

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

## **Civil Revision No. S – 155 of 2010**

(Muhammad Siddique & others V/S Muhammad Ismail & others)

Date of Hearing: **11-04-2022**

Date of Judgment: **11-04-2022**

Mr. Bakhshan Khan Mahar, Advocate for the Applicants.  
Mr. Sikadar Ali Junejo, Advocate for the Respondents

### **J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicants have impugned Judgment dated 22.05.2010, passed by Additional District Judge-III, Khairpur in Civil Appeal No.24 of 2008 (**Muhammad Siddique & others v. Muhammad Ismail & others**), whereby while dismissing the Civil Appeal, the Judgment dated 31.05.2008, passed by Civil Judge-III, Khairpur in Civil Suit No. 19 of 2006 (**Muhammad Siddique & others v. Muhammad Ismail & others**) has been maintained, through which the Suit of the Applicants was dismissed.

**2.** The Applicants' Counsel has filed written arguments; whereas, Respondents Counsel has made his oral submissions. I have heard learned Counsel and perused the record.

**3.** It appears that the Applicants had filed a Suit for declaration, partition, possession and permanent injunction seeking the following prayer:

a). That this Honourable Court may be pleased to declare that the defendants refusing to partition the property and declining to put the plaintiffs in possession of their share, is illegal, void and nullity in the eyes of law.

b). To partition the suit property among the plaintiffs and defendants.

c). To direct the defendants to put the plaintiffs in vacant possession of their share area 720 sq.ft. out of the suit property shown in para No:5 of the plaint.

d). To issue permanent injunction, restraining the defendants from creating any further charge or encumbrance upon the suit property in any manner what-so-ever and restraining them from interfering in any manner with the rights and interest of the plaintiffs over the suit property to the extent of share of plaintiffs.

e). To award costs of this suit.

f). Any other relief deemed fit and proper.

**4.** Learned Trial Court did not settle any independent issue(s) apparently for the reason that the Respondents were declared *ex parte* and after perusal of the record and affidavit-n-evidence of the Applicants, the Trial Court was pleased to dismiss the suit in the following terms:

“After hearing the arguments of learned counsel for plaintiffs, I have gone through the material available on record. Since plaintiffs claiming title over property by virtue of inheritance and relied upon the record of tax department only which is not sufficient proof of title though same is a photo stat copy however plaintiffs have failed to produce the title documents to show that actually the property is belonging to deceased Abdul Rehman. According to plaintiffs and their witness/memo of plaint that the deceased Muhammad Shahban, Muhammad Usman and Rabnawaz alias Ghaffari only were brothers/legal heirs of deceased Abdul Rehman and one Mst. Azeeman to be his sister but perusal of heir ship Certificate attached with plaint issued by Muhkhtiarkar one Suleman aged 75 years is also shown to be brother/legal heir of said deceased Abdul Rehman but the plaintiffs neither him nor his legal heirs made as party, in instant suit. Plaintiff further claimed that private partition was made amongst them and defendants but no such witness is examined in whose presence such partition was made while no such date, month and year are mentioned/appearing on the record though dispute between the party is arisen since 1989, then arisen a question that as and when alleged private partition amongst plaintiffs and defendants was held and share of land was come in favour of plaintiffs, while they filed instant suit on: 06-9-2006,

What has been discussed above, it appears that plaintiffs have failed to make out their suit case against defendants, same is not maintainable and barred by law, therefore, instant suit is dismissed with no order as to costs”

**5.** Being aggrieved, the Applicants preferred Civil Appeal and the learned Appellate Court has also dismissed the same in the following terms:

“Heard both parties counsel, gone through impugned Judgment and have perused the record.

Pursuant of record reflects that the trial court had dismissed the suit with no order as to costs. On the observation that suit was not maintainable as appellant/plaintiff relied upon document of the Excise and Taxation document, bearing No.P/1425 regarding Plot (1-B216-G-I) measuring 280 sq yards. The case in hand is for declaration, Partition and permanent injunction but it was incumbent upon appellant/plaintiff to have produced valid document from revenue department showing clear mutation regarding his share. Since no documentary proof has been produced except taxation department, which carry no weight in consideration of title of appellant/plaintiff. As such under the foregoing reasons, I found no illegality or irregularity attached with impugned Judgment/decree. Consequently, it stands maintained and appeal in hand is dismissed with no order as to costs”

**6.** It is the case of the Applicants that the Appellate Court has failed to settle any point for determination and therefore said Judgment is bad in

law. However, this argument appears to be misconceived inasmuch as there was only one issue *that as to whether the Applicants claimed any declaration without any title document* and the same has been dealt with and decided by the Appellate Court; hence the said objection appears to be misconceived. Reliance may be placed on the cases reported as ***Muhammad Iftikhar v. Nazakat Ali* (2010 SCMR 1868)**, ***Hafiz Ali Ahmad v. Muhammad Abad and others* PLD 1999 Karachi 354**, ***Ghulam Samdani and others v. Faqir Khan* PLD 2007 Peshawar 14**, ***Abdullah and 11 others v. Muhammad Haroon and 8 others* 2010 CLC 14** and ***Muhammad Azam v. Mst. Khursheed Begum and 9 others* 2013 Y L R 454**.

7. It has been further contended on behalf of the Applicant that the Trial Court had failed to appreciate that the Respondents were *ex parte*, whereas, affidavits-in-evidence along with further evidence were placed before the Court and therefore, the Suit ought to have been decreed. Again this contention also appears to be misconceived inasmuch as admittedly the Applicants had no title document in their favour to claim and file a Suit for declaration. There is nothing on record as to justify the claim of the Applicants which is only based on some document issued by the Excise and Taxation Department, which is not a title document. Secondly, as to the private partition, the Applicants had failed to lead any evidence through independent witnesses and therefore no case is made out. Lastly as to the objection that since Defendants / Respondents were Ex-parte, much credence ought to have been given to the evidence of the Applicants which has gone unchallenged; it would suffice to observe that in view of the dicta laid down in the cases reported as ***Nisar Ahmed & another Vs. Habib Bank Limited* (1980 CLC 981)** and ***Messers Al-Pak Ghee Mills through Managing Partner Vs. Zeeshan Traders through Proprietor* (2008 CLC 120)**, the Suit cannot be decreed as prayed in such matters, until and unless the Court is satisfied in this regard, therefore, this argument is also misconceived.

8. In view of hereinabove facts and circumstances of this case, it appears that both the Courts below have arrived at a just and fair conclusion which is based on the evidence led by the Applicants. Hence, no case for indulgence is made out. Therefore, by means of a short order

this Civil Revision was dismissed in the earlier part of the day and these are the reasons thereof.

**JUDGE**

Ahmad