

THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.11 of 2022

Applicant: Mst. Syeda Shazia Hussain through Mr. Farid Azam Advocate

Respondent No.1: Syed Aftab Ahmed through Mr. Qadir Hussain Khan and Ms. Shehla Anjum advocates

Respondents No.2&3: Nemo

Date of Hearing: 13-09-2023

Date of judgment: 13-09-2023

J U D G M E N T

SALAHUDDIN PANHWAR, J.- Through this Civil Revision, the Applicant has impugned judgment and decree dated 06.01.2022, passed by IX-Additional District Judge, Karachi West in Civil Appeal No.05 of 2021, whereby, the civil appeal filed by the appellant was dismissed the judgment and decree passed by XIII-Senior Civil Judge, Karachi West in Suit No. 123 of 2018 was upheld.

2. Succinctly, the facts for disposal of instant civil Revision are that respondent No.1 filed a Suit for Partition stating therein that his mother Mst. Raesa Sultan, who was owner of property No. 56, Sector 5/E, measuring 120 sq. yards situated at Orangi Town, Karachi (hereinafter referred to as subject property); that his mother died in the year 2003 whereas, his father died in the year 2007 leaving behind the respondent No.1 and the applicant as sole legal heirs; that original papers of the subject property were in the possession of the applicant, who after getting divorce, was residing with her mother; that after the death of parents, the respondent No.1 demanded his share from the subject property but the applicant refused, hence the respondent No.1 filed a suit for partition.

3. On being served, the applicant contested the said suit by filing her written statement. On the divergent pleadings of the parties, the learned trial Court framed the issues and thereafter, both the parties led evidence. However, after hearing learned counsel for the parties, the learned trial Court decreed the suit of the respondent No.1, which judgment in terms of Judgment and Decree dated 04.05.2021, which was challenged by the applicant in Civil Appeal No.05 of 2021, which was heard and dismissed by learned Appellate

Court vide Judgment and Decree, dated 06.01.2022. Hence instant Civil Revision Application has been preferred by the applicant.

4. Learned Counsel for the applicant contended that judgments and decrees of both the Courts below are illegal, perverse and the same are liable to be set aside as they have failed to take into consideration the contentions, the evidence and material placed on record; that both the Courts below have failed to appreciate that properties were distributed between them as per shares and the applicant is owner of subject property and the claim agitated by the respondent No.1 is baseless; that previously respondent No.1 filed Suit No. 1019/2010 but the same was dismissed for non-prosecution, as such the suit was barred by law. Lastly, it is prayed that judgments and decrees of both the courts below may be set aside and the suit filed by the respondent No.1 may be dismissed.

5. Learned counsel for the respondent No.1 contended that judgments and decrees passed by both the Courts below are well reasoned and are in accordance with settled principles of law, hence the instant Revision Application may be dismissed.

6. Heard and perused the record.

7. Prior to dilating upon the merits of the case, I would like to discuss '*revisional scope*'. It is settled principle of law that revisional jurisdiction is not equated to that of appellate jurisdiction because the former is meant only to correct an illegality/irregularity (in result of mis-reading or non-reading of evidence), question of jurisdiction or excess of jurisdiction is involved while in the later case whole case becomes open. Despite of limited scope of jurisdiction it cannot be presumed that such jurisdiction is without purpose and object because the provision of Section 115 C.P.C. vests authority to ensure no '*injustice*' of '*serious prejudice*' with parties goes un-attended. However, the Courts being custodian of the '*rights of parties*' to examine illegalities/irregularities, excess of jurisdiction and non-exercise of jurisdiction are such questions which cannot be properly addressed without going through all the available material. In my above views, I take guidelines from case of Noor Muhammad (2012 SCMR 1373). In the case of Cantonment Board through Executive Officer, Cantt. Board, Rawalpindi v. Ikhlaq Ahmed and others (2014 SCMR 161), the Apex Court held that the provisions of section 115, C.P.C under which a High Court exercises its revisional jurisdiction, confer an exceptional and necessary power intended to secure

effective exercise of its superintendence and visitorial powers of correction unhindered by technicalities.

8. With regard to the contention of learned counsel for the applicant that subsequent suit filed by the respondent No.1 was hit by res-judicata, it is well settled that right of inheritance could not be defeated by principle of res-judicata, as no law/judgment could override the law of Sharia, which was held to be a superior law.

9. Record reflects that Mst. Raeesa Sultan mother of the applicant and respondent No.1 expired in the year 2003 and their father expired in the year 2007, though, it is claimed by the applicant that the properties were distributed by their parents during their lifetime, but nothing has been placed on record in support of such claim. It appears that general power of attorney was executed by Mst. Raeesa Sultan in the year 2000 and admittedly she expired in the year 2003 and on the basis of such general power of attorney, the subject property was got transferred in favour of the applicant in the year 2004 i.e. after the death of Mst. Raeesa Sultan. Consequent upon the death of Mst. Raeesa Sultan the power of attorney stood automatically revoked. Needless to emphasize that on the death of a principal, power of attorney executed by him stands revoked. Reliance is placed on the case reported as *Mst. Hajyani Bar Bibi through L.R vs. Mrs. Rehana Afzal Ali Khan and others (PLD 2014 S.C 794)*. Therefore, transfer of subject property in favour of the applicant made on the basis of such dead power of attorney would certainly be termed as illegal, ineffective and of no legal consequence. Consequently, the concurrent findings of both the courts below appear to be well-reasoned and are not calling for any interference by this Court.

10. For what has been discussed above, applicant has failed to make out his case to interfere in the findings recorded by both the courts below. Consequently, the instant Revision is dismissed with no order as to cost.

JUDGE

SAJID