

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

Civil Revision Application No. **S-126** of **2011**

Applicants : Arz Muhammad & another, through  
Mr. Sarfraz A. Akhund, Advocate

Respondents : Province of Sindh & others, through  
No.1 to 5 Mr. Mehboob Ali Wassan, A.A.G.

Respondents : Syed Sabal Shah & another, through  
No.6 & 7 Mr. Kamran Mubeen Khan, Advocate

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Date of Hearing : 12.09.2022  
Date of Order : 16.09.2022  
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**JUDGMENT**

**ZAFAR AHMED RAJPUT, J.-** The applicants herein filed a civil suit being No. 55 of 1998 for declaration, cancellation and permanent injunction against the respondents, *inter alia*, averring therein that the applicant No.1 was granted agricultural land, admeasuring 11-14 acres, from Block No. 71/1(4-03), 83/1(4-0) and 83/2 (3-11) and the applicant No.2 was granted agricultural land, admeasuring 16-16 acres, from Block No. 72(1-16), 70/1 to 4 (13-0) and 47(2-0) in Deh Setharo, Taluka Rohri on *harap* basis by the respondent No. 4 (*Colonization Officer Guddu Barrage, Sukkur*) and such "A" Forms bearing No.1123 and 1124 were issued in their favour. Later, T.O. Forms were also issued to the applicants and forwarded by the Deputy Commissioner, Sukkur to Taluka Mukhtiarkar, Rohri for mutation of the record in their names but the latter refused to do so, as the name of respondent No.6 was already mutated by the order of the Deputy Commissioner Sukkur, dated 07.11.1996. It was further averred that the applicants came to know that the land was granted to respondent No.6 in lieu of his deficit area under land reforms by virtue of said order, which was null, void and not binding upon them as it was passed behind their back; hence, being aggrieved by the said order, they filed an appeal before the Commissioner (Revenue) Sukkur, which was dismissed on 10.01.1998 being

time barred. The applicants then filed Civil Suit No.16 of 1998 in the Court of Senior Civil Judge-II, Sukkur, but the same was withdrawn by them vide statement, dated 27.04.1998, on the ground that they will challenge the order of the Commissioner, dated 10.01.1998, and then they filed instant suit seeking setting aside the orders passed by the Deputy Commissioner Sukkur, dated 07.11.1996 and the Commissioner (Revenue) Sukkur, dated 10.01.1998. The respondent No.6 contested the suit by filing written statement wherein they also raised legal objection of maintainability of the suit. Respondent No.7 adopted the written statement of the respondent No.6. Official respondents No.1 to 5 failed to file their written statements and they were declared ex-parte. Out of divergent pleadings of the parties, the trial Court framed following issues:

1. *Whether the suit is not maintainable according to law?*
2. *Whether the suit is barred u/s 42 of the Specific Relief Act?*
3. *Whether the suit is time barred?*
4. *Whether the suit is not properly valued and insufficiently stamped?*
5. *Whether the orders dated 07.11.1996 and 10.01.1998 passed by the Deputy Commissioner, Sukkur and Commissioner, Sukkur Division, are illegal, void mala fide and unlawful, if so what is its effect?*
6. *Whether the plaintiffs are entitled to the relief sought for?*
7. *What should the decree be?*

The trial Court after recording pro and contra evidence and hearing the parties dismissed the applicants' suit vide judgment and decree, dated 24.02.2010 & 01.03.2010, respectively. Against that, the applicants preferred Civil Appeal No. 41 of 2010, which was heard and dismissed by the Addl. District Judge-V, Sukkur vide judgment and decree, dated 15.06.2011. It is against these concurrent findings of Courts below that the applicants have preferred instant Civil Revision Application.

2. Learned counsel for the applicants has mainly contended that while passing impugned judgments and decrees, both the Courts below acted in exercise of their jurisdiction illegally and with material irregularity, as once the trial Court reaches the conclusion that it has no jurisdiction over subject matter of the suit, it cannot decide any question on merits. It can simply decide on the question of jurisdiction and coming to the conclusion that it has no jurisdiction over the matter has to return the plaint. In support of his contentions, learned counsel has relied on the case of *Athmanathaswami Devasthanam v. K. Gopalaswami Ayyangar* {AIR 1965 Supreme Court 338 (V 52 C 63)}. He while referring to the case of *Evacuee Trust Property Board and others v. Mst. Sakina Bibi and others* (2007 S C M R 262) has also maintained that the Courts below had wrongly assumed the jurisdiction in spite of the exclusive bar contained under the provisions of Sindh Land Revenue Act, 1967 (“Act of 1967”), therefore, the judgments of the Court below are without lawful authority and void.

