

*JUDGMENT SHEET*

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

**Civil Revision Application R. A. No. 114 of 2005**

**Date of hearing**                      **03.04.2023.**

**Date of Judgment:**                **03.04.2023**

Applicants:                      Through Mr. Murtaza A. Arab Advocate for applicants.

Respondents:                    Mr. Allah BachayoSoomro, Additional Advocate General Sindh.

**J U D G M E N T**

**MUHAMMAD JUNAID GHAFAR, J.-** Through this civil revision application the applicants have impugned Judgment dated 02.04.2005, passed in Civil Appeal No.05 of 2004 by Additional District Judge Tharparkar at Mithi, whereby the appeal has been allowed by setting aside the Judgment dated 24.12.2003 passed in First Class Suit No.32 of 2001 by the Senior Civil Judge Mithi through which the suit of the respondents was dismissed.

Heard learned counsel for the applicants and perused the record. Insofar as respondent is concerned they stand served through publication as well as bailiff but nobody has turned up. It appears that the appellate court while passing the impugned Judgment has apparently failed to give any independent finding of its own in respect of the issues settled by the trial court and has rather reproduced such finding in its entirety except in respect of issue No.1 wherein certain observations have been made. The relevant finding of the appellate court in respect of issue No.1 is as under:-

*“Learned trial court further observed that, since plaintiff and his brothers failed to challenge the orders passed by Deputy Commissioner Mirpurkhas and Additional Commissioner Hyderabad, by filing any revision or civil suit, the status of the land becomes the property of defendant No.1 and hence same cannot be said to be joint property. That, the learned trial court has not decided this issue properly, as plaintiff in cross examination has denied that, defendant never filed any appeal before Deputy Commissioner Mirpurkhas in the year 1978 and same decided on 02.02.1980. Learned trial court has also not taken into consideration that, in the light of documents produced by plaintiff viz Ex.No.79, which reveals that, survey Nos. 87, 55, 49 & 132 are owned by Manyo, whereafter ‘foti-khata’ was taken place, if plaintiff or his brothers due to innocence failed to challenge order passed by Deputy Commissioner Mirpurkhas or Additional Commissioner Hyderabad, then property can be said that, it is in the possession of defendant and they are owners of the suit land and same is not joint property. These observations of the learned trial court needs to be interfered. Hence, are not maintainable and are set-aside.*

The appellate court has, on its own observed that even if the respondents or their brothers have failed to challenge the orders of the Additional Commissioner Hyderabad any further, that is mere innocence on their part, and not only that, after holding it to be mere innocence, it has been further observed by the appellate court that the property would be deemed to be jointly owned and in possession of the respondents as well. I am afraid such finding of the appellate court has been arrived at in total disregard to the settled proposition of law. If the respondents had opted to challenge the order of the Deputy Commissioner Mirpurkhas by way of a representation or appeal before the Additional Commissioner, then it was incumbent upon them to take further remedy and could not have abated the same. It is the case of the applicants that such order was passed somewhere in 1983 and without disclosing such fact they filed suit in the year 2001. The settled principles of the *doctrine of election*<sup>1</sup> denote that the election to commence and follow an available course, from concurrent avenues, vests with a suitor, however, once an option is exercised then the suitor is precluded from re-agitating the same *lisin* other realms of competent jurisdiction. Besides the above finding, the appellate court, has failed to give any independent reasoning of its own; rather it is mere reproduction of the finding recorded by the trial court.

In view of such facts and circumstances the impugned order of the appellate court cannot be sustained and is hereby set-aside, and as a consequence thereof this Revision application stands allowed.

JUDGE

A.

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<sup>1</sup>Per *MushirAlam J* in *Trading Corporation of Pakistan vs. Dewan Sugar Mills Limited & Others* reported as *PLD 2018 Supreme Court 828*