

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

Civil Revision Application No. 155 of 2003

Applicants : Khalid Mehmood & another through
Mr. Noor Ahmed Memon, Advocate.

Respondents No.1 & 2 : Ramzan & Allah Dino through Mr. Prakash
Kumar, Advocate.

Respondents No.3 to 6 : Through Mr. Rafique Ahmed Dahri, Asst.
A.G Sindh.

Date of hearing : 15.05.2023; 29.05.2023 & 01.06.2023

Date of Judgment : 02.06.2023

JUDGMENT

Muhammad Junaid Ghaffar, J:- Through this Civil Revision Application, Applicants have impugned judgment dated 27.10.2003 passed by 2nd Additional District Judge, Badin in Civil Appeal No.63 of 1999, whereby, the judgment dated 26.11.1999 passed by Senior Civil Judge Golarchi @ Badin in F.C Suit No.62 of 1998, through which the suit of the Applicants was decreed has been set-aside by dismissing their Suit.

2. Heard learned counsel(s) for the parties and perused record. It appears that the Applicants filed a Suit for declaration and permanent injunction wherein they sought the following relief(s):-

- a) *That this Honourable Court may be pleased to declare that plaintiffs are legally entitled and lawful owners of S.Nos.42, 40/AB, 47/AB, 55, 56, 173, 176, 177, 181 and 186 total area 46.05 acres of Deh Buhri, Taluka Tando Bago which are purchased through registered Sale Deed for the consideration of Rs.2,13,500/- followed by mutation in Record of Rights vide entry No.44 dated 21.03.1992 in favour of plaintiffs.*
- b) *To declare that the order dated 3.4.1994 passed by Additional Commissioner-I, Hyderabad Division holding disputed land as surrendered land and orders dated 22.10.1996 and 29.01.1997 passed by learned Member (J) Board of Revenue Sindh Hyderabad holding that the land has not been allotted to the claimant by the competent authority, are illegal, void, malafide, bad in law, without jurisdiction and nullity in the eyes of law.*

- c) *To grant permanent injunction against the defendants, thereby restraining the official defendants from dispossessing of the suit land in suit and the defendants No.5 and 6 may be restrained from interfering with possession of suit land of plaintiffs, directly or indirectly, personally or through their agents, servants or subordinates i.e. in any way manner whatsoever.*
- d) *The costs of the suit be borne by defendants.*
- e) *Any other relief which this Honourable Court deems fit and proper may also be awarded.*

3. It further appears that earlier one Khamiso the father of private Respondents herein (who was not a party to the Applicants Suit) had also filed a Suit which was the leading Suit and the trial Court formulated the following consolidated issues: -

1. *Whether the suit is government Naqabooli land?*
2. *Whether Khamiso and their sons are in possession of the suit land, if yes, in what capacity?*
3. *Whether Janan was not owner of the suit land?*
4. *Whether register sale deeds in favour of Khalid Mehmood and Ghulam Hyder are illegal and void?*
5. *Whether the Khalid Mehmood and Ghulam Hyder are not in possession of the suit land?*
6. *Whether suit land granted by C.O.S.B Hyderabad vide order dated 31.10.1992, was during pendency of status-quo in favour of Ramzan and Allah Dino are legal and valid?*
7. *Whether order dated 30.10.1992 of C.O.S.B Hyd, order dated 30.10.1994 of M.B.R Hyderabad and order dated 19.03.1997 of M.B.R Hyderabad are legal and valid?*
8. *Whether the suit of Khamiso is maintainable under the law?*
9. *Whether the suit of Khalid Mehmood & other is maintainable under the law?*
10. *What should the decree be?*