3. Conversely, learned counsel for the respondent No.6 & 7 and learned A.A.G. have fully supported the impugned judgments and decrees.

4. Heard, record perused.

5. The applicants in their suit have sought a declaration to the effect that orders dated 07.11.1996 and 10.01.1998 passed by the Deputy Commissioner, Sukkur and Commissioner (Revenue) Sukkur in respect of suit land are unlawful, illegal and not binding on them in as much as the said orders do not affect the grant made in their favour by the Guddu Barrage Authority. It may be observed that section 161 & 164 of the Act of 1967 itself provides the provision of appeal and revision against the orders passed under the Act of 1967 by the revenue officers; hence, first and foremost question before the Courts below was of

maintainability of the civil suit. For the sake of convenience, sections 161 and 164 of the Act of 1967 are reproduced, as under:-

*"161. Appeals.--- (1) Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue Officer as follows, namely---*

- (a) to the Assistant Collector of the first grade when the order is made by the Assistant Collector of the second grade; and*
- (b) to the Collector when the order is made by an Assistant Collector of the first grade;*
- (c) to the Commissioner, when the order is made by a Collector;*
- (d) to the Board of Revenue only on a point of law, when the order is made by a Commissioner:*

*Provided that ---*

- (i) when an original order is confirmed on first appeal, a further appeal shall not lie.*
- (ii) When any such order is modified or reversed on appeal by the Collector, the order made by the Commissioner on further appeal, if any, to him shall be final.*

*Explanation (1):- Omitted*

- (2) An order shall not be confirmed, modified or reversed in appeal unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of or against the order appealed from.*
- (3) No Revenue Officer other than the Board of Revenue shall have power to remand any case in appeal to a lower authority.*

**164. Revision.-** *(1) The Board of Revenue, may, at any time, on its own motion, or on an application made to it within ninety days of the passing of any order, call for the record of any case pending before, or disposed of by, any Revenue Officer subordinate to it.*

*(2) A Commissioner or Collector may, at any time, of his own motion or on an application made to him within ninety days of the passing of any order, call for the record of any case pending before, or disposed of by, any Revenue Officer under his control.*

*(3) If in any case in which a Collector has called for a record he is of opinion that proceedings taken or order made should be modified or*

*reversed, he shall report the case with his opinion thereon for the orders of the Commissioner.*

*(4) The Board of Revenue may, in any case called for under sub-section (1) and 3Commissioner may in any case called for under sub-section (2) or reported to him under sub section (3) pass such orders as it or the thinks fit:*

*Provided that no order shall be passed under this section reversing or modifying any proceedings or order of a subordinate Revenue Officer affecting any person without giving such person an opportunity of being heard.*

*Provided further that any order passed in revision under this section shall not be called in question on an application of the party affected by such order.*

*Provided also that no Revenue Officer other than the Board of Revenue shall have power to remand any case to a lower authority.*

6. In the instant case, the original order of Collector (*Deputy Commissioner*), dated 07.11.1996, whereby the entry was mutated in record of rights in favour of respondent No.6 was maintained on first appeal by the Commissioner vide order, dated 10.01.1998 by rejecting the appeal of the applicants; hence, a revision lied to the Board of Revenue under section 164 of the Act of 1967, which the applicants did not prefer. It may also be observed that Section 11 of Sindh Revenue Jurisdiction Act, 1876 (“**Act of 1876**”) bars jurisdiction of Civil Court to entertain any suit which is filed on account of any act or omission of any Revenue Officer unless plaintiff proves that he has presented appeal allowed by the law for the time being in force within the period of limitation of such suit. Admittedly, applicants have not filed any further appeal or revision before the Board of Revenue under revenue hierarchy calling in question order passed by the Commissioner (Revenue) Sukkur; therefore, the suit of the applicants for declaration and injunction under Specific Relief Act, 1877 was barred under Section 11 of the Act of 1876. Besides, Section 9 of C.P.C. is also not helpful to

applicants for the reason that under the said provision “Courts to try all civil suits unless barred”. For ready reference, the provision of section 9 of C.P.C. is reproduced as under:

