

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No.40 of 2006

[Mir Mohammad & Ors versus Abdul Qadir & Ors]

Applicants : Through Mr. Sunder Das advocate
Respondent No.1 : Through Mr. Rustam Khan Talpur advocate
Official respondents : Through Mr. M. Ismail Bhutto, Additional A.G Sindh
Date of hearing & Order: 30.09.2022

ORDER

ADNAN-UL-KARIM MEMON, J. This revision application has been directed against the conflicting findings of the two Courts below. The respondent/plaintiff filed Suit bearing No.42 of 2000 for declaration, mandatory and permanent injunction in respect of agricultural land bearing Block No.261/1 to 4 and 268/1 & 2 admeasuring 24-0 acres situated in Deh Kakejani Taluka Golarch [**Suit Land**]. The said suit was dismissed by the trial Court vide Judgment & Decree dated 28.08.2003; however, in Appeal bearing No.97 of 2003, preferred by the respondent/plaintiff before learned IInd Additional District Judge Badin/Appellate Court, the Judgment & Decree passed by learned trial Court was set aside and consequently, the suit was decreed vide impugned Judgment & Decree dated 25.11.2005.

2. Private respondent's case is that the suit land was granted to him by the Barrage authorities vide Ijazatnama dated 09.10.1958, however, in the year 1966-67, it was canceled by respondent No.5/Revenue Officer Kotri Barrage Hyderabad without any intimation; however, subsequently same was restored and then he paid all the installments and T.O Form was issued in his name in the year 1984 and such entry was made in the Record of Rights declaring the suit land as Qabooli land. It is further claimed by respondent No.1 that in the year 1997, he came to know through the father of applicants that the suit land had been granted to him, thereafter he immediately approached respondent No.6 / Barrage Mukhtiarkar S.F Rahu and verified the record and it was revealed that lower staff of Barrage Mukhtiarkar / respondent No.6 by committing fraud had prepared a false A-Form, thereby father of applicants got the suit land in exchange of Block No.358/1, 4 and 413/1, 2 under the alleged order of respondent No.5 issued in the year 1968. It is also claimed by respondent No.1 that after coming to know about the above fraud, he approached respondent No.5 / Revenue Officer Kotri Barrage, who referred the matter to Additional Commissioner-II Hyderabad Division, who passed order dated 03.07.1997 and thereby cancelled the duplicate entry in respect of suit land based on

false A-Form; however, father of applicants challenged the said order before respondent No.3 Member (Judicial) Board of Revenue Hyderabad, who vide order dated 18.10.2000 set-aside the order dated 03.07.1997 passed by Additional Commissioner-II, which compelled the respondent to approach the Civil Court through Suit bearing No.42 of 2000, which was dismissed; however, in appeal, it was decreed, as mentioned supra.

3. Whereas the case of applicants is that suit land owned by their father and respondent No.1 never remained in possession thereof and the grant in his favor was/is bogus. They further claimed that suit land was granted to one Porho S/o Khamiso, who exchanged the same with their father in the year 1968 in lieu of Block No.358/1, 4 and 413/1, 2, which was granted to their father. They also claimed that suit land was mortgaged with ADBP Golarchi Branch and they were in cultivating possession thereof and paying the land revenues.

4. However, both parties after arguing the matter at some length finally agreed that the orders dated 03.07.1997 and 18.10.2000 passed by revenue authorities as well as Judgments and Decrees passed by the Courts below in respect of suit land may be set aside and the matter may be referred to Senior Member Board of Revenue to pass speaking order after examining the record and providing full opportunity of hearing to all the parties.

5. In principle the controversy could only be set at naught between the parties if the present status of the subject land is brought on record.

6. In view of the above, let Senior Member Board of Revenue Hyderabad submit his comprehensive report on the following points:

- (i) Whether the suit land was granted to respondent No.1 through Ijzatnama dated 09.10.1958?
- (ii) Whether the Suit land was canceled in favor of respondent No.1? If yes, in which year?
- (iii) Whether the suit land was restored in favor of respondent No.1? If yes in which year?
- (iv) Whether respondent No.1 paid all installments in respect of suit land and T.O was issued in his favor and such entry was made in the Record of Rights declaring the suit land as Qabooli land?
- (v) Whether the suit land was granted to Porho S/o Khamiso, who exchanged the same with the father of applicants in lieu of Block No.358/1, 4 and 413/1, 2? If yes in which year?
- (vi) Whether the lower staff of Barrage Mukhtiarkar prepared the false A-Form in favor of the father of the applicant in respect of suit land, as claimed by respondent No.1?
- (vii) Who is in cultivating possession and paying the land revenue in respect of the suit land since the beginning?

7. Senior Member Board of Revenue is directed to submit his report within 30 days accordingly.

8. Captioned revision application is adjourned and is to be relisted after the report is received.

JUDGE

Sajjad Ali Jessar