4. It is important to note that at the time of arguments, the leading Suit No.125 of 1998 (Old No 81 of 1992) was withdrawn by Plaintiff and none, including the present Respondents had objected to such withdrawal. Therefore, notwithstanding the said withdrawal, the present Respondents, impliedly consented for decision of the Applicants Suit on the basis of available evidence, whereas, the learned trial Court had passed an order on 26.11.1999 to the effect that as a consequence of withdrawal of the leading Suit, *“as the evidence in both suits are part and parcel of this Suit therefore for the proceeding of this case specially the evidence part to be treated as part of Suit No.62 of 1998”*. This order was accepted by the present private

respondents and even during arguments, while confronted, learned Counsel for the said private Respondents has conceded to this aspect of the matter; however, contended that the Applicant / Plaintiff has to succeed on its own evidence which they have failed as held by the Appellate Court. To this legal aspect there is no cavil. Per settled law, where the evidence of plaintiff was self-contradictory and not confidence inspiring then he must fail and where the case is doubtful, the decision must be given in favour of defendant rather than the plaintiff and it is also a well settled exposition of law that the plaintiff must succeed on the strength of his own case rather than the weakness of the defendant¹.

5. Perusal of the record further reflects that the learned trial Court after exchange of pleadings and recording evidence came to the conclusion that the Applicants had made out a case and accordingly their suit was decreed by answering the above issues in their favour. The said judgment and decree was then appealed by the private respondents and the learned Appellate Court through impugned judgment has been pleased to set-aside the judgment of the trial Court and as a consequence thereof the Applicants' suit stands dismissed. It would be advantageous to refer to the relevant findings of the Appellate Court which reads as under: -

"10. The case of the respondents No.1 & 2 is that the suit land was purchased by them from its claimant Janan son of Dondi through his General Power of Attorney namely Qassim Ali Khan son of Ajmeeri Khan Qaimkhani through a registered sale deed and such entry No.44 dated 21.3.1991 in favour of the respondents No.1 & 2 was made in record of rights. In support of their claim, the respondents No.1 and 2 examined respondent Ghulam Hyder and one witness Mehmood Khan. On the contrary, the appellant's claim is that the suit land was in the first instance allotted to one claimant Muti Rehman which later on was surrendered after promulgation of MLR 89-91 and was not repurchased by said Muti Rehman hence it was kept in Government Pool, thereafter, the same was granted to their father being its sitting tenant and the said Janan was a fictitious person and the document in his name were manipulated by the respondents No.1 & 2. Thus it was for the respondent No. 1 & 2 to prove that they were bonafide purchasers of the suit land through registered sale deed. The respondents No.1 & 2 are only in possession of the Record of Rights Entry No.113 in the name of alleged claimant Janan. Ex.76 order of the Assistant Settlement Commissioner (Land) Hala Sub-Division Hyderabad Ex.153, and Certificate issued by Assistant Rehabilitation Mukhtiarkar and Assistant Settlement Commissioner (lands) Division Hyderabad Ex.154, registered sale deed Ex.157 and on the contrary, the appellants have vehemently denied the claim of the respondents No.1 & 2 and they have alleged that the alleged claimant Janan was a fictitious person and in fact the documents in his name were manipulated and forged by the respondents No.1 & 2. Ex.128 is the order of Colonization Officer Sukkur Barrage, Hyderabad whereby the suit land was granted to the father of the appellants. Ex.129 is the order of Additional Commissioner, II Hyderabad whereby the Petition of the respondents No.1 & 2 was dismissed in respect of the suit land with observation that

¹ Nasir Ali v Muhammad Asghar (2022 SCMR 1054)

the suit land was to be disposed off by the Colonization Officer as it was surrendered land. Ex.130 is order of Member (Judicial) Board of Revenue Sindh Hyderabad whereby the petition of respondents No.1 & 2 was dismissed with the observation that the suit land was State land and it should be disposed of by the Barrage authorities according to the existing land grant Policy. The Ex.131 is Record of Rights Form-B wherein the suit land has been shown to have been allotted to the father of appellants forever on harip conditions. These all are the documentary facts brought by the parties on record.

11. The perusal of the above documents shows that the suit land was firstly allotted to one claimant Muti-ur-Rehman and later on it was surrendered after promulgation of MLR-89-91 and was not repurchased by said Claimant Muti-Rehman hence it was kept in Government pool. Thereafter, the same was granted to father of the appellants namely Khamiso by the competent authorities. The alleged sale deed entry made on its basis and the entry in the name of said Claimant Janan are false and manipulated for several reasons.

