IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No. 184 of 2023

Applicants : Chatro & another
through Mr. Bharat Kumar Suthar, Advocate

Respondents : Anchalsingh & others
Nemo

Date of Hearing & Order: 06.10.2023

O R D E R

ARSHAD HUSSAIN KHAN, J:- Through instant civil revision application, the applicant has called in question the judgment and decree dated 20.02.2023 passed by learned District Judge / Model Civil Appellate Court, Tharparkar at Mithi in Civil Appeal No. 15 of 2022, whereby the learned Judge while dismissing the appeal maintained the judgment and decree dated 06.07.2022 passed by the trial court in F.C. Suit No. 40 of 2018 (New).

2. Brief facts of the case are that applicants filed suit for declaration and permanent injunction against respondents with following prayer:-

> a) To declare that the plaintiffs No.01 & 02 are legally owners & grantees/allottees of the suit land by Deputy Collector and the plaintiffs have legal right, character & title upon the suit land, being owners.
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> b) To declare that the order of defendant No.07 dated: 21-01-2014, the order of defendant No.08 dated: 21-09-2014 & the order of defendant No.09 dated 31-03-2015 are illegal, null, void, ab-initio, not sustainable in the eye of law, without applying judicial mind, therefore; the said orders are liable to be set aside/cancelled by this competent Civil Court.
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> c) To declare that the plaintiffs are in peaceful cultivation possession in the suit land since 1960.
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> d) To grant the permanent injunction, restraining & prohibiting the defendants No.1 to 9 for interfering into the peaceful cultivation, and possession of plaintiffs and may be further to restrain them for selling, transferring, mortgaging, alienating, leasing, creating change or any third-party interest in the suit land by themselves or through their agents, servants, subordinates, attorneys & agency etc, directly or indirectly in any manner whatsoever.
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> e) The cost of the suit is borne by the defendants.
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> f) Grant any other relief which this Honourable Court deems fit & proper in favour of the plaintiffs.

3. After filing of above suit, summons were issued to respondents / defendants, when respondents 1 to 5 / defendants 1 to 5 filed their joint written statement denying the case of applicants in the plaint & raised objections on the maintainability of the suit, they further stated that the suit land is government land and used as Aasaish/Gaucher land up to 2013; that on starting Kharif Season-2013, the plaintiffs, *malafidely,* cut the Aasaishi trees & forcibly occupied/cultivated Gaucher land, on which, the defendants preferred an appeal before Assistant Commissioner, Nagarparkar, which was upheld vide order dated 21-01-2014, wherein, the Assistant Commissioner, Nagarparkar cancelled the entries of the plaintiffs in respect of suit land being bogus & managed; that Assistant Commissioner, Nagarparkar in its order dated 21-01-2014, mentioned that as per record of Deh viz. *Hameshgi Yadashat*, Khasra Girdwari-1977 to 1980-81 & 1996-97 & record of Deh Sabusan, total survey numbers in Deh are from 01 to 1081 and in Khasra Girdwari year 1977-78 to 1980-81, last survey number of Deh Sabusan is 1057 and in field books of the year 1986-87 to 1997-98, last survey number of Deh Sabusan is 1081 according to revenue record of Deh Sabusan. It is further asserted that revenue forum, after conducting complete enquiry & perusing revenue records, passed orders, which are legal & lawful; they further stated that plaintiffs are neither the owners of suit land, nor it was granted to them and nor they remained in its cultivating possession but, by playing fraud with the collusion of lower revenue staff, the plaintiffs have managed their survey numbers in revenue record, actually suit land is Government land, near Karoonjhar Hill & being used as Aasaish/Gaucher, hence; claim of the plaintiffs is false & bogus. They lastly prayed for dismissal of the suit.

5. Learned trial court after recording evidence and hearing the parties dismissed the suit vide impugned Judgment dated 06.07.2022. Relevant Portion of the Judgment for ready reference is reproduced as under:-

> " I have perused to evidence/record/orders of revenue forum & considered the arguments. A perusal of record divulges that the plaintiffs are claiming the ownership/possession of Suit land, located in Deh Sabusan, Tapa Adhigam, Taluka Nagarparkar, on basis of Deputy Collector's order#8135 dated: 26-10-1960, whereas, the defendants are claiming on the basis that the suit land is Government Gaucher Land & there is no existence of the suit land viz. S. Nos. 1082 to 1087 in the revenue record. In order to resolve the controversy, this court has examined the official witness/Tapedar at Ex:81, who deposed in his evidence that no record has existed of said survey numbers in the revenue department of Taluka Nagarparkar. He has further deposed that the last survey number in Deh Sabusan, Tapo Adhigam, Taluka Nagarparkar is S. No. 1081 & in this regard, he produced entry#13 from the register of Deh Form-VII at Ex:81/A (showing last survey number as 1081), Khasra girdhawari of the year of 1981-1982 at Ex:81/B (showing last survey number as 1081) and receipt at

page#94 from the Field Book of Tapedar of the year 2013-14 at Ex:81/C (showing last survey number as 1081).

