

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Civil Revision Application No. S- 31 of 2013

Applicant : *Hazoor Bakhsh*, through
Mr. Iftikhar Ali Arain, Advocate

Respondent No.1 : *Muhammad Ibrahim (Nemo)*

Respondents : *Mukhtiarkar (Revenue) Bhiria & others,*
No. 2,3&4 through Mr. Ali Raza Baloch, Assistant
Advocate General

Dated of hearing : 03.10.2022
Date of order : 03.10.2022

ORDER

ZAFAR AHMED RAJPUT. J.- The applicant herein filed F.C Suit No.157/2010, for specific performance of contract, possession and permanent injunction against the respondents, alleging therein that the agricultural land bearing S.No.500/1 to 4, measuring 16-00 acres, located in Deh Soodhan, Taluka Bhiria, District Naushahro Feroze was owned by the respondent No.1; out of which, he purchased 8-00 acres land through agreement of sale, dated 12.05.2008, for consideration of Rs.2,40,000/- in presence of the witnesses. It was further alleged that the respondent No.1 also sold out remaining piece of 8-00 acres land and received Rs.1,30,000/- on 18.12.2008, Rs.90,000/- on 20.12.2009 and Rs.50,000/- on 03.02.2010 from the applicant, and such subsequent transaction was also incorporated by the respondent No.1 himself in the same agreement of sale. It was case of the applicant that respondent No.1 was bound to perform his part of contract by executing registered sale deed before the Sub-Registrar, Naushahro Feroze but he avoided to perform his part of contract; hence, the cause of action accrued to him to file the aforesaid suit. On being served, respondent No.1 contested the suit by filing written statement, wherein he denied the claim of the applicant by asserting that alleged sale agreement was forged and fabricated. The learned trial Court after framing issues on the

divergent pleadings of the parties and recording evidence of the applicant (*respondent failed to adduce his evidence*) and hearing the learned counsel for the parties dismissed the suit vide judgment and decree dated 30.05.2012 and 02.06.2012, respectively. Against that, the applicant preferred Civil Appeal No.56/2012, which was dismissed by the learned District Judge, Naushahro Feroze, vide judgment and decree dated 26.02.2013 and 01.03.2013, respectively, It is against these concurrent findings of the Courts below that the instant Civil Revision Application has been preferred by the applicant.

2. Learned counsel for the applicant has mainly contended that the impugned judgment and decree passed by the Courts below being against the law, facts and equity are not sustainable in law; that both the Courts below recorded impugned findings in hasty manner without considering the oral as well as documentary evidence of the applicant on record; that the respondent No.1 himself made additional note on the subject sale agreement regarding sale of rest of his (8-00) acres land which was not required to be proved by the applicant; that the alleged sale agreement is a genuine legal document which ought to have been considered by the Courts below, hence, the suit of the applicant was liable to be decreed but the learned Courts below committed error of law and passed the impugned judgments and decrees.

3. On the other hand, learned AAG Sindh has fully supported the impugned judgments and decrees on the ground that the same are well-reasoned and passed by the Courts below after appreciating relevant evidence on record.

4. Heard learned counsel for the applicant, learned AAG Sindh and perused the material available on record.

5. Since the respondent No1 has denied execution of alleged sale agreement, burden lies upon the application to prove its execution. It is an admitted position that the alleged sale agreement, dated 12.05.2008, bears the

first transaction of sale of subject agricultural land admeasuring (8-00) acres, which was scribed by PW Saleem Bhurt wherein PW Ghulam Shabbir and Sikander acted as attesting witnesses, while the subsequent additional note pertains to 18.12.2008 regarding sale of remaining (8-00) acres of agricultural land and receiving of certain payments. In this regard the scribe Saleem Bhurt has clearly stated that the alleged stamp paper was not purchased from his shop but the parties had brought the same after purchasing it from another shop and he had reduced into writing the sale agreement and not the subsequent additional notes; so also, both the aforementioned attesting witnesses of the alleged sale agreement have shown their ignorance about the additional note of the sale agreement. In this regard the relevant findings of the Appellate Court are reproduced, as under:

“From the perusal of the above evidence it reveals that there are major and material contradictions and discrepancies in the evidence of the appellant/plaintiff and his witnesses and they have contradicted to each other on the material facts and circumstances of their evidence, because of the reason that the appellant/plaintiff has deposed that remaining amount was also paid by him to the respondent No.1/defendant No.1 in presence of the witnesses named above, whereas the above both witnesses have clearly deposed that they do not know about the payment of the remaining or another note on the sale agreement and the appellant/plaintiff has deposed that stamp paper was purchased from shop of Saleem Bhurt, whereas said Saleem Bhurt who is stamp vendor has deposed that it was not purchased from his shop, but the parties had brought the same after purchasing it from another shop. Not only this, but although the appellant/plaintiff and PW Ghulam Shabbir claimed that Saleem Bhurt had reduced into writing the stamp paper, whereas PW Sikander has deposed that it was reduced into writing by Shahabuddin Shaikh the stamp vendor. PW Ghulam Shabbir has deposed that they had proceeded towards Naushahro Feroze, on the car of the respondent No.1 / defendant, whereas PW Sikander deposed that they had gone to Naushahro Feroze on the motorcycle. PWs Ghulam Shabbir and Sikander deposed that the talks were held at village Jalbani, whereas appellant/plaintiff has deposed that the talks were held at shop of stamp vendor. Furthermore the alleged

agreement of the sale is not bearing the copy of CNIC of respondent No.1/defendant No.1, which may certify that actually it was made by respondent No.1/defendant No.1 or not. Moreover the appellant/plaintiff failed to call said Shahabuddin Advocate/ Notary Public to corroborate the version of the appellant/plaintiff who is a marginal witness of the appellant/plaintiff, therefore, under these facts and circumstances, I am of the humble view that the sale agreement dated 12.05.2008 is managed by the appellant/plaintiff and the appellant/plaintiff failed to prove the same. I have also gone through the findings recorded by learned trial Court on issues No.1 and 2 and I am of the considered view that the same are up to the mark and specifically recorded and given the findings, which do not require any sort of interference, hence the reply of issues No.1 to 3 is in "Negative."

6. The learned counsel for applicant has failed to rebut aforementioned findings of the learned Appellate Court; even he could not satisfy the Court on the query regarding endorsement of alleged subsequent transactions after a considerable period, which could have been recorded by executing a subsequent sale agreement in accordance with law. The points raised by the learned counsel for the applicant in his arguments have already been discussed by the learned Appellate Court with sufficient reasoning which do not need reappraisal of this Court.

7. For the foregoing facts and reasons, I do not find any illegality or irregularity in the impugned judgment and decree requiring any interference of this Court in its revisional jurisdiction under Section 115 of the C.P.C for interfering in the concurrent findings of the Courts below on issue of facts, hence this Civil Revision Application is dismissed accordingly, along with listed applications.

Judge

ARBROHI