12. It is said that the suit land was owned by claimant Janan but not a single document in respect of his claim has been brought to record by the respondents. Mere entry No.113 showing the suit land to have been allotted to said claimant Janan cannot be ipso facto considered sufficient proof to conclude that the suit land was allotted to him under Claim particularly in presence of overwhelming evidence produced by the appellants in shape of the orders of Revenue authorities. The respondents No.1 & 2 even did not make any application to the lower Court for calling the rehabilitation record viz. L.R-2 Register. On the contrary, the appellants have successfully proved their contention that the suit land was granted to them as its sitting tenants by the competent authorities in the year 1992 and the orders of the Revenue Officers in respect of the grant of suit land in their favour were proper and in accordance with procedure. It is the case of respondents No. 1 & 2 that they purchased the suit land from its claimant Janan through registered sale deed through attorney of Janan namely Qassim Ali Khan but neither the said attorney Qassim Ali has been examined nor the General Power of Attorney allegedly executed by Janan in favour of Qassim has been produced by the respondents No.1 & 2. Besides the entry in record of rights in the names of respondents No.1 & 2 on the basis of registered sale deed has not been brought to record. A Photostat copy of entry No.44 dated 21.3.1992 showing the suit land entered in record of rights in names of respondents No.1 & 2 on the basis of registered sale deed was attempted to be produced by the respondents No.1 & 2 in their evidence but the same was not allowed by trial court, as such, this entry cannot be considered and the same is excluded out of consideration. For the reasons recorded herein above, I am of the opinion that the suit land was legally granted to the father of appellants by the Revenue Officers as per Land Grant Policy after observing all the procedural formalities and the entry in the name of claimant Janan in record of rights and subsequently the entry in record of rights in the name of respondent No.1 & 2 on the basis of sale deed allegedly executed in their favour by the attorney of Janan namely Qassim Ali are false, bogus and manipulated".

5. The precise case as set-up on behalf of the present Applicants in their plaint was to the effect that they be declared as the lawful owners of the suit property which was purchased by them from one Janan S/o Doondi (who was purportedly granted the suit land in satisfaction to his claim vide entry No 113 dated 3.6.1966), through a registered sale deed followed by a mutation in their favour. They further sought a declaration that order(s) passed by the revenue

authorities dated 3.4.1994; 22.10.1996 and 29.01.1997 (the dates seem to be incorrect as perusal of such orders reflect that they are dated 30.3.1994 and 28.10.1996), were illegal, void, malafide and without jurisdiction. The learned trial Court came to a conclusion that since a registered sale deed was already available in favour of the present Applicants, hence, the order(s) passed by the revenue authorities cannot be sustained and accordingly the suit was decreed.

6. On the other hand, the Appellate Court observed that since the Applicants, notwithstanding holding a sale deed in their favour, had failed to establish as to how their predecessor in interest i.e. Janan owned the suit land in question and therefore, the judgment could not be sustained.

7. After perusal of the record and the judgment(s) of the two Courts below, in my considered view, the Appellate Court was fully justified in holding so. Admittedly, the Applicants claimed that the property was purchased by them by way of a sale deed executed by Janan; however, it is also an admitted position that such sale deed was never executed by a Janan himself but through an attorney namely Qasim Ali Khan. Insofar as the Applicants are concerned, firstly, they never joined their seller i.e. Janan or his attorney as a party to the proceedings. Secondly, in evidence, they failed to produce Janan or his attorney so as to establish the genuineness and bonafide of their claim. A pertinent question was asked from their witness DW-1 (Applicant No.2 Exh-152) in this regard and he stated that "*It is fact that above Janhan have not been appeared in any Court proceedings*" Moreover, they also failed to produce the original title of Janan on the basis of which they claimed that a sale deed was executed. It has further come on record and also noted in the impugned order that to prove their revenue records and the purported sale deed etc., the Applicants never made any effort to bring in any official witness to establish the very correctness of these documents. This was necessary, as three Revenue orders were against them, wherein it was held that the main / master entry regarding allotment of land to the claimant Janan is not a matter of record. This shifted the entire burden on the Applicants to first establish the ownership of their seller, notwithstanding the fact they were holding a registered sale deed through his purported Attorney. These facts do not appear to be in dispute insofar as the Applicants' case is concerned. It would also be advantageous to reproduce the cross examination of witness of the Applicants namely Ghulam Hyder which reads as under:-

