

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

R.A No.19 of 2024 : Muhammad Ismail V/S Mst Kalsoom
and others
For the Applicant/s : Mr. Chetan S. Kella, Advocate.
Date/s of hearing : 15.01.2024.
Date of decision : 15.01.2024.

ORDER

Khadim Hussain Soomro, J. Through this Civil Revision, the defendant/applicant has impugned the judgment dated 28.11.2023 and decree dated 04.12.2023 passed by the learned District Judge/Model Civil Appellate Court Badin whereby the appeal bearing No.35 of 2023 Re: Muhammad Ismail vs Mst. Kalsoom and others filed by the applicant was dismissed, and the judgment dated 29.08.2023 and decree dated 31.08.2023 passed by learned Senior Civil Judge Badin in F.C Suit No.42 of 2019 was maintained.

2. Brief facts, as narrated in the plaint, are that shop No.99-A, measuring 294 square feet within the boundaries viz. East: Shop of Noor Ahmed, West: Shop of Hakeem Umerani, South: Shahi Bazaar and in the North; there is a street situated in Shahi Bazaar, Deh Badin, Tapo Badin, Taluka and District Badin (**hereinafter referred to as the suit shop**). It is averred that the suit shop was owned by the deceased Muhammad Siddique, who transferred it to the brother of the respondents/plaintiffs, Noor Ahmed Memon, by way of a gift in his favour; this gift deed was also mutated in the relevant revenue record. Similarly, the deceased Muhammad Ibrahim, the father of the respondents/plaintiffs, left other property, such a khatta was also mutated in the record of rights in favour of the father of the respondents/plaintiffs. The respondents/plaintiffs No.1 and 2 submitted an application to the District & Sessions Judge in Badin, seeking their respective shares and possessions. As a result, a family settlement was reached between the parties, which was reduced into the family settlement deed in writing, dated 30.12.2001. According to this, the suit shop was given to the respondents/plaintiffs, and such register sale deed bearing No 1116 dated 03-07-2017 was executed in their names. It is also asserted that after the death of the father of the respondents/plaintiffs, all the matters relating to the properties were looked after by their brother, namely

Noor Ahmed, and the suit shop was already on rent to the applicant/ defendant on a fixed monthly rent of Rs.3000/ per month. The respondents/plaintiffs communicated with the applicant/defendant regarding the family settlements. Additionally, the appellant/defendant was informed that the suit shop had been transferred to the respondent/plaintiff, and he was advised to pay rent to them. However, the applicant/defendant refused to pay the rent. Furthermore, the rent shop was required to the respondents/plaintiffs for their personal bonafide use; thereupon, they filed an ejectment application bearing No.1 of 2015 before the Rent Controller, Badin and the same was dismissed vide order dated 22.03.2016 thereafter, they filed the suit which was concurrently decreed in their favour.

3. At the very outset, learned counsel for the defendant/applicant submits that the suit shop was previously the property of Hindu owner who migrated in India in the year 1948 and the respondents/plaintiffs produced P.T.D documents which does not show the name of Hindu Khatedar, however, besides this Rehabilitation laws, the property left by Hindus can be only transferred to the persons who came / migrated from India to Pakistan and property left by Hindu's cannot be granted local persons; that respondents/plaintiffs produced only P.T.D. which reveals different description of shop and such facts have been admitted in cross examination of attorney of respondents/plaintiffs but the learned trial court as well as learned appellate Court have not considered the said piece of evidence; that judgment and decree passed by the learned trial Court is based on the managed documents; that the judgment of the learned trial Court as well as appellate Court is based on non-reading of evidence on record therefore, the same are liable to be set-aside. He lastly prayed for justice.

4. I heard the learned counsel for the defendant/applicant and perused the material available on the record. The perusal of the record demonstrates that the suit shop was initially owned by Haji Muhammad Siddique, son of Haji Juman Memon, in the year 1960, and there is an entry in his name in the relevant Taluka Form-II. He, being the owner of the suit shop, made a gift in favour of Noor Muhammad, son of Muhammad Ibrahim, through a registered gift deed bearing registration No.1289 dated 24.01.1996. This register gift deed was produced by PW-2 Luqman Burgori Junior Clerk City Registrar Office Badin before the trial Court, which was exhibited as (Ex.36). The record further reveals that Noor Muhammad, son of Muhammad Ibrahim under the

family settlement, transferred the suit shop to Mst. Kulsoom and others (**respondents**) by way of a registered sale deed, and there is a subsequent entry in Taluka Form-II in their favour, which was also exhibited at (Ex.32-C & Ex.32-D, respectively). The perusal of the written statement shows that the defendant /applicant had denied the right title and legal character of the respondents/plaintiffs over the suit shop; therefore, the respondents/plaintiffs maintained the suit for declaration against him. For the sake of Section 42 of the Specific Relief Act, 1877, which is reproduced hereunder:-

42. Discretion of Court as to declaration of status or right. Any person entitled to any legal character, or to any rights as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such -suit ask for any further relief.

