

**HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

R.A No. 157 of 2017

Applicant : Hamzo Khan Son of Haji Ahmed Khan through
Mr. Ashar Majeed Khokhar, Advocate

Respondents 1 to 3 : Province of Sindh & others through
Mr. Allah Bachayo Soomro, Addl. A.G, Sindh.

Respondent No.4 : Muhammad Khan Son of Haji Ahmed Khan through
Mr. Aqeel Ahmed Siddiqui, Advocate.

Respondents 5 to 9 : Ejaz Ahmed & others through Mr. Nouman Raja
Khan, Advocate.

Date of hearing
and Order : 21.10.2022

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant revision application, the applicant has called in question the vires of Judgment and Decree dated 10.04.2017 passed by learned Additional District Judge, Tando Allahyar in Civil Appeal No. 07 of 2017, whereby the Judgment and Decree dated 23.12.2016 passed by learned Trial Court dismissing F.C Suit No.162 of 2016 was maintained, now the applicant being seriously aggrieved by the aforesaid judgments has preferred the instant Civil Revision Application under Section 115 CPC inter-alia on the ground that both the *fora* below have not considered the evidence of applicant's side in its true perspective; that, applicant is co-sharer in the suit property thereby has possessed preferential right; and that decision was / is erroneous and needs to be set at naught by this Court.

2. The facts giving rise to the present revision application are that the applicant filed suit for declaration, cancellation, pre-emption, mandatory and permanent injunction, stating therein that he is zamindar and share-holder in agricultural land comprising S.No.447 (7-00) situated in Kapaho Tapo-A Thull Taluka Chambar, District Tando Allahyar, out of which he has share of 0-22 2/9 paisa which is inherited by his mother namely Bhambo who expired on 27.06.2012; that respondent No.4 being his real brother was also share holder in the same land; that agricultural land of their mother was inherited by applicant and respondent No.4 and their sisters Mst. Hajini, Mst. Sabiani, Mst. Asiat, Mst. Sakina and Mst. Zainab and their names stands mutated in khata being co-sharers

in the record of rights; that agricultural land owned by the applicant and respondent No.4 as well as suit land have a common water course for irrigation with common peach of water; therefore, about three months ago, when the applicant was on his land, he came to know through witnesses that respondents 5 to 9 have purchased the suit land from respondent No.4 under registered sale deed for consideration of Rs.1,50,000/-, hence on acquiring knowledge of sale transaction pertaining to the suit land the applicant without any delay immediately declared his intention and asserted his right through '*Talab-e-Muwasibat*' and then very soon on the same day after making such, he went alongwith the above said witnesses at the house of respondent No.4 who was available there and the applicant affirmed his intention repeatedly each time referring expressly the fact that '*Talab-e- Muwasibat*' had already been made and thereafter made demands in presence of witnesses Haji Ahmed son of Abbas Ali and Gul Hassan son of Lakha Dino, '*Talab-e-Ishad*' in respect of his rights to pre-empt over the suit land; that despite demands by way of '*Talab-e-Muwasibt*' followed by the '*Talab-e-Ishad*' in presence of witnesses, the respondent No.4 firstly kept the applicant on false hopes and thereafter refused to concede to the said demands, as such respondent No.4 has not conveyed the suit land according to the rights of applicant over the suit land under pre-emption; that the suit land as well as lands of the applicant is joint ancestral property and have same common source of water for irrigation/cultivation of both the lands beside access of the land owned by the applicant is also in possession of the suit land since 1992 and he has spent huge amount over it, therefore respondents 4 to 9 want to dispossess the applicant; that he is '*shafi-e-Jar and Shafi-e-Khilat*' for the purpose of right of pre-emption in respect of suit land on its valid and bonafide complete sale; that respondents 5 to 9 are strangers as such they have no lawful right as against the applicant who is joint owner/co-sharer with common mutation in the record of rights in respect of suit land which is still in his possession being un-partitioned, hence he filed the suit with following prayers:-

- a) **Declaration;** To that this Honourable Court may be pleased to pass a decree against the defendants for pre-emption in respect of the suit land as well as declare that the sale dated 09-02-2015 Jaryan No 396 Registration No 456 Book No 1 dated 20-02-2015 made on the basis of fraud, invalid, void, forged and ineffective as the plaintiff law full share holder of the suit land survey numbers are still not partitioned privately or officially as well as plaintiff is in possession of the suit land since 1992 and expended huge amount over it, therefore, defendant have no right interest or title of the above suit property.

Cancellation; To cancel the sale dated 09-02-2015 Jaryan No 396 Registration No 456 Book No 1 dated 20.02.2015.

Permanent Injunction; That the defendants be restrained and prohibited permanently through permanent injunction not to sell the suit land or to transfer alienated the suit land without any due course of law, themselves, through their agents, servants etc in any manner what so ever.

For Mandatory Injunction.

- a) Directing the defendants No 1 to 3 to cancel the sale agreement, and entries in respect of the suit land mentioned above and transfer in the name of plaintiff.
- b) **Cost** is saddled upon the defendants.
- c) Any other relief as deemed fit and proper may be awarded in the circumstances of the case.

2. Upon service of notice, respondents 1 to 4 did not appear hence were declared *experte vide* order dated 14.05.2016 while respondents 5 to 9 jointly filed their written statement mainly denying the claim of applicant stating that he was on his land where he came to know through witnesses namely Haji Ahmed son of Abbas Ali and Gul Hassan son of Lakhadino that said respondents purchased the suit land amounting to Rs.1,50,000/- from respondent No.4 under registered sale deed; that they denied that the plaintiff is in possession of suit land since 1992 instead they have right, title and interest in the disputed land being owners of disputed land through sale deed, and they are also in possession of disputed land and lastly denied that the applicant is not entitled to any relief and his suit is liable to be dismissed.

3. From the pleadings of the parties, learned trial court framed the following issues:-

I S S U E S .

1. Whether the suit of the plaintiff is not maintainable according to law? OPD.
2. Whether suit is joint ancestral property of plaintiff and defendants and have common source of water? OPP
3. Whether plaintiff duly made the required demands of talabs in month of February 2015 to defendant No 4? If yes then registered sale deed dated 20-02-2015 executed by defendant No 4 in favour of defendant No 5 to 9 in respect of disputed land is liable to be cancel? OPP.
4. What should the decree be?

4. After arguing this matter at some length, both the parties agreed for disposal of instant revision application on the premise that they shall seek their rights in the Suit pending regarding cancellation of registered documents / entry

remanded by this court in terms of order dated 11.09.2019 passed by this Court in R.A. No.241 of 2018 already pending before trial court; therefore, this Civil Revision Application stands disposed of. However, the parties appearing in this revision application are at liberty to pursue the suit pending before learned Trial Court with clarification that their rights if any, shall also be looked into by the trial court after recording evidence in accordance with law.

JUDGE

Muhamud Danish