4. On the pleadings of the parties, learned trial court framed following issues:-

1. Whether the suit is not maintainable under the law?
2. Whether the plaintiff is lawful absolute owner of suit land bearing No.20-03 acre out of S.No.217/3, 3A (3-32) acres, S.No.21/A, 4A (3-38) acres, S.No.25/1 (4-00) acres, S.No.25/5 (1-00) acres, S.No.36/2, 2A (3-25) acres, S.No.36/3, 3A (3-328) acres, situated in Deh and Tapo Dasori, Taluka Jhando Mari, District Tando Allahyar?
3. Whether Yameen Khan has no concerned, right, title and interest over the suit land and sell to plaintiff through registered sale deed is illegal, bogus, and have no legal effect?
4. Whether the order dated 26-8-2006 passed by the learned Executive District Officer, Revenue in respect of suit land mentioned in plaint is illegal, ultravires, void, malicious, partial and liable to be cancelled?
5. Whether plaintiff is entitled for relief claimed?
6. What should the decree be?

5. Learned trial court after considering the evidence available on record and hearing the parties counsel by judgment dated 26-4-2011 dismissed the applicant's suit. An appeal (Civil Appeal No.127/2011) was preferred against the trial Court's judgment, which was also dismissed by the appellate Court through impugned judgment against which the instant Revision has been filed.

6. Learned counsel appearing on behalf of applicant submitted that impugned judgments and decrees are opposed to facts, law and justice as both the Courts below did not consider the evidence as a whole and have chosen to bring on record certain pieces of evidence to decide the issues against the applicant, which is not permissible under the law. He also submitted that scanty observation on issues No.2 to 6 made by the Courts below were against the provisions of law as much as the only issue involved in the case was whether suit property was an evacuee land (land left by Hindu owners and transferred to claimant in lieu of claim) or not. The suit property

after being treated as an evacuee land cannot be taken back by the Federal Government, and similarly the Barrage land belonged to the Government, but learned Courts below while passing impugned judgments have failed to consider this important aspect of the case. He also submitted that entries in the record of right pertaining to the suit land were made in the name of purchaser / applicant Muhammad Shafi prior to the entries made in the record of rights in the name of Murad Ali, therefore, old entries were supported by registered sale deed while new entries were not supported by any documentary evidence but paper book done by the officials even the EDO to favour the transferee / respondent No.7 but possession of the respondent No.7 is not supported by any documentary or oral evidence and the word against the word is there which has got no value in the eyes of law, but learned Courts below failed to appreciate the same while passing the impugned judgments. He further submitted that findings of learned trial Court on issue are contradictory, illegal, wrong, unreasonable and unsound in view of grounds mentioned in appeal, hence impugned judgments are liable to be set-aside. He relied upon the case law reported in (1) **PLD 2007 SC 681**, (2) **1987 CLC 1193**, (3) **PLD 1976 Karachi 21**, (4) **1990 SCMR 1638** and (5) **1974 SCMR 356**.

7. On the other hand, learned counsel appearing on behalf of respondent No.7 controverting the arguments as advanced by the learned counsel for the applicant, supported the judgments passed by the Courts below and also argued that learned Courts below while rendering the judgments impugned have not committed any illegality or material irregularity, therefore, the same are liable to be maintained.

8. Heard learned counsel and review the record.

9. Perusal of the record as well as the judgments impugned shows that it is the case of the applicant that he after completion of all the legal formalities has purchased the suit property from its original owner namely Yameen Khan for total sale consideration of Rs.160,000/- and khata was also mutated in his favour in Revenue record but his legal right was illegally assailed by

respondent No.7 in collusion with other defendants, therefore, he filed the aforementioned suit before the trial Court. On the other hand, the defendant No.7 in support of his plea, raised in written statement that suit of the plaintiff was not maintainable, has failed to show that in what manner, the suit of the plaintiff was not maintainable, therefore, learned trial Court while deciding issue No.1 has rightly and properly decided in favour of the applicant.

10. It is also case of the applicant that he is lawful owner of S.No.21/3, 3A, 21/A, 4A, 25/1, 25/5, 36/2-2A and 36/3-3A total admeasuring (20-03) acres, situated in Deh and Tapo Dasori, Taluka Jhando Mari, District Tando Allahyar, on the other hand the case of respondent No.7 is that he is owner of S.No.21/3, 3A, 21/4, 25/1 total admeasuring 11-13 acres while he has no concern with rest of property. The applicant claimed the ownership of entire suit land as purchased by him from original owner Yameen Khan Yousuf Zai for a total consideration of Rs.160,000/- through registered sale deed and such mutation was also effected in the Revenue record, however, the said entries were challenged before respondent No.2 by him, who cancelled the same as null and void. The applicant in support of his case before learned trial Court produced registered sale deed of suit land, which shows that suit land was purchased by him from Muhammad Yameen Khan for total sale consideration of Rs.160,000/- containing survey numbers mentioned above, however in cross-examination he admitted that "It is correct that S.No.21/3, 3A, 4A and 25/1 are owned by defendant No.7 while the rest of the suit land is owned by me." Although the applicant claimed his ownership on the entire suit land but he had not mentioned survey numbers in his examination-in-chief while in his cross-examination he admitted the ownership of respondent No.7 for the above survey numbers. Similarly, Pw-3 Ahmed admitted during his cross-examination that "it is correct that defendant No.7 also owned agricultural lands. I do not know that S.No.21/3, 3A, 4 and 25/1 are owned by defendant No.7 or otherwise." The applicant and his witnesses were not confident that the plaintiff is owner of above survey numbers which were allegedly purchased by him from original owner/claimant Yameen Khan.