Surprisingly, the same witness was again recalled & re-examined at Ex:89 on the application of the plaintiff's side, filed u/o XVIII rule 17 CPC (allowed by my learned predecessor vide order dated: 23-11-2020), wherein, the official witness/Tapedar had again deposed that he has already produced the record, relevant with the suit land during the turn of evidence of private defendant's side & further deposed that no record regarding the suit land has existed and last survey number is 1081. The said witness was cross-examined under order XVIII rule 17 CPC by the court and during such cross-examination, the documents at Ex: 67/C to 67/H, produced by the plaintiff's side was seen by the official witness and on seeing the said documents, the official witness said that the documents/records have not existed in our office and the entries regarding the suit land have already been cancelled by Assistant Commissioner, Nagarparkar vide his order dated: 21-10-2014.

Further, the plaintiffs are asserting that the suit land was granted by the Deputy collector on a permanent basis, vide order#8135 dated: 26-10-1960 however; it is admitted fact that they did not produce the order before the court. The sole claims of the plaintiffs are on the basis of document/Patta (Ex:67/B), however; on perusal of the said documents/Patta, it is revealed that neither it was issued by the Deputy Collector nor it had any official seal, hence; there is no value of the document/Patta in the eye of law. Besides, for sake of arguments, if we presume that the document/patta (Ex:67/B) is legal & relevant to the case, then, suffice it to say that the same is issued to one Wasoo Lako & other so also one PartabSingh & others, while per record, the father's name of the plaintiff#01 is Vasto instead of Wasoo Lako. Hence; it is clear that the document/patta has also no relevance to the plaintiffs/case.

Not only this but it is also pertinent to mention here that the plaintiffs have produced attested copies of Hameshgi yadasht of 1965-66 (Ex:67/C), attested copies of Patwari Forms XV (Ex: 67/D & E) and attested copies of Forms VII-B (Ex:67/G to I), which reveal that the plaintiffs did not produce the original of these documents but have produced only the true copies thereof. Going into further details, it is necessary to mention here that 'certified true copy' is one of the documents, shown as 'secondary evidence' by Article 74 of the Qanun-e-Shahadat Order, 1984. Needless to add that per Article 75 of the Order document must be proved by 'primary evidence' except as provided by Article 76 of the Order which reads as:--

76. Cases in which secondary evidence relating to document may be given.--- Secondary evidence may be given of the existence, condition or contents of a documents in the following cases:--

> (a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to the process of the Court; or of any person legally bound to produce it and when after the notice mentioned in Article 77, such person does not produce it;

Here, the plaintiffs though produced the certified true copies of these documents but not through the officials concerned who were/are the custodian of the record. The plaintiffs also showed no reason on the justification for not bringing the 'secondary evidence' on record as required by law hence; the secondary evidence, without any proper explanation for the non-production of primary evidence, is not worth consideration. In this regard, I could lay my hands on the case-law cited as "PLD 2005 Supreme Court 418", wherein, it was held as under:

["This is settled law that in absence of original document, its certified copy if not admissible evidence and notwithstanding the presumption of correctness being attached with certified copy of a document pertaining to the official record, if the validity or the existence of the document is disputed and original is not produced, its certified copy would not be admissible in evidence without proving the non availability of the original."]

Further, the plaintiffs, in support of their case, produced only a Land Revenue Receipt of the crop season 1968-69 in original (Ex:67/F). However; it is settled that the land revenue receipt of the crop is not a 'title document' but is a simple entry which is maintained/kept by the Tapedar. There is no ambiguity that the land revenue receipt record is the document, which carries the signature of the Tapedar alone without any attestation or confirmation by other Revenue Officers, so authorities to maintain the record of the rights. Besides, the receipt, so produced by the plaintiffs, pertains to the season of 1968-69 only, although the plaintiffs claimed that they remained in possession of the land in question since 1960. If so, why the subsequent entries of land revenue receipts were not produced to establish continuity of possession under such claim, although the subsequent entries should have been collected/obtained when earlier entry viz. receipt of 1968-69 was provided by the office concerned. Not only this, but the plaintiffs also not produced a single document which could show that entries of such receipt were transcribed/entered in the record of the rights. Such non-production of the record should be taken adverse to the plaintiffs within the meaning of Article 129 of the Qanun-e-Shahadat Order.