*Sec.9—Courts to try all Civil suits unless barred--- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”*

7. Another aspect of the case, which has rightly been deliberated by the Appellate Court, is that the applicants earlier after availing their remedy before the Commissioner (Revenue) Sukkur, though were required to file revision before the Board of Revenue but they filed civil suit No.16/1998, which they withdrew and then they again brought present suit i.e. Suit No.55/1998. Record shows that the counsel for the applicants made a statement for withdrawal of aforesaid earlier suit that *“I withdraw the suit and I will challenge the order of Commissioner dated 10.01.1998.”* The trial Court dismissed the suit as withdrawn. It is clear from the said statement that no permission for filing fresh suit in terms of Order XXIII, Rule 1 (2), C.P.C. was sought by the applicants. A plaintiff has a right to withdraw his suit whenever he desires, but he cannot file a fresh suit on the same subject matter if no permission under said Order is obtained. Hence, in the instant matter, the applicants were precluded by Order XXIII, Rule 1 (3) (*ibid*) from instituting any fresh suit in respect of same subject matter or part of the claim, and they were also precluded by rules from instituting a further suit in respect of same cause of action under section 12(1), C.P.C.

8. As regards to contentions of learned counsel for the applicants, it may be observed that under Order VII, Rule 10, C.P.C. the plaint is returned for its presentation to the Court in which the suit should have been instituted. For examining question of maintainability of the suit or in order to determination of the territorial jurisdiction with reference to or on analogy of provisions of Rule

10 (*ibid*), averments made in plaint are to be taken as a whole with presumption of correctness attached thereto. Learned counsel has failed to make out from the averments of the plaint any case of its return for its presentation to the Court in which the suit should have been instituted. So far, the case of *Athmanathaswami* (*supra*) is concerned, it may be observed that under sub-section (1) of Section 189 of the Madras Estates Land Act, 1908 a District Collector or Collector are authorized to hear the suits of the nature specified in Parts A and B of the Schedule of the said Act as a Revenue Court and no Civil Courts in the exercise of its original jurisdiction is empowered to take cognizance of any dispute or matter in respect of which such suit might be brought or made. In view of such legal position, Supreme Court of India held in said case that the suits by a landlord to recover arrears of rent and to eject a *ryot* (a peasant or tenant farmer) are triable by a Collector and a Civil Court cannot take cognizance of such suits in view of bar contained by the said provision; hence, when the Court has no jurisdiction over the subject matter of the suit, it cannot decide any question on merits; it can simply decide on the question of jurisdiction and coming to the conclusion that it has no jurisdiction over the subject matter has to return the plaint. However, in the case in hand the legal position was/is different, as under the Act of 1967, no Revenue Officer is authorized to hear a suit of whatever nature. Hence, the applicants' case was not that of return of plaint for its presentation to the Court in which the suit should have been instituted, as no such forum was/is available under the law for the institution of the suit on the matter in respect thereof the subject suit was brought by the applicants, but of dismissal of the suit being barred by law. It may be observed that since the applicants' suit carried factual controversies which were to be resolved through eliciting of evidence, examining and analyzing of record and hearing of the parties on merits, it was dismissed after full-fledged trial; otherwise, plaint should have been rejected under Order VII, Rule 11 (d), C.P.C. being barred by law.

9. In the case of *Evacuee Trust Property Board* (supra) the Courts below had wrongly assumed the jurisdiction in spite of the exclusive bar contained under Section 14 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 and the Hon'able Supreme Court of Pakistan held that the orders and judgments of the Courts below were without lawful authority and void; however, in the case in hand, the Courts below by dismissing the suit of the applicants have in fact declined to assume jurisdiction due to exclusive bar contained under the provisions of Act, 1967, Act of 1876, Sections 9, 12 (1) and Order XXIII, Rule 1(3), C.P.C. Hence, the cited case being on distinguishable facts does not advance the case of applicants.

10. For the foregoing facts and reasons, as no case is made out on the ground of any irregularity or exercise of jurisdiction not vested in the Courts below or failure of exercise of jurisdiction vested in it, the impugned judgments of Courts below do not call for any interference or exercise of discretion on any point of law in this case of concurrent findings. Accordingly, the instant revision application is dismissed but with no order as to costs.

JUDGE