11. The perusal of evidence of respondent No.7 shows that he fully support his claim with regard to ownership of land pertaining to S.No.21/3, 3A, 4 and 25/1. He in is evidence testified in the manner that “the S.No.21/3, 3A, 4 and 25/1 were allotted to me by defendant No.5. I am in possession of above survey number admeasuring 11-33 acres. The above suit land was purchased by me and the case maintained by EDO Revenue in my favour, therefore, I pray from the Court that the decision of EDO be upheld and same land be mutated in my name in revenue record.” The applicant supported the version of respondent No.7 in his cross-examination and admitted that “it is in my knowledge that four S.No.21/3, 3A, 4A and 25//1 were granted by Barrage Mukhtiarkar to defendant No.7 on installments.” In proof of his claim he filed Form-A issued by defendant No.5 in his favour showing the suit land upto extent of survey numbers claimed and issued as Barrage land. This document was not challenged and decided to be an admitted document. The applicant was under the knowledge that said survey numbers were granted to respondent No.7 but he never challenged the above grant, whereas to the contrary he admitted the claim of respondent No.7. Therefore, it is established that respondent No.7 submitted cogent evidence with regard to his claim while applicant admitted the claim of respondent No.7 in his cross-examination which means that the claim of applicant over suit land is doubtful that he purchased the same from Yameen Khan Yousifzai. The perusal of evidence of Pw-4, who was Mukhtiarkar Jhando Mari, testifies that “it is correct that entry No.81 is in the name of Muhammad Yameen as claimant, the said entry was cancelled.” Since the entry in the name of original owner Muhammad Yameen was cancelled, therefore the said claimant had no right and title to sell the suit land to the applicant. Moreover, the applicant claimed the possession of the suit property and deposed in his evidence before the trial Court that “I am in possession of suit land”, but in cross-examination he admitted that, “It is correct that S.No.21/3, 3A, 4A and 25/A are in possession of defendant No.7.” The applicant at first claimed the possession of entire suit land however during cross-examination he resiled from his previous statement and admitted

possession of the above survey numbers in favour of respondent No.7. The said survey numbers were also claimed by respondent No.7 to be in his possession. Since the ownership as well as the possession pertaining to above survey numbers has been admitted by applicant, therefore, learned trial Courts below have rightly, properly held that the applicant has failed to prove that he was owner of the total survey numbers. Further, the applicant in his evidence admitted that survey numbers mentioned above were granted by respondent No.5 in favour of respondent No.7, therefore, the allotment of said survey numbers to Muhammad Yameen as Evacuee property was illegal and unlawful, therefore, the Courts below have rightly held that the sale deed executed by Muhammad Yameen in favour of the applicant was null and void and same was rightly cancelled with subsequent entries. Both the Courts below have also observed that the applicant has failed to produce any document or record from Central Government to show that the suit property was allotted to Muhammad Yameen under the claim of Displaced Persons. The record of Evacuee property pertains to suit land had also not been produced in evidence by the applicant showing that the suit land was never an Evacuee property and there was no any record in favour of the applicant. To the contrary, the record in respect of the suit land allotted to the respondent No.7 i.e. Form-A issued in his favour, and produced as Exh-56/A, therefore, the order passed by the respondent No.5 did not suffer from any infirmity and was held as a valid and legal order. Both the Courts further observed that the respondent No.5 did not cancel the registered sale deed but the illegal allotment of Muhammad Yameen under the claim of Displaced Persons in Revenue Record, for which the applicant failed to produce any single document to show that such allotment was made in favour of Muhammad Yameen and on the basis of which, he purchased the suit, thus the applicant has failed to produce any cogent reason that order dated 26.08.2006 regarding cancellation of the allotment in favour of Muhammad Yameen Khan suffered from any illegality, therefore, the findings of the Courts below do not require any interference.

12. Being cognizant of the fact that in the exercise of revisional powers, it is not the duty of the High Court to enter into the merits of the evidence as it has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of the revision, and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order. That's why if someone invokes the jurisdiction under S. 115, C.P.C. he must show not only that a jurisdictional error has been committed by the court below, but also that the interests of justice call for interference by the High Court, as the powers of the Court under S. 115 of the Code are purely discretionary, which are to be exercised in the interests of justice alone where the High Court could legitimately hold that the court below had exceeded its jurisdiction or had refrained from exercising a jurisdiction vested in it or it acted illegally or with material irregularity in the exercise of that jurisdiction, i.e. committed an error of procedure or of a mandatory procedure and that such an error had resulted in failure of justice. The words 'acted illegally' have been interpreted to mean *acting in breach of some provisions of law* and the words 'acting with material irregularity' are interpreted to mean *committing some error of procedure and in the course of proceedings, which is material in the sense that it may have affected the ultimate decision.*

13. A review of the judgments of the courts below shows that neither any of these Courts decided the case perversely, nor it could be said that they acted illegally or with material irregularity in the exercise of their jurisdiction. Where a lower Court passes an order in exercise of its jurisdiction, the High Court is not to interfere with it in revision unless the order (being sought revision), if allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury, which is not the case at hand. In the absence of any defect in the concurrent findings of both the Courts below, interference of High Court in civil revision as held by Apex Court in **2006 SCMR 50**, amounts to improper exercise of revisional jurisdiction.

14. The case law cited by the counsel for the applicant is also quite distinguishable from the facts and circumstances of the case at hand, thus does not applicable to any extent.

15. In the given circumstances as well as in the light of the above cited judgment of the Apex Court and other judgments delivered on the same point being **2006 SCMR 1304** and **2010 CLC 528**, the instant revision preferred against the concurrent findings of the Courts below for the reasons detailed, merit no consideration and the same is accordingly dismissed, and the judgments and decrees of the Courts below are maintained.

JUDGE

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