It is also noticeable that the concerned Mukhtiarkar, Nagarparkar, who had issued attested copies of the documents (Ex:67/B to E & 67/G to H), produced by the attorney of the plaintiffs, was a material witness. However, surprisingly, he was given up by the plaintiff's side by filing a statement (Ex: 71) and not produced/examined for any valid reason. Therefore the presumption of Article 129 of the Qanun-e-Shahadat Order by reason of withholding of the best evidence can also be drawn against the Plaintiffs. Reliance on the case-law cited as [2020 SCMR 276].

It is also worth mentioning that the suit land falls in the category of the grant of desert land, which is covered under Colonization of Government Land Act-1912, subject to the conditions laid down in notification dated: 11-12-2000 (Land Grant Policy-2000) & notification dated:30-06-1964 (Land Grant Policy of Nagarparkar), issued by Sindh Government Land Utilization Department (the notifications). I have benefited from going through the notifications and in condition No.03 of the notification dated: 11-12-2000, it is mentioned that "the allotment of the land under these conditions shall be made by the collector or his nominee not below the rank of the Assistant Commissioner duly empowered under the act for the sole purpose of cultivation". Not only this but it is also mentioned in condition No. 16 (2) of the notification that "the collector may reserve area whichever is necessary for grazing ground (Gaucher) in the Makan."

Besides, the condition#03, mentioned in the notification dated: 30-06-1964 (Terms & Conditions for the grant of land, situated in the Parkar Tract of Nagarparkar) reveals that "No land used as Charagah or lying within 20 chains of a village pond, graveyard, well, cremation ground and the land assigned for the public purposes shall be granted".

What, therefore, appears from the perusal of these conditions is that grant/allotment or reserve of the land, is within the direction & domain of the Government & such direction/domain could be exercised by Revenue Authority. However; in the case at hand, the plaintiff's side has asserted that they have the suit land since 1960. This evidence does not qualify them to be entitled as the owner of the suit land. Be that as it may, on their own showing their grant/allotment was cancelled by the Assistant Commissioner,

> Nagarparkar vide order dated: 21-01-2014 being fake & bogus and as discussed above, they could not produce the order of the Deputy Collector or any proof/record regarding their allotment & possession, therefore; their claim that they are the owner of the suit land is unfounded.
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> Thus, in view of the above as well as keeping the age of plaintiffs, at the time of alleged grant in the year 1960, it is crystal clear that there is no existence of survey numbers viz 1082 to 1087 (the suit land) in revenue record and the same land is Government Gaucher Land, hence; the plaintiffs have no title whatsoever, regarding the suit land, as such, suit is barred under Section 42 of the Specific Relief Act, 1877.
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> Sequel to the above, I am of the considered view that the plaintiffs have not approached this court with a clean hand, hence the suit is not maintainable being barred under Section 42 of the Specific Relief Act, 1877. Accordingly, Issue Nos. 01 & 02 have been determined/answered as "Affirmative".

6. The appeal preferred against the aforesaid Judgment was also dismissed by learned District Judge / Model Civil Appellate Court Tharparkar at Mithi while maintaining the Judgment of the trial court. Hence the instant Civil Revision Application.

7. I have gone through the findings of the courts below as well as the record as available before me and find that the trial court has considered the evidence produced before it which findings were subsequently upheld by the lower appellate court with cogent reasoning. Admittedly there is concurrent findings of the courts below against the applicants which ordinarily does not require further interference by this Court.

8. 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 and that both the courts below did not consider the stance of applicants as well as the record available before them; that both the courts below while passing the impugned decisions failed to exercise the jurisdiction vested in them according to law. Nevertheless, learned counsel for the applicants during his arguments failed to controvert the findings of the courts below through material available on record.

9. 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 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 illegally or with material irregularity.

10. 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 two courts below are not to be interfered in revisional jurisdiction, unless extra ordinary circumstances are demonstrated by the applicants, which in the present case is non-existing. 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].

11. 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 in limine along with pending application(s).

JUDGE

Karar_Hussain /PS