

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

**Civil Revision No. S – 34 of 2007**

**(Mst. Lal Khatoon & others vs. Jan Muhammad & others)**

Date of hearing: 14-03-2022

Date of decision: 14-03-2022

Mr. Soomar Das R. Parmani, Advocate for the Applicants  
Mr. Abdul Rasheed Kalwar, Advocate for Respondents 3 & 4  
Mr. Ahmed Ali Shahani, Assistant Advocate General

### **JUDGMENT**

**Muhammad Junaid Ghaffar, J.** – Through this Revision Application, the Applicants have impugned judgment dated 24-02-2007 passed by District Judge, Ghotki in Civil Appeal No.71 of 2003, whereby, while dismissing the Appeal, judgment dated 30-08-2003 passed by Senior Civil Judge, Mirpur Mathelo has been maintained through which the Suit of Respondents 1 and 2 (F.C Suit No.65 of 1993) was decreed and Suit of present Applicants (F.C. Suit No.66 of 1993) was dismissed.

2. Learned Counsel for the Applicants has contended that in the first round of this litigation, judgment passed by the learned trial Court, whereby, the Suit of Respondents No.1 & 2 was decreed was set-aside by the Appellate Court with certain observations and matter was remanded; that the remand order was also maintained by this Court in Revision; however, in the second round, the learned trial Court has delivered the judgment verbatim without any changes and has ignored the directions of the Appellate Court and the remand order; that the Appellate Court in the second round has also failed to appreciate this legal aspect; that even otherwise the land in question could not have been sold through any agreement of which the specific performance has been allowed in view of Section 19 of the Colonization Act, 1924; that Respondents 1 and 2 had relied upon a forged and managed agreement, which was attested at Ubauro by the Assistant Commissioner, whereas, it was allegedly executed at Mirpur Mathelo, and therefore, per learned Counsel no case was made out by the Respondents for passing of a decree in their favour; hence this Civil Revision Application be allowed. In support he has relied

upon the cases reported as **Abdul Aziz etc. vs. Deputy Commissioner / Collector, Rahimyarkhan and others (P L D 1981 Lahore 457); Ghulam Rasul and others vs. Muhammad Anwar and others (1969 SCMR 254) and Ms. Clare Benedicta Conville and others vs. Mst. Sbahat Idrees and others (2009 SCMR 851).**

3. Insofar as the Respondents 1 and 2 (the contesting Respondents) are concerned, despite being served, they have chosen not come forward and assist the Court. Learned Counsel for Respondents 3 and 4 has supported the impugned judgment and has further argued that against the impugned judgment first a review was filed which stands dismissed, and thereafter, this Civil Revision Application has been filed which is not maintainable and in support he has relied upon the cases reported as **Nadir Khan vs. Liaquat Ali and others (1999 SCMR 1132) and Mehdi Hassan vs. Province of Punjab and others (2007 SCMR 755).**

4. While making his rebuttal, learned Counsel for the Applicants has contended that a Revision is still maintainable, even if a review has been sought and dismissed by placing reliance on the case of **Nazir Hussain vs. Rehmat Bibi and others (PLD 1992 Lahore 295).**

5. I have heard both the learned Counsel and perused the record.

6. As to the very maintainability of this Civil Revision Application, which has been filed after dismissal of a review application; it may be observed that there appears to be no absolute bar in entertaining a Revision Application. Even if the Applicants had first sought review of the impugned judgment which was disallowed; and thereafter filed a Revision Application which otherwise is within the prescribed limitation; then how and in what manner an aggrieved person can be non-suited on this ground alone. At the most the Court can ignore the review order; and then can independently adjudicate and decide the Revision Application which has been filed within the limitation period. The objection, therefore, does not appear to be very convincing, whereas, under Section 115 CPC, there appears to be no bar in challenging a judgment by way of a Revision, notwithstanding filing of a Review against the said judgment. The only exception, at the most, could have held ground if the Revision was time barred, and then the Court was required to see as to whether the delay can be condoned and whether the Revision has to be attended to or not. The argument of learned Counsel for Respondents 3 and 4 appears to be

far-fetched, whereas, the jurisdiction under Section 115 CPC is wide enough including a Suo-moto jurisdiction and therefore, the Applicants cannot be non-suited on this ground alone. Reliance on the case of Nazir Hussain (Supra) by the Applicants Counsel also supports this argument. Accordingly, this objection is hereby repelled and it is held that this Revision Application is competent; warranting a decision on merits.