“It is fact that suit land were originally owned by one Hindu Kirshan Lal. It is incorrect to suggest that later on above land was granted to Matee ur Rehman in lieu of his claim. It is incorrect to suggest that because of Martial Law order above Matee ur Rehman has surrendered suit land. And then he has not purchased. It is incorrect to suggest that since then suit land become government land. It is incorrect to suggest that prior to partition of subcontinent, Khamiso and his son were hari of suit land. It is incorrect to suggest that still they are in possession of the suit land. It is incorrect to suggest that the person named Jannan is not available but this is fictitious person, this land in collusion of Mukhtiarkar Record was prepared. It is fact that above Jannan have not been appeared in any Court in proceedings. It is incorrect to suggest that Civil Suit filed by Khamiso in the Court of Civil Judge Tando Bago was ended in his favour. It is incorrect to suggest that suit land being government was available for grant of landless haries. It is incorrect to suggest that still we are required by police in fraud case relating to dispute of suit land. It is incorrect to suggest that we never remained in possession of suit land at any time. It is incorrect to suggest that we have not made any single pai in respect of purchase of the suit land. It is incorrect to suggest that R.O have granted suit land in favour of Ramzan and Allah Dino in legal manner. It is incorrect to suggest that Khatooni issued in favour of Jannan is manipulated. It is incorrect to suggest that on the basis of Khatooni the sale deed are false and manipulated. We have no any other land in the same Deh. It is incorrect to suggest that we have got manipulated false revenue receipts in collusion with the Mukhtiarkar which is produced by me. It is incorrect to suggest that orders of R.O and Addl. Commissioner are legal. It is incorrect to suggest that Member Board of Revenue have rightly cancelled the entries of suit land in favour of Khalid Mehmood and Ghulam Hyder. It is incorrect to suggest that in the year 1996 we have made attack on the houses of Khamiso. It is incorrect to suggest that the case filed by them is correct. It is incorrect to suggest that above all cases including this case are filed to make pressure on Khamiso and his sons to usurp the lands. It is incorrect to suggest that I am deposing falsely”.

8. Mere holding a registered sale deed without any ownership documents or supporting material of the seller would not ipso facto warrant a declaration that Applicants are lawful owners of the property in question. More so, when the order(s) passed by the revenue authorities have established that there was no such proven allotment in favour of the predecessor in interest of the Applicants. It was incumbent upon the Applicants to bring in evidence not only their predecessor in interest as apparently their entire sale deed is dependent on a power of attorney, whereas, neither the power of attorney was produced as an Exhibit by the said attorney; nor he or Janan, the purported original owner was brought or examined before the Court as their witnesses. The law to this effect is also settled that a mere mutation entry or even a sale deed would not prove the original title of a disputed property. In the case of *Nasir Ali*² it has been held as follows by the Supreme Court;

10. The learned counsel for the respondent relied on the case of *Muhammad Akram and another v. Altaf Ahmad* (PLD 2003 SC 688), in which this Court held that once a mutation is challenged, the party that relies on such mutation(s) is bound to revert to the original transaction and to prove such original

