IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

R.A No. 65 of 2022
[Samina Nooruddin & others v. Mst. Jameela Begum & others

Applicant : Samina Nooruddin and others through Mrs. Razia Ali Zaman, Advocate

Respondent : Mst. Jameel Begum & others through Mr. Kazi Atif, Advocate

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

Date of Hearing & Order : 18.09.2023

O R D E R

ARSHAD HUSSAIN KHAN, J -. Through instant Civil Revision Application, the applicants have called in question the judgment dated 08.01.2022 passed by learned 8th Additional District Judge, Hyderabad in Civil Appeal No. 159 of 2021, whereby the learned Judge while dismissing the appeal maintained the order of rejection / dismissal of plaint under Order VII Rule 11 CPC passed by the trial Court in F.C Suit No. Nil of 2021.

2. Briefly, the facts giving rise to instant Revision Application are that the father of applicants and respondent Nos. 2 and 3, namely Jan Muhammad Keerio during his lifetime purchased a property bearing plot No.B-6, admeasuring 1559.00 Sq. Fts., Ali Nagar Housing Scheme, Hyderabad through a registered instrument (Sub-Leased Deed dated 12.07.1989) in the name of her wife-Jameela Begum (respondent No.1), the real mother of applicants and respondent Nos. 2 and 3. Upon purchase of the property, the same was mutated in the name of respondent No.1. On 10.11.1999 said Jan Muhammad expired. Respondent No.1 in the year 2015, by keeping the entry in the Revenue Record, transferred 50 paisa share in the property in favour of respondent Nos. 2 and 3. Upon coming to know about the said transfer, the applicants filed F.C. Suit No. Nil of 2021 before the court of IVth Senior Civil Judge Hyderabad for declaration, cancellation, possession, recovery of death claim benefits, mesne profits and permanent injunction against the present private respondents. Upon presentation of the said suit, the office raised objection with regard to the maintainability on the point of limitation, which was subsequently decided by the trial court vide order 07.07.2021 whereby the suit of the applicants was dismissed. The said order was subsequently challenged by the applicants in Civil Appeal No. 159 of 2021

before 8th Additional District Judge, Hyderabad. On 08.01.2022 the said appeal was also dismissed against which the applicants have preferred the present revision application.

3. Learned counsel for the applicants while reiterating the facts has contended that the orders impugned herein are not sustainable both in law and facts. It is contended that the limitation is a mixed question of law and facts, which could only be determined on the basis of evidence adduced by both the parties, which in the present case is lacking as the trial court has dismissed the suit of applicants summarily on technical ground of limitation, which order was subsequently endorsed by the lower appellate court as well. It is also contended that the father of the parties namely Jan Muhammad purchased the suit property through sub-lease deed No.3173 dated 12.07.1989 in favour of the mother of the parties i.e. Mst. Jameela begum (respondent No.1). Their father expired on 10.11.1999 after that their mother (respondent No.1) sold out the property in question to respondent Nos. 2 & 3 through register sale deed dated 23.02.2015. That the applicant / Plaintiffs came to know about the said transaction on 07.06.2021 hence they presented the suit before the trial court. The main contention of applicants is that the property in question was benami and indeed their father Jan Muhammad had purchased it with his own sources / income in the name of his wife as benami; therefore, the property may be partitioned between all the legal heirs because the applicants are also co-sharers and co-owners in the property.

4. On the other hand, learned counsel for respondents vehemently opposed the argument put forth by learned counsel for the applicants. He while supporting the impugned orders has contended that the impugned order is well reasoned and within the parameters of law as such does warrant any interference by this court. It is contended that the applicants have failed to satisfy the trial court that their claim was within the period of limitation as such the plaint of applicants' suit was rightly rejected by the trial court. It has been argued that bare reading of impugned order reflects that the trial court examined each and every aspect of the case / plaint while rejecting the plaint under Order VII Rule 11 CPC. He lastly contended that the order impugned in the present proceeding does not suffer from any illegality and infirmity as such present revision application is liable to be dismissed. Learned Addl. A.G also supported the impugned decisions.

5. 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.

6. 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 that respondent No.1 was benami and indeed their father Jan Muhammad had purchased the property in question in the name of his wife; that both the courts below while passing the impugned decisions failed to exercise the jurisdiction vested in them according to law.

7. 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.

8. Precisely, the case of applicants is that respondent No.1 is a benami owner of the property whereas the actual owner of the property was their father and as such, in this regard they while seeking declaration sought cancellation of registered sub-lease executed in favour of respondent No.1 in the year 1989. Per Article 120 of the Limitation Act time for seeking declaration of any right as to any property is six years which is to be computed from the date when the right to sue accrued. In the instant case, it is an admitted position that the property in question was purchased in the year 1989 whereas the father of applicants died in the year 1999 and during his lifetime he never claimed that he is actual owner and respondent No.1 is merely an ostensible owner of the property. Since, Jan Muhammad claiming to be actual owner of the property, during his life time did not seek any declaration of his ownership and allowed the applicable period of limitation to lapse, as such, no fresh limitation period could be made available to

his legal heir i.e. the present applicants. Thus, the challenge made by the applicants in 2021 to sub-lease deed of 1989, based on their inheritance rights from Jan Muhammad, was clearly barred by time, as concurrently held by the trial and lower Appellate Court.

9. 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 law. In this regard reliance can be placed on the case of *Muhammad Islam v. Inspector General of Police Islamabad and others* [2008 SCMR 8].

10. Insofar as the contention of learned counsel for the applicants is concerned with regard to 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 period, 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 that:

> "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"

11. 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 is no disputed fact as such requiring recording of evidence as

opposed to the eventuality, discussed above, which might lead to the determination of the question of limitation after recording evidence.

12. It is well settled that an incompetent suit should be laid at rest at the earliest moment 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. Reliance, in this regard is placed on the case of *Ilyas Ahmed v. Muhammad Munir and 10 others* [PLD 2012 Sindh 92]

13. 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].

14. 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, this Revision Application is found to be meritless and is accordingly dismissed along with pending application(s).

JUDGE

Karar_Hussain /PS