

JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.138 of 2000

Nasir Ali ..... applicant.

Versus

Mst. Kausar Parveen & others ..... Respondents.

Applicants through:- Mr. Mushtaque Ahmed Arain, Advocate.

Respondents:- Mr. Arbab Ali Hakro, Advocate

Date of hearing 08.05.2018.

Date of order 08.05.2018

**JUDGMENT**

**Zulfiqar Ahmad Khan, J.** This revision challenges judgment passed by appellate as well as trial Court.

2. The litigation between the parties commenced by filing F.C.Suit No.41 of 1995, for Declaration and Injunction by Mst. Kausar Parveen wherein she claims that she being owner of the land admeasuring 3-30½ Ghuntas in Deh 44 Taluka Dad District Nawabshah, out of Survey No.91/1, which she got converted in "Sikni" land through an application moved to Assistant Commissioner Nawabshah on which order dated 08.07.1984 was passed where-after land was declared as "Sikni", which she apparently partitioned and sold out for "Sikni" purpose. In the said suit, she alleged that defendant No.1 claimed having purchased an area of 1 acres 30½ Ghuntas (eastern portion) in the same survey number / Deh, was illegally claiming his title through certain sale deeds, for their cancellation, she also prayed.

3. The trial Court rendered judgment dated 08.09.1998 by decreeing the suit and the appellate Court also choose not to interfere in the findings of the trial Court, which lead to the filing of the instant revision.

4. Learned counsel for the applicant submitted that in fact Mst. Kausar Parveen had no title in the land in question and any subsequent permission to convert the land into "Sikni" is illegal, void ab-initio and unlawful. Learned counsel further submitted that admittedly the power of attorney was granted to Ghareeb Nawaz, who filed the instant suit in the year 1995 but he has categorically admitted in his examination at Page No.159 that he got converted the agricultural land into "Sikni" himself in the year 1984, this admission itself was sufficient to hold the transaction fraudulent and illegal. Learned counsel in particular referred to the order of the Assistant Commissioner cited above, where neither any stamp of his office is affixed nor the formalities for the conversion of agricultural land into "Sikni" are patently complied with, and the said conversion was allowed by a single stroke of the pen. Learned counsel by referring to the record, reproduced at Ex.87, submitted that while name of Mst. Kausar Parveen was entered as "Sikni" owner, however, under the heading "Asal Malik Jo Nalo" no entry is present which gives reasons to believe that in fact no rights existed in her name when she applied for change of land from agricultural to "Sikni".

Learned counsel further submitted that the land which the applicant bought through two registered sale deeds, for which

transactions were recorded through entries made on 23.04.1987 (Ex.108) are legit. Learned counsel further submitted that trial Court failed to appreciate the fact that Mst. Kausar Parveen had no ab-initio title in the land, thus her request to convert the land into "Sikni" should not have been allowed, and even if the case was to the contrary, no formalities were completed in this regard. Learned counsel lastly submitted that the Courts below committed gross illegality and material irregularity in appreciating the evidence and applying their minds to the fact that Mst. Kausar Parveen did not provide any title document of the land in question, which she applied for conversion from agricultural into "Sikni". Learned counsel further challenged the initial suit being barred by Limitation as under Article 120 of the Limitation Act, according to which an action against any registered document is to be taken within 06 years whereas in the case at hand, the sale deed was affected in the year 1987 and it was not until 1995 when the suit was filed, therefore, suit ought to have been dismissed on account of Limitation. Learned counsel relied upon case law reported as PLD 1994 S.C. 245.

5. To the contrary, learned counsel for the respondent vehemently challenged the assertions of the counsel for the applicant and submitted that the revenue entry made in records converting the land from agricultural to "Sikni" attained finality as no challenge was made to it. Learned counsel referred to case laws reported at PLD 1994 S.C. 245, 1997 CLC 1971, 2004 YLR 2546, 2001 SCMR 1700, 2012 CLC 1634, 1995 MLD 1458, PLD 2008 S.C. 571 and 2010 CLC 120 on the point of presumption.

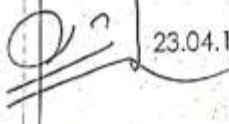
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attached to the entries made U/S. 52 of the Sindh Land Revenue Act 1967. Learned counsel also drew attention of this Court to the limited mandate available U/S. 115 CPC in revisional jurisdiction, allegedly barring this Court's intervention in the matter.

6. Heard the counsels and perused the material available on record.

7. It is abundantly clear that when Respondent No.1 Mst. Kausar Parveen reached to the Assistant Commissioner, who passed his order dated 08.07.1984, no question was posed nor any clearance was sought as to her title in the land in question being an area comprising 03-30½ Ghuntas of Deh 44 formed out of Survey No.91/1, for which, she applied conversion into "Sikni" from agricultural. A perusal of the order annexed at Page No.177 shows that the concerned Officer was not even cognizant of the fact that formalities had to be complied with when allowing such a request in the due course of law, in particular the applicant's title needed to have be ascertained as a least measure. There is clear failure of independent and judicious application of mind in the order of the Assistant Commissioner dated 08.07.1984.

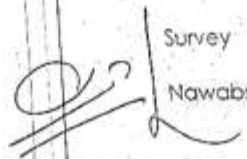
8. The case of the applicant is that he acquired title in 01-30½ Ghuntas land out of Survey No.91/1 through a registered sale deed from respondents Nos.2 and 3, who in fact bought the said land through another sale transaction from respondent No.4. Such transaction in fact acquired sanctity of Section 52 on 23.04.1987 when entry was made in favour of predecessor in



interest of the applicant. The evidence clearly speaks volumes about the lack of title of Mst. Kausar Parveen on the land in question and the intervention made by her attorney, who by his own admission managed the entire transfer from agricultural to "Sikni" after grant of power of attorney (back dated in the year 1984). This itself being an error floating on the surface, which both the Courts below had neglected to take cognizance of. It appears that the Courts below without applying their mind as to the very title of Mst. Kausar Parveen in the land in question, decreed the suit and granted her a fresh lease of life in respect of the land in question, which otherwise was non-existent.

9. With regard to the case law cited by the learned counsel for the respondents, as to sanctity attached to the entries made in land record U/S. 52 of the Sindh Land Revenue Act, 1967, the same are also applicable to the entry in favour of the respondents Nos.2 and 3 dated 23.04.1987. No benefit could be passed on to the respondent No.1 where she failed to show any proof of her ownership of the suit land, which was illegality converted into "Sikni" land, even without complying with codal formalities.

10. In the given circumstances, I am of the view that the interest of justice will be only served by allowing this revision, holding the title of the applicant in 1 acre 30½ Ghuntas out of Survey No.91/1 located in Deh 44 Taluka Dad District Nawabshah, as validly acquired through legit transactions,



therefore, the instant revision is allowed and the impugned judgments and decrees of appellate Court dated 05.04.2000 and of the trial Court dated 08.09.1998 are set-aside.

Sd/- ZULFIQAR AHMAD KHAN,  
JUDGE.

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