

IN THE HIGH COURT OF SINDH HYDERABAD CIRCUIT

**R.A. No. 161 of 2020**

[Haji Arbab & another versus Kheemchand & others]

Applicants : Haji Arbab and another through Mr. Muhammad Arshad S. Pathan, Advocate.

Respondents 1-10 : Nemo.

Respondent 11-16: Province of Sindh & 05 others through Mr. Ayaz Ali Rajpur, Assistant Advocate General, Sindh.

Date of hearing: 29-10-2021

**ORDER**

**Adnan Iqbal Chaudhry, J.**- F.C. Suit No. 141/2010 was instituted by the Respondents 1 to 9 [Plaintiffs] against the Applicants and the Respondents 10 to 16 [Defendants]. By order dated 27-02-2020 the 1<sup>st</sup> Senior Civil Judge Umerkot rejected the plaint under Order VII Rule 11 CPC. However, on Civil Appeal No. 33/2020 by the Respondents 1 to 9 [Plaintiffs], the learned Additional District Judge-I Umerkot restored the plaint by order dated 07-09-2020, hence this revision by the Applicants who are the Defendants 1 and 3 in the suit.

2. As per the plaint, the suit land, comprising of agricultural land in Deh Vehro, Thar and Deh Lashari, Umerkot, was granted by the Government to late Mansukdas by grant dated 24-01-1985, and after his death, vested in his sons namely Jessa Ram, Kheta Ram and Motomal in equal shares. The Plaintiffs claim the suit land as legal heirs of said sons, or through sons of said sons and include the legal heirs of Jessa Ram. It is averred in the plaint that after the death of Mansukdas the suit land was wrongly mutated in favor of Jessa Ram alone and one Phelaj by an entry dated 04-10-1995 to exclude the other sons of Mansukdas, and which was so done by the Mukhtiarkar while misconstruing a compromise order dated

26-06-1994 passed in certain revenue proceedings between Jessa Ram, Kheta Ram and Motomal on the one hand and one Phelaj on the other. It is averred that taking advantage of such wrong entry, the Defendants 1 to 3 with the collusion of the Sub-Registrar and revenue officials, forged and registered sale deeds with thumb impressions of an imposter and managed entries in the record of rights to fraudulently portray that part of the suit land had been sold/transferred by Jessa Ram to them before he passed away on 25-02-2009. It is further averred that on discovering such fraudulent entries in the record of rights, the Plaintiffs filed an appeal before the revenue authority, but the same was disposed of by order dated 29-04-2010 by requiring the Plaintiffs to approach a civil court, hence the suit.

3. Heard the learned counsel and perused the record.

4. With the above pleading the Plaintiffs prayed *inter alia* for the following relief:

- (i) for a declaration that they inherited the suit land from Mansukdas;
- (ii) for a declaration that the entry dated 04-10-1995 in the record of rights in favor of Jessa Ram and Phelaj is unlawful;
- (iii) for cancellation of the registered sale deed dated 26-08-2004 allegedly executed by a person posing as Jessa Ram to convey part of the suit land to the Defendants 1 and 3;
- (iv) for cancellation of the registered sale deed dated 12-02-2009 allegedly executed by a person posing as Jessa Ram to convey part of the suit land to the Defendant No.2;

5. The plaint-rejection order which was subsequently set-aside in appeal, and which the Applicants of this revision now seek to reinstate, had rejected the plaint on the ground that the suit was time-barred; that the averment in the plaint that Mansukdas was

granted the suit land in the year 1985 was belied by a Form-VII produced by the Plaintiffs which showed that Mansukdas had passed away in the year 1962; that the letter of grant dated 14-01-1985 granting the suit land to Mansukdas was not annexed with the plaint nor produced with the list of documents; and last, that the Plaintiffs had suppressed the fact that they had earlier filed F.C. Suit No. 18/1997 and F.C. Suit No. 69/2000 in respect of the suit land.

6. Regards the ground that the suit is time-barred, it will be seen that apart from the declaration sought against the entry dated 04-10-1995 standing in the names of Jessa Ram and Phelaj, the Plaintiffs have also prayed for cancellation of the sale deed dated 26-08-2004 purportedly executed by Jessa Ram in favor of the Defendants 1 and 3, and for cancellation of the sale deed dated 12-09-2009 purportedly executed by Jessa Ram in favor of the Defendant No.2. The plaint manifests that the prayers for cancellation of the said sale deeds are independent of the declaration sought against the entry dated 04-10-1995. The suit having been filed in 2010, the prayer for cancellation of the sale deed dated 12-09-2009 is clearly within limitation. As regards the prayer for cancellation of the sale deed dated 26-08-2004, the Plaintiffs have contended in paras 24 and 25 of the plaint that they came into knowledge of the sale deeds in 2010; therefore limitation for such relief remains a mixed question of law and fact. In other words, even assuming for the sake of argument that the relief for declaration was time-barred, the plaint could still not be rejected in piece meal for the relief of cancellation.

7. Regards the ground that the Plaintiffs had suppressed previous suits in respect of the suit land, the learned appellate court has held that those previous suits were not between the same parties; that the issues therein were different from the present suit; and hence the bar of Order II Rule 2 CPC was not attracted. The

plaints of those previous suits have not been filed by the Applicants with this revision to demonstrate that such finding of the appellate court is in any way erroneous.

8. As regards the last ground taken for rejection of the plaint, viz. that the suit land could not have been granted to Mansukdas in 1985 as he had passed away in 1962, the learned appellate court has observed that such ground was misconceived as the Assistant Commissioner's letter dated 24-01-1985 was not a grant of land to Mansukdas, but an order for transferring the *khata* to his name which had not been done during his lifetime. Nevertheless, such aspect of the matter remains a question of fact for which the plaint cannot be rejected.

9. As discussed above, none of the grounds urged for rejection of the plaint had any force. Therefore, I do not find any reason to interference with the order dated 07-09-2020 passed by the learned appellate court. The revision application is dismissed.

Dated: 27-07-2022

**JUDGE**