7. As to the merits of the case, it appears that Respondents No.1 & 2 had filed a Suit for Specific Performance of an Agreement, whereas, the Applicants had filed a Suit for Declaration, possession, cancellation and mesne profits. Both the Suit were consolidated and in the first round Respondents Suit was decreed, whereas, Applicants Suit was dismissed by the trial Court. In Appeal, the said judgment was set aside by the Appellate Court; and had remanded the matter with certain directions. Such order of the Appellate Court was also maintained in Revision by this Court. Again in the second round the Applicants have failed before the trial Court as well as the Appellate Court. It is the case of Respondents No.1 & 2 that deceased Shafi Muhammad had sold the suit property to them by way of an Agreement; that they had already been in possession; that the installments of the suit property were then paid by them to the Barrage Authorities who had allotted the suit land to deceased Shafi Muhammad; and since the Transfer Order was yet to be issued; therefore, they had not filed a Suit for performance, whereas, before such transfer in their favor, Shafi Muhammad had expired; hence, the Suit in question. On the other hand, the Applicants had controverted the said assertion and claimed that no such agreement was entered into by Shafi Muhammad; that they being legal heirs were entitled to share in the property as per Muhammad Law; hence, they in essence sought cancellation of the sale agreement relied upon by Respondents No.1 & 2 and also sought Declaration and possession of the same property. In both the rounds the trial Court as well as the Appellate Court have come to a conclusion that the Applicants have failed to make out a case in their favor.

8. The Applicants' Counsel has raised an objection that in the second round the learned trial Court has failed to appreciate the remand order and has again reproduced the same judgment which was passed in the first round. However, firstly it may be observed that the directions in the remand order were never as contended. The crux of the finding of the Appellate Court in the first round vide its judgment dated 30.04.2001 was

more focused on the agreement in question being improperly stamped and the same being liable to be impounded with imposition of penalty under the Stamp Act. This finding by itself cannot be made basis to otherwise decree the Suit if a case is made out on the basis of the evidence before the Court. Per settled law an agreement of sale can even be entered into orally and can also be specifically enforced if proved in accordance with law. The other reason for setting aside the judgment was purported noncompliance of Order XX Rule 5 CPC for apparent failure in not giving finding on the issues separately. Again it hardly matters if a reasoned finding is given together when issues are interlinked with each other. This does not by itself amounts to an illegality so as to set-aside an otherwise well-reasoned judgment. In fact, even otherwise it appears that the directions stand duly complied with.

9. Insofar as the second limb of the arguments that the same judgment has been reproduced, this again does not appear to be correct or a valid ground for upsetting the findings of the trial Court. Notwithstanding, the Appellate Court has also attended to this objection and no further deliberation is required on this aspect of the matter.

10. The Learned Appellate Court has responded to all the above arguments in an elucidate manner and has reached a correct conclusion in law and fact. The said finding is relevant for addressing the arguments so raised on behalf of the Applicants and reads as under;-

“I have heard learned counsel for the parties and perused the R & Ps.

