

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No. 21 of 2022

Applicant : Karim Dino and others through
Mr. M.B. Nouman Sahito,
Advocate who is called absent today

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of hearing
and Order : 15.08.2022

ORDER

ADNAN-UL-KARIM MEMON, J:- Through instant revision application, the applicant has called in question the judgment dated 15.12.2021 passed by learned Additional District Judge-I, Tando Adam in Civil Appeal No. 38 of 2021, whereby the learned Judge while dismissing the appeal maintained the order dated 20.02.2021 passed by trial Court in F.C Suit No. 153 of 2019. The applicant has now attempted to re-open the case through this revision application under Section 115 CPC, inter-alia on the ground that disputed title of the suit land could be decided through civil proceedings and not under the Revenue hierarchy; that limitation of 29 years in filing suit does not debar the applicant to approach the learned civil court from the date of his knowledge; that fraud had been committed by the private respondents in connivance with the revenue officials; thus the matter is liable to be remanded to the trial court for a decision on merits.

2. None present for the applicant and no intimation is received. The record reflects that after obtaining the order for issuance of notice neither the applicant nor his counsel turned up or even attempted to have the matter fixed before this Court, which prima-facie shows that perhaps he has lost interest in these proceedings, therefore, I have gone through the record as available before me and find that there are concurrent finding of facts and law available against the applicant which does not require further interference by this Court at the revisional stage as no illegality has been pointed out in the memo of revision application. An excerpt of the Appellate judgment is reproduced as under:-

“ Heard and perused the material on record. On perusal of impugned order, it appears that learned trial Court rejected the plaint being hopelessly time barred and barred U/s 42 of Specific Relief Act 1877. On perusal of the contents of plaint, it indicates the appellants filed suit for Declaration, Cancellation and Permanent Injunction and claiming their father owned the suit land who has expired. During his life time, he leased out suit land to one Khair Muhammad, father of respondent No.1(a) to 1(c) for the period of 10 years in the year 1968 which was extended verbally after his death. Further claimed that in

the month of May 2019, the respondents No.1(a) to 1(c) disclosed that the father of appellants sold out the suit land to father of respondents No.1(a) to 1(c). The appellants claimed that the father of respondents No.1(a) to 1(c) in collusion with revenue department changed Khata from the name of their father to the name of father of respondents No.1(a) to 1(c). The appellants have sought in prayer for declaration and cancellation of the revenue entries in favour of father of respondents No.1(a) to 1(c) and subsequent entries. This court has observed that dispute over suit land was already agitated and order was passed by revenue authority as reflected from Prayer clause "C" of the suit, wherein the Appellants have sought to declare impugned order dated: 17/09/2003 passed by Executive District Officer (Revenue) Sanghar for cancelling entry No.1063 dated: 25/06/1994 and restoring original entry No.143 of Ali Khan in respect of suit land is illegal, void, malafide and exparte. However, the Appellants nowhere stated such facts in body of plaint nor produced any such order on record, thus the appellants concealed the real facts and have not come in court with cleans hand. It may be noted here that the appellants in para No.4 of plaint claimed since 1968 the father of respondents (a) to 1 (c) and after his death the respondents (a) to 1 (c) being legal heirs are cultivating the suit land, therefore it is admitted position that since 1968 till filling of suit the appellants never remained in possession of suit land. It is matter of fact that the appellants have sought declaration but omitted the relief of possession of suit land in prayer clause, thus the suit of appellants is barred by proviso to section 42 of Specific Relief Act, 1877. Further, record reveals that the appellants are seeking for cancellation of entries pertaining to 1990 and subsequent entries and filed suit in the year 2019 and admittedly the appellants are not in possession of suit land since 1968. The facts and circumstances as pleaded by the appellants in plaint suggest no cogent reason has been put forward justifying such long and long delay of 29 years for filling of the suit. Hence the suit was rightly held by learned trial court to be hopelessly time barred.

6. In view of the above, no illegally or irregularity has been committed by the learned trial Court while passing the impugned order, as a result of it, instant appeal is hereby dismissed with no order as to cost. Let the copy of this order be sent to the learned trial Court along with R & Ps of F.C.Suit No.153 of 2019.

3. Primarily, cases can be revised by this Court as it possesses revisional jurisdiction as defined under Section 115 of the Code of Civil Procedure. This Court has the right to revise cases decided by subordinate courts to ensure the delivery of justice and maintenance of fairness. However in the present case, the applicant's point of view has been discarded, for the reason that the applicant throughout the proceedings has lost his case up to the level of the appellate stage, and at the revisional stage, he has agitated the grounds already exhausted by him and properly adjudicated by the competent forum, thus in my view, no perversity and illegalities have been pointed out in the concurrent findings of the competent forums, therefore no ground existed for re-evaluation of evidence, and thus, I maintain the Judgment and Decree passed by both the courts below.

4. Before parting with this order, it is observed that undoubtedly, Revision is a matter between higher and subordinate Courts, and the right to move an application in this respect by the Applicant is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; the first part enumerates the

conditions, under which, the Court can interfere and the second part specifies the type of orders which are susceptible to Revision. In numerous judgments, the Honorable Supreme Court was pleased to hold that the jurisdiction under Section 115 C.P.C. is discretionary.

5. In the light of the above facts and circumstances of the case, I am of the view that this Court in its Revisional Jurisdiction cannot interfere in the concurrent findings recorded by the two competent Courts below and I also do not see any illegality, infirmity or material irregularity in their Judgments warranting interference of this Court. Hence, this Revision Application is found to be meritless and is accordingly dismissed along with the pending application(s) with no order as to costs.

JUDGE

Karar_Hussain /PS