

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

R.A No. 20 of 2020

[Mst. Razia Bibi and another v. Saeed Gul alias Said Gul & others

Applicants : Mst. Razia Bibi and Mst. Shah Meva through L.Rs
through Mr. Muhammad Sulleman Unar, Advocate

Respondent : Saeed Gul alias Said Gul and other through Mr. Javed A.
Aslam Buriro, Advocate

Mr. Allah Bachayo Soomro, Addl.A.G.

Date of Hearing & Order : 09.10.2023

ORDER

ARSHAD HUSSAIN KHAN, J -. Through instant Civil Revision Application, the applicants have called in question the judgment dated 02.12.2019 passed by learned 2nd Additional District Judge, Sanghar in Civil Appeal No. 145 of 2017, whereby the learned Judge while dismissing the appeal maintained the order dated 24.11.2017 passed by learned 1st Senior Civil Judge, Sanghar on an application moved by respondents 1 to 6 / defendants 1 to 6 under Order VII Rule 11 CPC in F.C. Suit No. 59 of 2017 filed by the applicants.

2. Brief facts of the case as per memo of plaint are that the applicants / plaintiffs filed suit for declaration, cancellation, possession, mesne profit, mandatory and permanent injunction asserting therein that suit land bearing Survey Nos. 32/1 to 16, 33/1 to 16 total area 32-00 acres situated in Deh Samathri Taluka & District Sanghar originally belonged to the father of plaintiffs & defendants Nos. 1 to 4, which was allotted to him by MFRO from Defense quota, being retired Army person who died on 21.05.1990 leaving behind the plaintiffs and defendant Nos. 1 to 4 as his surviving legal heirs; that defendant Nos. 1 to 3 with the collusion of Revenue Staff got changed the Khata of suit land in their names on the basis of forged gift statement vide Entry No:1696/263 dated 04.03.1987, hence, the above suit was filed.

3. Upon service defendant Nos. 1 to 3, 5 & 6 filed joint written statement and defendant No.4 filed her separate written statement; while the official defendants did not contest the suit. In their written statement defendant Nos. 1 to 6 denied the claim of plaintiffs and submitted that [late] Qadeem Gul in his life time with his free will gifted out the suit land to defendant Nos.1 to 3 vide gift

statement dated 04-03-1987, such mutation was made in the record of rights in favour of defendant Nos. 1 to 3. The defendant Nos. 1 to 3, 5 & 6 filed applications U/O VII Rule 11 C.P.C as well defendant No.4 filed separate application U/O VII Rule 11 CPC which after hearing the counsel for both the parties was allowed and resultantly rejected the plaint. An excerpt of the order is reproduced as under:-

“ Perusal of record shows that plaintiff seeks cancellation of Entries dated 04.03.1987 after a period of 30 years which is time barred because law provides that the aggrieved party may approach to Revenue Department within a period of 15 days for challenging the Entry in Revenue Record.

Apart from this suit for cancellation of such Entries can be filed within a period of three years as provided Under Article 91 of Limitation Act. Even Article 120 provides a period of six years for filing such suits for declaration. In present matter the plaintiffs have filed this suit after a period of 30 years which is against the law. It is a law point and in such cases Limitation point cannot be ignored.

Merely dragging any person in civil litigations is against the law. Admittedly suit is hopelessly time barred and falls under the purview of Limitation Act as it has been held in case reported in NLR-2008 Civil Karachi-250, which reads as under:-

Question of limitation is always not mixed question of law and fact. Where question of limitation is apparent on face of record, Court can proceed without any further inquiry. Matters of limitation cannot be left to pleadings of parties. A duty is imposed on Court to notice the point of limitation, whether the plea of limitation was or was not raised (NLR-2008 Civil KAR-250).

Further it is not a case of inheritance because late Qadeem Gul in his life time gifted the suit land to his sons on 04.03.1987 and Khata were mutated in record of rights in their names. Moreover these Entries/Gift Statement have not been challenged during life time of Late Qadeem Gul, even late Mst: Razia Bibi and Mst: Shah Meva the daughters of late Qadeem Gul also never challenged these Entries in their life time, but now the legal heirs of late Mst: Razia and Mst: Shah Meva filed this suit after a period of 30 years. Besides of this defendant No:4 Mst: Taj Begum through his written statement asserted that her father in his life time gifted the suit land on 04.03.1987 vide Entry No:1696/263 to defendants No:1 to 3 his sons. The legal heirs of plaintiffs also filed Revenue Appeal and same was also dismissed vide Order dated 07.06.2017 but inspite of that the plaintiffs did not adopt the proper Forum to file further Appeal as per law. The plaintiffs have filed this incompetent suit.

It is well settled law reported in 2002 SCMR-338 that “it is requirement of law that incompetent suit shall be buried at its inception. It is in the interest of litigated party and Judicial Institution itself. The parties are saved with their time and unnecessary expenses and code to get more time to devote it for genuine causes”.

