IN THE HIGH COURT OF SINDH, KARACHI

Civil Revision No.114 of 2019

Mst.Rizwana Khatoon & Others Vs. IInd ADJ, Karachi [East] & Others

Date	Order with signature of Judge

BEFORE
Mr. Justice Arshad Hussain Khan

Applicant: Through Mr. Nazar Iqbal Advocate

Respondents Nemo
Date of Hearing 16.01.2023
Date of Order 16.01.2023

ARSHAD HUSSAIN KHAN, J.- Through this civil revision, the Applicants have impugned the judgment and decree dated 23.05.2019 and 29.05.2019 respectively, passed by IInd Additional District Judge, Karachi [East] in Civil Appeal No.19 of 2018, upholding the judgment and decree dated 22.12.2017 and 28.12.2017, passed by learned Xth Senior Civil Judge [East] Karachi, in Civil Suit No.713 of 2014, whereby the suit of the Plaintiffs/Applicants was dismissed.

2. Briefly the facts giving rise to the present case are that the mother and the present applicants filed a civil suit bearing No. 713 of 2014 for Declaration, Administration, Possession, Cancellation and Permanent Injunction, inter alia, against Respondent No. 3 in respect of the properties viz. Flat No.1, First Floor, Soulat Arcade, Gulistan-e-Jauhar, Karachi, Car (Alto), Regular income certificate amounting to Rs.1,000,000/- and service benefits [said properties] left by deceased Asad Ali Khan son of Yousuf Ali Khan, real brother of the present Applicants by claiming inheritance right over the said properties as the said Asad Ali Khan [the deceased] died issueless. It was claimed that the deceased since was issueless as such as per law of inheritance all the properties of the deceased shall liable to be distributed amongst all the legal heirs (mother, brothers and sisters including Respondent No.3-widow of the deceased). However, when respondent No.3 refused to give the shares of the applicants, the above suit was filed before the court of Xth Senior Civil Judge Karachi. The said suit after a full dressed trial was dismissed against which civil appeal was preferred by the present applicants, which too was dismissed and thereafter present revision application was filed.

3. This matter is pending adjudication since 2019, and considerable time has been passed after filing of the present case as well as learned counsel has failed to get notices issued upon the respondents as such this Court has finally asked the applicants' counsel to argue his main case. During the course of arguments learned counsel for the applicants while reiterating the facts has contended that the orders impugned herein are not sustainable in law and facts both. It is mainly contended that the learned courts below while passing the impugned judgments have failed to consider that respondent No.3 with malafide intention filed the fake and forged general power of sub attorney and further they have neither applied judicial mind nor compared the relevant documents under the provisions of Qanoon-e-Shahadat Ordinance, 1984, and passed the judgment and decree in hasty manner and as such the findings of both the courts below are untenable in law and liable to be set aside.

4. I have heard the arguments of the learned counsel for the applicants and perused the record. In this case, the evidence produced before the learned trial court find an elaborate mention in the impugned judgment and as such the same is not being reproduced here to avoid unnecessary repetition.

5. From the record it appears that learned trial court on the basis of divergent pleadings framed the issues and recorded evidence of the parties and after hearing learned counsel for the parties dismissed the suit No.713/2014, vide the judgment and decree of the learned trial court; and the said judgment and decree were upheld by IInd Additional District Judge, Karachi [East] in Civil Appeal No.19 of 2018, vide the judgment and decree of the appellate court.

Before proceeding further, it would be appropriate to reproduce herein below the concluding para of the appellate judgment for the sake of convenience which read as follows:-

> "Having heard advocate for appellants and advocate for respondent No.1 and after perusing pleadings of parties, evidence, impugned judgment and decree, it reveals that the attorney of appellants/plaintiffs in her cross examination admitted that she has not produced any documentary proof regarding property in question so also admitted that she has not produced any documentary proof about the ownership of Asad Ali Khan [her son] in respect of suit property, neither produced any proof that the suit property was purchased from the funds of Asad Ali husband of defendant No.1 and son of plaintiff No.1. As plaintiffs themselves failed to produce any documentary proof in respect of suit flat and such fact also admitted by attorney of plaintiffs in her cross examination, therefore, suit of the plaintiffs barred under Section

> 42 of Specific Relief Act. The plaintiffs failed to prove ownership of Asad Ali regarding flat in question. Further pertinent to mention that prayer clause D of the plaint is concerned regarding which appellant Allah Rakhi had filed SMA 539/2013 regarding Flat No.1, Ist Floor, Saulat Arcade Gulistan-e-Jauhar, Karachi and other properties. During pendency of SMA the advocate for petitioner gave statement that he shall file suit for property in question before civil court having jurisdiction. Thereafter said SMA allowed by learned IIIrd Addl.Sessions Judge vide order dated 06.02.2014. Furthermore, the defendant No.3 had filed written statement before learned trial court by asserting that their department disbursed the pension and gratuity of deceased Asad Ali in accordance with rules 4.7(1) as per which wife or wives of the deceased male government servant entitlement for pension. The perusal of impugned judgment and decree reveals that the learned trial court has well discussed each and every thing while deciding the issues, therefore, the question of misreading and non-reading of evidence does not arise. The learned counsel for appellants has not pointed out any illegality or irregularity in the impugned judgment. Therefore, point No.1 is hereby decided in negative, the appeal in hand merits no consideration which is hereby dismissed with no order as to costs. Let the decree be prepared accordingly."

From perusal of the above order, it appears that the appellate court has held that the applicants/plaintiffs themselves failed to produce any documentary proof in respect of suit property before the learned trial court and such fact has also been admitted by the attorney of plaintiffs in her cross- examination, therefore, suit of the plaintiffs barred under Section 42 of Specific Relief Act and also held that the learned trial court has fully discussed each and every aspect of the case, therefore, the question of misreading and non-reading of evidence does not arise.

6. Even otherwise, the provisions of Section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when a court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. The mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For an applicant to succeed under Section 115, C.P.C., he has to show that there is some material defect or procedure or disregard of some rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine a matter and erroneous action of a court in exercise of such jurisdiction. It is a settled principle of law that erroneous conclusion of law or fact can be corrected in

appeal and not by way of a revision, which primarily deals with the question of jurisdiction of a court i.e. whether a court has exercised a jurisdiction not vested in it or has not exercised a jurisdiction vested in it or has exercised a jurisdiction vested in it illegally or with material irregularity.

7. In the matter in hand, no such infirmity has been shown by learned counsel for the applicants to call for interference in the impugned judgments by this Court. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered in revisional jurisdiction, unless extra ordinary circumstances are demonstrated by the applicants. It is also trite law that a revisional court does not sit in reappraisal of the evidence and is distinguishable from the court of appellate jurisdiction. Reliance in this regard can be placed in the cases of *Abdul Hakeem v. Habibullah and 11 others* [1997 SCMR 1139], *Anwar Zaman and 5 others v. Bahadur Sher and others* [2000 SCMR 431] and *Abdullah and others v. Fateh Muhammad and others* [2002 CLC 1295].

8. Consequently, in view of the law laid down by the Hon'ble Supreme Court in the above referred judgments, the findings of both the courts below are on the correct proposition of law hence, I do not find any infirmity or irregularity in the impugned judgments of the courts below, which could warrant interference in the revisional jurisdiction of this Court. Accordingly, the present Revision Application, being devoid of any force and merit, is dismissed in limine.

JUDGE

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