

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No. 305, 306 & 307 of 2021

Applicant : Muhammad Iqbal through L.Rs
through Mr. Hansraj Naurang, Advocate

Respondents : Muhammad Zafar and others
Nemo

Date of Hearing & Order: 02.10.2023

ORDER

ARSHAD HUSSAIN KHAN, J:- Through instant civil revision applications, the applicant has called in question the judgments and Decrees dated 1.09.2021 passed by learned Vth Additional District Judge, Hyderabad in Civil Appeal Nos. 35 & 36 of 2020, whereby the learned Judge while dismissing the appeal maintained the Judgment and Decree dated 24.12.2019 and decree dated 4.1.2020 passed by the trial court in F.C. Suit Nos. 87 & 289 of 2012.

2. Brief facts of the case are that applicants filed suits for partition and permanent injunctions against respondents which after recording evidence and due consideration were dismissed vide judgments dated 24.12.2019. The operative part of the Judgment of the trial court is reproduced as under:-

Issue No.3.

17. The onus to prove this issue lies upon the shoulders of defendant namely Muhammad Zafar in FCSuit No.87 of 2012 and plaintiff in FCSuit No.289 of 2012. In this connection Muhammad Zafar has agitated in his pleadings that house No.285 and 253 situated in Gharibabad Colony Hyderabad was acquired by their deceased father namely Muhammad Yousuf s/o Abdul Raheem on the basis of entitlement slip No.5977 dated 19.9.1978 from administrator Municipal Corporation Hyderabad and second entitlement slip No.430 dated 5.12.1979 from Cantonment Board Hyderabad. Further he contended that after the death of his father the plaintiff and defendant in both consolidated suits became co-sharer/ co-owner in both properties but the plaintiff of leading suit with intention to usurp the property bearing No.253 situated in Gharibabad Colony Hyderabad has illegally occupied and denied the share of defendant and other legal heirs of deceased Muhammad Yousuf in property No.253. in this respect he produced entitlement slip No.430 dated 5.12.1979 as Ex.47/3 in the name of Muhammad Yousuf s/o Abdul Raheem. To the contrary, plaintiff of leading suit agitated that house No.253 was allotted in his name vide entitlement slip No.3889 dated 12.12.79 on the basis of physical possession. He also produced entitlement slip bearing No.3889 of 12.12.2012 as Ex.42/2, certificate as Ex.42/3 and electricity bill, gas bill, water bill in his

deposition. The record reveals that attorney of defendant Muhammad Iqbal in cross examination stated that entitlement slip was issued in the name of Muhammad Iqbal in the year 1989 and since then he is in possession of the suit property of house No.253 whereas entitlement slip produced by him bears date 12.12.1979. Further more the learned counsel for the plaintiff put a question to defendant Muhammad Zafar in his cross examination that the entitlement slip issued in the name of Muhammad Yousuf s/o Abdul Raheem was cancelled which was denied by defendant Muhammad Zafar. From the question it clears that entitlement slip was issued in the name of Muhammad Yousuf further plaintiff failed to produce any record to show that the entitlement slip issued to the Muhammad Yousuf was cancelled. Further record reveals that the entitlement slip issued to Muhammad Yousuf bears date 5.12.1979 and entitlement slip issued to Muhammad Iqbal bears date 12.12.1989 it means there is 7 days different in issuing the second entitlement slip to Muhammad Iqbal. Further no record of cancellation of first entitlement slip issued to Muhammad Yousuf s/o Abdul Raheem is produced either by plaintiff or any other authority. Further in absence of cancellation second entitlement slip can not be issue according to law. In the circumstance property bearing No.253 was also allotted to Muhammad Yousuf s/o Abdul Raheem in which all the legal heirs of Muhammad Yousuf s/o Abdul Raheem are entitled of their share so also defendant is entitled. Consequently issue No.3 is decided in affirmative.

Issue No.4.

18. As discussed above in issue No.2 & 3 both plaintiffs of the leading suit and defendant of the leading suit who is also plaintiff in subsequent suit are the legal heirs of deceased Muhammad Yousuf s/o Abdul Raheem and all the legal heirs of deceased Muhammad Yousuf are entitled of their share in both properties i.e 285 and 253 situated in Gharibabad Colony Hyderabad as both properties were acquired by deceased Muhammad Yousuf s/o Abdul Raheem on the basis of slip of entitlement bearing No. 5977 dated 19.9.1978 and 430 dated 5.12.1979. The issue No.4 is decided in affirmative.

Issue No.5.

19. In view of findings on the issues and detailed discussion from the issue No.1 to 4 undersigned has reached to conclusion that the plaintiff of leading suit namely Muhammad Iqbal to prove his claim hence, his suit bearing No.87 of 2012 (Re- Muhammad Iqbal V/s Muhammad Zafar and others) is hereby decreed and subsequent suit No.289 of 2012 (Re. Muhammad Zafar and others V/S Muhammad Iqbal and others) is hereby also decreed with no order as to cost.

3. The appeals preferred against the said Judgment also failed. The operative part of the Judgment of appellate court dated 1.9.2021 is also reproduced as under:-

“ The attorney of appellant in cross examination has deposed that entitlement slip was issued in the name of Muhammad Iqbal in the year on 1989 and from that time he is in possession of suit property which is totally incorrect because the entitlement slip produced by him issued on 12.12.1979. The appellant failed to produce any document to show that the entitlement slip issued in the name of Muhammad Yousuf has been cancelled. There is nothing on record to show that the entitlement slip of Muhammad Yousuf is forged and fabricated document. Admittedly, the possession of suit property was received by appellant in consequence of legal proceedings. The learned trial court discussed each and every controversy between the parties in detail according to

law and evidence which requires no interference of this court. Thus the point No.1 is answered in Negative.

Point No.2

In view of the above discussion on point No.1, consolidated Judgment and Decree 24.12.2019 and 4.1.2020 passed by the trial court is hereby upheld. Consequently both civil appeals are dismissed with no order as to costs.

4. I have gone through the above findings of the courts below and also gone through record as available before me and find that the trial court has considered the evidence produced before it and upheld by the appellate court with cogent reasoning and admittedly there is concurrent findings of the courts below against the applicant which ordinarily does not require further interference by this Court.

5. From the perusal of record, it appears that the applicants have now attempted to re-open the case through this Civil Revision Application under Section 115 CPC, inter-alia on the ground that the impugned decisions of the courts below are illegal, void and malafide. That both the courts below did not consider the stance of the applicant; that both the courts below while passing the impugned decisions failed to exercise the jurisdiction vested in them according to law.

6. 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 a jurisdiction not vested in it, or has irregularly exercised a 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 applicant to succeed under Section 115, C.P.C., he has 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 illegally or with material irregularity.

7. No any infirmity has been shown by the counsel for applicants to call for interference in the impugned decisions by this Court. It is 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 two courts below are not to be interfered in revisional jurisdiction, unless extra ordinary circumstances are demonstrated by the applicants. It is also trite law that a revisional court does not sit in reappraisal of evidence and is distinguishable from the court of appellate jurisdiction. Reliance in this regard can be placed in the cases of *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].

8. 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 of this Court. Hence, these Revision Applications are found to be meritless and are accordingly dismissed along with pending application(s).

JUDGE

Karar_Hussain /PS