In the light of above discussion the above application stands allowed and resultantly the plaint is rejected U/O 7 Rule 11 C.P.C with no order as to costs.”

4. The said order was subsequently challenged by the applicants in Civil Appeal No. 145 of 2017 before learned 2nd Additional District Judge, Sanghar. On 02.12.2019 the said appeal was also dismissed with following observation:-

11). In view of above discussion, the suit of plaintiffs/appellants is time barred and not maintainable, having no cause of action to file the suit and the plaint of their suit was/is liable to be rejected u/o 7 Rule 11 CPC being time barred, it was the duty of trial Court to notice the point of limitation that a suit for declaration can be filed within six years and limitation period for cancellation of document is three years. It has been held in case of Yakoob V/S Mst. Zamrud Bano reported in 1986-NLR-Karachi-398;

(b) Limitation Act (ix of 1908. Art. 91. Specific Relief Act (I of 1877), S. 39- cancellation of sale deed- Suit filed in 1973 for cancellation of sale deed executed in 1961, held would be time barred- such suit would be filed within three years of execution of

sale deed (1402)

It has also been held in case reported in PLJ-2008-Karachi-127;

Question of limitation is not a mixed question of law and facts and where the question of limitation is apparent on the face of record the court can proceed without any further inquiry.

It is also held in case reported in NLR-2008 Civil Karachi-250;

Question of limitation is always not a mixed question of law and facts. Where question of limitation is apparent on face of record, the Court can proceed without any further inquiry. Matters of limitation cannot be left to pleadings of parties. A duty is imposed on Court to notice the point of limitation, whether the plea of limitation was or was not raised.

12). Upshot of the above discussions is that the impugned order passed by learned trial Court while allowing the Application and rejecting the plaint of appellants/plaintiffs U/O 7 Rule 11 C.P.C is legal and proper, which is hereby maintained. Resultantly, the appeal in hand stands dismissed with no order as to costs.

5. Against the aforesaid concurrent findings the applicants have now preferred the present revision application.

6. Learned counsel for the applicants while reiterating the facts has contended that the impugned decisions of the courts below are against the law and facts; that applicants are admittedly the legal heirs of [late] Qadeem Gul and they have been deprived of the inheritance on the basis of alleged gift statement which is doubtful, there is no signature of attesting witnesses on the alleged gift statement and according to Section 123 of the Transfer of Property Act 1882 the alleged gift statement is not complete; that according to Martial law regulation, entire land cannot be gifted and in the instant matter, entire land has been gifted out, hence, it is also violation of Martial Law Regulation; that the trial Court without assigning any valid reason rejected the plaint U/O VII rule 11 C.P.C holding that the suit of plaintiff is hopelessly time barred but in fact the suit of

the plaintiffs was within time as there was no limitation in the case of inheritance and in the present suit the plaintiffs have claimed their share from their father's property. The trial Court has to decide the matter on merits after recording evidence as the limitation is also a mixed question of law and facts but the trial court totally ignored the averments of the plaint and committed illegality in rejecting the plaint under Order VII Rule 11 C.P.C. that the appellate court also endorsed the decision of the trial court; hence both require interference by this Court and are liable to be set-aside. In support of his contention learned counsel relied upon the cases reported in 2020 SCMR 352 and 2018 SCMR 1402

7. On the other hand, counsel for respondents vehemently opposed the argument put forth by the counsel for applicants. He while supporting the impugned orders has contended that the impugned order is well reasoned and within the parameters of law as such no interference is required by this court. Learned counsel in support of his arguments has relied upon the case reported in 2023 SCMR 1402. Learned Addl. A.G also supported the impugned decisions.

8. I have heard the arguments of learned counsel for the parties as well as Addl. A.G and perused the material available on record with their assistance.

9. Precisely, the case of the applicants is that the alleged gift in favour of respondent Nos. 1 to 3 is outcome of fraud committed by the said respondents with the connivance of official respondents, resultantly they were deprived from of their share of inheritance in the subject property left by their deceased father (died on 21.05.1990), as such seeks cancellation of gift statement and mutation entries recorded in the year 1987.

10. Record reflects that the alleged gift was made on 04.03.1987 by the father of the parties namely Qadeem Gul who subsequently died on 21.05.1990. Thereafter, the widow of [late] Qadeem Gul was also expired in the year 2009. Whereas the present applicants filed suit for cancellation of said entries in the year 2017 after approximately after 30 years without explaining plausible reason for such delay. Record also reflects that deceased Qadeem Gul at the time of his death had left behind widow, three sons and three daughters as his legal heirs. Out of three daughters one namely Shah Meva expired on 31.03.2011 whereas Mst. Taj Begum (respondent No.4) filed her affidavit in the suit stating that her father gifted the property in favor of respondents 1 to 3 after consultation with his sons and daughters and further the respondents have not committed any fraud in this regard. Moreover, the respondents are in possession of the property and there is nothing on record to suggest that they ever paid share of produce to the applicants / plaintiffs.