It is denied by Muhammad Ameen and others that; late Shafi Muhammad has entered into agreement of sale of suit land with Jan Muhammad and Fateh Muhammad, execution whereof is also challenged to be barred by Section 19 of the Colonization of Government Lands Act, 1912, as such according to learned counsel for the appellants was not enforceable but is liable to be cancelled. The parties to the litigation, there is no denial to the fact are closely related to each other. It is the case of Jan Muhammad and Fateh Muhammad that late Shafi Muhammad entered in to agreement of sale of the suit land with them on 25.02.1986, for sum of Rs.1,60,000/- at the rate of Rs.10,000/- per acre, received total sale consideration, executed such an agreement of sale, put them in to possession whereof. Execution of agreement of sale they have been able to prove through cogent and reliable evidence of attesting witnesses Himat Ali Shah and Shamsuddin Khatian. The delivery of the possession of suit land to them they have been able to prove by producing receipts towards land revenue and installments which they have paid for

the suit land, since the days when agreement of sale was entered in to, in presence of this, it appears to be only an allegation that they have taken over the possession of the suit land by show of force on demise of Shafi Muhammad, particularly when they have been supported in their version none by Mst. Sahati and Mst. Kamal Khatoon widow and one of the daughters of said Shafi Muhammad. This was the agreement of sale and not sale itself was for a running grant, T.O Form for that was yet to be issued, was not hit by Section 19 of the Colonization of Government Lands Act, 1912, was enforceable one, reference in that respect, if need be, could be made to case of Muhammad Iqbal and others Vs. Muhammad Hussain and others that is reported at PLD 1986 S.C 70.

Mst. Lal Khatoon obviously has opposed that a sale agreement being under influence of her husband Muhammad Ameen and in this respect she was also supported by her one of sister Mst.Jamiat. No cogent evidence is brought by them on record for that the sale agreement could be refused to be enforced or cancelled.

The conclusion which could be drawn of the circumstances would be that agreement of sale was entered in to is liable to be enforced and not cancelled.

The judgment and decree of learned Trial Court, impugned through this an appeal, call for no interference by this a court, it is therefore maintained, cannot be set aside only under the pretext that; those are ditto copy of earlier judgment and decree which were set-aside, which in fact are not, appears to be independent one and have been passed after due compliance of the directions of the appellate court in first round of appeal.

For what has been discussed above, the present appeal fails. It is therefore dismissed, with no order as to costs.

11. Perusal of the aforesaid finding reflects that as to the ingredients for proving a sale agreement is concerned, the same have been duly complied with and this Court has not been assisted in any manner as to any defect or misreading in the said evidence and its appreciation. Further the possession of the Suit land was also established by cogent evidence and the Applicants miserably failed to rebut this contention of Respondents 1 and 2. It is also a matter of fact that parties are related to each other and the contesting parties belong to two wives of deceased Shafi Muhammad with whom Respondents 1 and 2 had entered into a sale agreement, whereas, one set of his legal-heirs (i.e. Mst. Sahati and Mst. Kamal Khatoon widow and one of the daughters of said Shafi Muhammad) have supported the case of these Respondents, whereas, the other set of legal-heirs i.e. the Applicants are disputing it. The Respondents No.1 & 2 have

also produced in evidence that not only they were put into possession by deceased Shafi Muhammad; but were also paying installment to the Barrage Authorities on behalf of the deceased. In that case, a heavy burden lay on the present Applicants to disprove the very execution of the agreement in question as the same was supported and admitted by one set of legal heirs of deceased Shafi Muhammad.

12. As to violation of Section 19 of the Act is concerned, it may be observed that firstly the present Applicants have no locus standi to take any shelter under this provision. It was for the Government to look into before accepting any further installments from Respondent Nos.1 & 2. Secondly, and as rightly observed by the learned Appellate Court that it was merely an agreement of sale was not a sale by itself, whereas, it was for a running grant, and T.O was yet to be issued; hence the same was not hit by Section 19 *ibid*.

13. In view of hereinabove facts and circumstances of this case, it appears that the two Courts below have come to a fair and just conclusion, which is in accordance with law being based on the available evidence, whereas, the Applicants have miserably failed to point-out any misreading or non-reading of the evidence; hence this Court is of the view that no case for interference is made out to upset the concurrent findings of the two Courts. Accordingly, this Civil Revision Application is hereby ***dismissed***.

**Judge**

ARBROHI