

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No.113 of 2018

[Muhammad Yaseen versus Folad Khan & Ors]

Applicant : Through Mr. Naveed Farooqi advocate
Respondent -1 : Through Ms. Gul Bano advocate
Official respondents : Through Mr. Allah Bachayo Soomro AAG
Date of hearing : **17.10.2022**
Date of Decision : **31.10.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. This revision application has been directed against the concurrent findings of two courts below. The applicant/ plaintiff filed an F.C Suit No. 476 2011 for Declaration, Possession, Cancellation, Permanent and Mandatory Injunction and Mense Profit in respect of Plot No.139 situated in Muslim Rajput Colony, Unit No.7 Latifabad Hyderabad (**Suit Property**) against respondent No.1 in the Court of 1st Senior Civil Judge Hyderabad in September 2011. The learned trial Court after recording evidence of the parties dismissed the suit vide Judgment dated 31.08.2016 & Decree dated 05.09.2016, against which applicant / plaintiff preferred Civil Appeal No.185 of 2016 before learned IVth Additional District Judge Hyderabad; however, the same was also dismissed vide impugned Judgment dated 16.01.2018 & Decree dated 22.01.2018.

2. Concise facts of the matter are that the applicant filed the above suit with the claim that his father Pir Gul had expired in the year 10.07.1989 leaving behind him and four others as surviving legal heirs and respondent No.1, who was their family friend had been allowed to reside in the suit property; that in the year 2011 he requested the respondent No.1 to vacate the suit property; however, he refused and claimed ownership based on managed bogus and fabricated Sale Agreement dated 20.01.2000, allegedly entered into between his late father and respondent No.1; that on inquiry it was revealed that Taluka Municipal Administrator had already executed Lease Deed bearing No.1420 dated 6.6.2011 in favor of respondent No.1

based on aforesaid bogus Sale Agreement, consequently, he filed the above suit, which was dismissed and the appeal preferred by him also met with the same fate, hence this revision application.

3. Mr. Naveed Farooqi learned counsel for applicant argued that the Judgments and Decrees passed by the courts below are opposed to facts and law; that the findings of trial Court on issue No.1 are erroneous, illegal, void, ab-initio and suffer from misreading and non-reading; that falsification of alleged Sale Agreement is evident from the fact that the same is claimed to have been executed on 20.01.2000 with the late father of applicant, whereas it is admitted position that father of applicant had expired in the year 10.07.1989; however, both Courts below have failed to appreciate the same documentary evidence; that the findings of trial Court on issue No.3 are erroneous, illegal, void ab-initio and suffer from gross misreading and mis-appropriation of law of possession; that a licensee can never deemed to be in possession of property which occupied by way of permission or license, but the person who put him in possession is considered to be in possession in the eyes of law; that no notice and/ intimation was even issued to the legal heirs while execution of Sale Deed by the official respondents, which proves their malafide and connivance with respondent No.1; however, all these facts were not considered by the courts below. He lastly prayed for setting aside the impugned Judgments and decree of both the courts below and sought a decree of suit as prayed.

4. Ms. Gul Bano learned counsel for respondent No.1; however, supports the concurrent findings of the Courts below; that both the Courts below after perusing the material and hearing the parties gave well-reasoned findings, which do not require interference by this Court; that sale agreement was executed by all legal heirs including applicant; however, the present applicant became greedy and demanding more money, which is supported by the fact that no other legal heir came forward except present applicant. She lastly prayed for dismissal of present revision application.

5. Mr. Allah Bachayo Soomro, learned A.A.G has opposed the present Civil Revision Application on the ground that both the Courts below have handed down the decisions under the law and since the ownership rights are not devolved upon the applicant in respect of suit property, therefore, the present Applicant lacks legal character under Section 42 of Specific Relief Act for bringing such a proceeding.

6. I have heard learned counsel for the parties and perused the record with their assistance.

7. The question involved in the present proceedings is whether the suit filed by the applicant Muhammad Yaseen son of late Pir Gul for declaration, possession, cancelation, and mandatory injunction and mesne profit before learned trial Court based on entitlement slip issued by Katchi Abadi, was maintainable in terms of Section 42 of Specific Relief Act.

8. To appreciate the points of view of the parties on the lis, the trial Court framed the following issues:

- “1. Whether plaintiff and his mother are the real owners of the suit property?
2. Whether the sale agreement and sale deed so also entries in favor of defendant No.1 in respect of the suit property are managed and the outcome of fraud?
3. Whether possession of defendant No.1 over suit property is illegal?
4. Whether the plaintiff is entitled to any reliefs prayed?
5. What should the decree be?”

9. Learned trial Court examined the official witness namely Waseem Jarwar Sub-Accountant in District Accounts Office, Hyderabad at Ex.47. He produced authority letter as well as his statement in Court at Ex.48. Statement of Muhammad Aqil, Assistant Director, Katchi Abadi was recorded at Ex.49. He produced copy of slip of entitlement at Ex.50, statement of Tariq Pervez Khan Notary Public was recorded at Ex.51. Statement of Attorney of Plaintiff namely Muhammad Aftab was recorded at Ex.C-1. He produced original copy of power of attorney at Ex.62 and Pension Book at Ex.63. On the other hand, the statement of respondent/defendant No.1 Folad Khan was recorded at Ex.69. Statement of Hafiz Qari Sadakat was recorded at Ex.70. Statement of Muhammad Amin was recorded at Ex.81. Learned trial Court after hearing the arguments of counsel for the parties dismissed the Suit. The appeal preferred by the applicant before learned IV Additional District Judge, Hyderabad, was also dismissed vide judgment dated 16.01.2018 and decree dated 22.01.2018 on the premise that the applicant failed to show his legal right, title and legal character in the suit property in terms of Section 42 of Specific Relief Act, as such the consequential relief of cancellation of sale

agreement dated 20.01.2000 and lease deed registered on 23.07.2011 could not be granted on the aforesaid analogy.

10. Primarily, the declaratory suit is required to be filed under Section 42 of Specific Relief Act, whereas the applicant's Suit was based on the entitlement slip/Fard-e-Haqeeqat granted in favor of his father in the year 1978; and, no lease was executed in his favor by the competent authority, who passed away in the year 1989; therefore, the applicant could not claim right of inheritance on the subject land which had never been leased out in favor of his father. Even otherwise, the entitlement slip does not create any right or title to claim proprietary right under the law.

11. The law regularizing Katcha Abadis is meant to accommodate/benefit the landless. The applicant based his claim on the suit land which admittedly was not owned by him under the law. Land in Katchi Abadis cannot be used for personal enrichment by somehow acquiring possession of it and then handing over its possession to the occupant. The applicant had no legal character in terms of Section 42 of Specific Relief Act, 1877, and his suit, seeking declaration of ownership of the plot in possession of private respondent was not maintainable, and appeal preferred by him was rightly dismissed in terms of paragraph 9 of the judgment and decree of appellate Court. On the aforesaid proposition, I am guided by the decision of Honorable Supreme Court in the case of Syed Jamil Ahmed Vs. Muhammad Aslam and others (2022 SCMR 282).

12. Learned counsel for applicant also failed to point out any illegality or irregularity in the impugned judgments, which may warrant interference of this court in the concurrent findings of facts recorded by two Courts below

13. This revision application is found to be not maintainable and is accordingly dismissed.

JUDGE