² 2022 SCMR 1054

transaction which resulted into the entry or attestation of such mutation(s) in dispute. The burden squarely lay on him to prove the transaction because the existence thereof has throughout been alleged by him in affirmative. He was bound to fail in the event of the non-proof of transaction. He also referred to the case of Rehmatullah and others v. Saleh Khan and others (2007 SCMR 729), in which this Court held that it is settled law that entries in the mutation registers are by themselves not conclusive evidence of the facts which they purport to record. It is settled law that any person who is acquiring title through mutation, the burden of proof of proving transaction embodied in the mutation is upon him. It is also settled law that mutations by themselves do not create title and the persons deriving title thereunder have to prove that the transferor did part with the ownership of the property, the subject of mutation in favour of the transferee and that the mutation was duly entered and attested as law laid down by this Court in the case of Hakim Khan v. Nazeer Ahmed Lughmani and 10 others (1992 SCMR 1832) and Niaz Ali and 16 others v. Muhammad Din through Legal Heirs and 13 others (PLD 1993 Lahore 33). It is settled law that an attested mutation may carry a rebuttable presumption. See Karam Shah v. Mst. Ghulam Fatima and 3 others (1988 CLC 1812) and Ghulam Muhammad v. Mukhtar Ahmad and others (1992 MLD 1335). Mutation is to be proved through evidence of title. Whereas this Court in the case of Arshad Khan v. Mst. Resham Jan and others (2005 SCMR 1859) held that there is no cavil to the proposition that the presumption of truth is attached with the Revenue Record but this presumption is always rebuttable. ***This is settled law that the mutation itself does not confer or extinguish any right or title and if the mutation on the basis of which right in the property is claimed, is disputed, the onus of proving the correctness of mutation and genuineness of the transaction contained therein would be on the party claiming right on the basis of such mutation.*** While in the case of Muhammad Bakhsh v. Zia Ullah and others (1983 SCM 988), it was held that the entries of the revenue record like the Jamabandi do not provide the foundation of title in property but are mere items of evidence to prove title Wali Muhammad v. Muhammad Bux (AIR 1930 PC 91). They have a presumption of correctness which is rebuttable. ***The moment during scrutiny one reaches the transaction on the basis of which a change in the revenue record has been brought about then it is not the record but the transaction itself, not the secondary source but the primary one, which becomes the foundation of all claims and rights.*** It is clear that in the two cases before us, the justification for the entries in the revenue record showing the plaintiffs as co-sharers or owners was an oral transaction of purchase given effect to by a mutation in contravention of Section 54 of the Transfer of Property Act. Such a transaction must satisfy the legal requirements and it is only when its conformity to law is established that title to property is created, legal rights and liabilities come into existence.

9. The aforesaid observations and law settled is fully attracted to the present set of facts in hand. As noted, the Applicants had failed to rebut the stance taken by the official Respondents and the findings recorded in the impugned orders. Therefore, even if sale deed is in their names, it is not always a case that it should be accepted without looking into the title of the executant. At best, the Applicants had a case against the said executant for having sold them a property which he didn't own lawfully; but this was never their case. They all along tried to prove his ownership on the basis of their own sale deed, whereas, non-joining of the seller and his attorney was also fatal insofar as leading proper evidence is concerned. At least they could have been brought in as Applicants witnesses. However, this was also not done; therefore, they miserably failed to discharge the burden and consequently, the findings in the impugned orders have gone unrebutted.

10. As to the order(s) passed by the revenue authorities, it further appears that insofar as the respondents are concerned, there is no such final allotment or any order in their favour which could give rise to a cause of action for the present Applicants. In fact, their last attempt to seek a review was also declined along with the review filed by the present Applicants vide a common order dated 19.3.1997. It was held that the suit land was never allotted to the claimant i.e. Janan by the competent authority under any law, or to the predecessor in interest of present Respondents, whereas the land in question is a state land and was ordered to be disposed of by the Barrage Authority according to Land Grant Policy once the ban already imposed is lifted. So in all fairness the respondents were never declared as owners; rather the land in question being state land was directed to be disposed of in accordance with law.

11. In view of hereinabove the facts and circumstances of this case, it appears that the learned Appellate Court was fully justified in passing the impugned judgment whereby the judgment and decree of the trial Court dated 26.11.1999 has been set-aside; hence, no case for indulgence is made and therefore, this Civil Revision Application stands ***dismissed*** accordingly.

Dated 02.06.2023

JUDGE

****Hafiz Fahad****