11. Admittedly, the father of applicants remained alive approximately for three years after the alleged gift and mutation but he did not challenge the veracity and legality of said gift and mutation in his life time. Further the said gift was also neither challenged by the mother of applicants nor her sister namely Shah Meva in their lifetime. On the contrary one of the sisters namely (Mst. Taj Begum) through her affidavit denied the claim of present applicants. Since [late] Qadeem Gul in his life time did not seek cancellation and allowed the applicable period of limitation to lapse, as such no fresh limitation could be made available to the present applicants being one of the legal heirs of said Qadeem Gul to seek cancellation of gift and mutation of record in 1987. The applicants had no locus standi to challenge the legality of (gift) mutation on a vague allegation of fraud when the donor had never challenged the same in his life time and the mutation had been given effect in the revenue record. Thus the challenge made by the applicants in 2017 to the gift and mutation entries of 19987 based on their inheritance was clearly barred by time as concurrently held the courts below.¹

12. It has now been settled that the question of limitation is not a mere technicality rather it goes to the roots of litigation until it is proved that cause of action was agitated within a time prescribed by law².

13. Insofar as the contention of learned counsel for applicants is concerned with regard to the question of limitation is a mixed question of fact and law, as such the trial court in order to resolve the controversy had to record the evidence. It may be observed that the question of limitation rests on the circumstances explained in the pleadings, inasmuch as it has two- fold implications; and being a pure question of law, at times, it becomes mixed question of fact and law particularly when disputed facts in regard to reckoning of limitation from the acquisition of knowledge or origin of the cause of action from a specific date, need probe by recording evidence. Recording of evidence is not mandatory when the averments of the pleadings are silent regarding the factum of case being barred by limitation and recording of evidence cannot be permitted when the pleadings did not disclose any disputed question of fact for application of mixed question of fact and law nor was there any factual controversy as to the limitation, to be set at rest in the suit. The Supreme Court of Pakistan in the case of *Muhammad Khan v. Muhammad Amin* [2008 S C M R 913], inter alia, has held as under:

¹ Mst. Faheeman Begum (Deceased) through L.Rs and others v. Islam-ud-din (Deceased) through L.Rs and others [2023 SCMR 1402]

² Muhammad Islam v. Inspector General of Police Islamabad and others [2008 SCMR 8]

“Evidently the suit was filed beyond the period of limitation prescribed under Article 113 of the Limitation Act it must be stated that the fact of limitation is evident from the averments made in the plaint itself. In such circumstances, the trial Court was not required to frame issue and record evidence. The argument advanced by learned counsel for the petitioners is absolutely misconceived and not tenable”

14. In the instant case bare reading of plaint of the suit of applicants does not give rise to any such factual probe in respect of institution of suit beyond limitation period, in such eventuality there is no need to frame issue and record evidence, and it is liable to be considered as a pure question of law. Needless to say that disputed facts in respect of date of knowledge may call for recording of evidence as a mixed question of fact and law. But in the case under consideration, there are no disputed facts as such recording of evidence as opposed to the eventuality, discussed above, which might lead to the determination of the question of limitation after recording evidence.

15. It is well settled that an incompetent suit should be laid at rest at the earliest so that no further time is wasted over what is bound to collapse not being permitted by law. It may be observed that in the trial of judicial issues i.e. suit which is on the face of it incompetent not because of any formal, technical or curable defect but because of any express or implied embargo imposed upon it by or under the law should not be allowed to further encumber legal proceedings.³

16. 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 the jurisdiction not vested in it, or has irregularly exercised the jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when the court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. Mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For the applicants to succeed under Section 115, C.P.C., they have to show that there is some material defect in 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 the matter and erroneous action of a court in exercise of such jurisdiction. It is settled principle of law that erroneous conclusion of law or fact can be corrected in appeal and not by way of revision, which primarily deals with the question of jurisdiction of a court i.e. whether a court has exercised the jurisdiction not vested in it or has not exercised the jurisdiction vested in it or has exercised the jurisdiction vested in it

³ Ilyas Ahmed v. Muhammad Munir and 10 others [PLD 2012 Sindh 92]

illegally or with material irregularity. It is also well settled that if no error of law or defect in procedure had 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 courts below are not to be interfered in revisional jurisdiction, unless extra ordinary circumstances are demonstrated by the applicants.⁴

17. The upshot of the above discussion is that there appears no illegality, irregularity or jurisdictional error in the concurrent findings of the courts below warranting interference by this Court. Hence, this Revision Application being devoid of merit is dismissed along with pending application(s).

JUDGE

Karar_Hussain/PS

⁴ 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]