Bar to such declaration. Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

5. In the event that any of the rights derived from a title are violated or threatened. In such circumstances, an aggrieved person has the right to institute a Suit under Section 42 of the Specific Relief Act, seeking a declaration against any individual who denies the right or is interested in denying the title to such character or right to such property. In its discretion, the Court may declare that he/she (plaintiff) is entitled. A Suit for declaration of status or rights is maintainable if it is by any statute or in accordance with a law for the time being enforced. The respondent/plaintiff sought the declaration of ownership on the basis of the title documents. However, the defendants/applicants denied their right over the suit land; hence, they initiated the civil proceedings against him.

6. Furthermore, the defendant/applicant did not challenge the chain of title documents initially started by Muhammad Siddique, and subsequently, transfers were made in favour of Noor Muhammad and Mst. Qulsoom and others. The title page of the plaint reveals that the defendant/applicant did not join Muhammad Siddique and Noor Muhammad, from whom the respondents/plaintiffs derived their title as a party in the proceedings. Likewise, the defendant/applicant did not produce even a single document to establish his right over the suit shop even though he admitted this fact during cross-examination; hence, the possession of the defendant/applicant is without any lawful right, title and legal character. It is worth mentioning here that the

defendant/applicant asserted his right over the suit plot on the basis of continued possession; mere possession without title does not create any right in his favour.

7. The respondents/plaintiff sought relief for the restoration of possession under section 8 of the Specific Relief Act 1877. First of all, it is essential to discuss the scope of section 8 *ibid* and its applicability. The relevant section is reproduced as under;-

"8. Recovery of specific immovable property: A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure"

---S.8---Phrase "entitled to the possession" for the seek of legal discussion if it is to be assumed that the plaintiff is entitled to possession that involves the plaintiff's right with regard to the subject property and that right must be in accordance with substantive law. The first portion of section 8 above is related to the right of a person who is legally entitled to possession. The term entitled serves as the foundation for this right to pursue ownership, but in the case in hand, the respondents/plaintiffs have chain of documents as well as crossponding entires in the relvenat record does not have right, title and legal character as enunciated under section 42 of the Specific Relief Act 1877. In this context I took guidance from the case of Hazratullah and others v. Rahim Gul and others (PLD 2014 SC 380), the Hon'ble apex Court held as under:

".....it may be held that in a suit under section 8 of the Specific Relief Act, 1877, the declaration of the entitlement is an inbuilt relief claimed by the plaintiff of such a case. Once the plaintiff is found to be entitled to the possession, it means that he/she has been declared to be entitled, which includes the declaration of the plaintiff qua the property....."

8. In *Taj Wali Shah v. Bakhti Zaman* (2019 SCMR 84), the Hon'ble Supreme Court subsequently mentioned and relied on the *Hazratullah* case before. This paragraph No. 6 of the judgment is reproduced below:-

"Any suit under section 8 of the Specific Relief Act, 1877, could be filed by any person entitled to the possession of specific immovable property on the basis of his title and where the title is disputed one a suit under section 42, for declaration, under Specific Relief Act, 1877, is to be filed. Where a suit for possession, on the basis of a title which is disputed one, creating a cloud over his title, he must seek a declaration to his right, first."

9. Last but not least, turning to the High Court's revisional jurisdiction, it is crucial to note that the petitioners are approaching this Court in accordance with its revisional authority as outlined in Section 115 of the C.P.C. Both lower courts have arrived at concurrent factual determinations, posing a heavy

obstacle. Additionally, this Court, in its revisional jurisdiction, is quite limited, and concurrent findings of fact are typically not disturbed unless it discerns that such conclusions by the lower courts resulted from an erroneous conclusions were reached as a result of an incorrect or misreading of the evidentiary material on record or in violation of established law. Reliance in this regard may be placed upon the case of Noor Muhammad and others v. Mst. Azmat Bibi (2012 SCMR 1373) wherein the august Supreme Court has observed as under:-

"There is no cavil to the proposition that the jurisdiction of High Court under section 115, C.P.C. is narrower and that the concurrent findings of facts cannot be disturbed in revisional jurisdiction unless courts below while recording findings of facts had either misread the evidence or have ignored any material piece of evidence or those are perverse and reflect some jurisdictional error. "Muhammad Akhtar v. Mst. Manna 2001SCMR 1700; Ghulam Muhammad v. Ghulam Ali 2004 SCMR1001; Abdul Mateen v. Mustakhia 2006 SCMR 50 and Muhammad Khaqan v. Trustees of the Port of Karachi 2008SCMR 428."

10. In consideration of the preceding discussion, it is unequivocally ascertained that both the courts below, in their unanimous judgments, are not found to have been tainted with misreading or failing to read the relevant material, nor are they found to have some jurisdictional flaw that justifies interference. The applicants failed to bring their case within ambit of Section 115 of C.P.C., 1908, whose scope is very limited and restricted. As a result, the present civil revision application is dismissed along with the listed applications.

Judge,

Ahmed/Pa

6. Under these circumstances, the impugned judgments passed by the Courts below have clearly appreciated the facts and record as well as law and

no infirmity in respect thereof has been identified to this Court. It is settled law that in the presence of concurrent findings supported by evidence, a revisional court ought not to interfere, even if another view was possible. Reappraisal of evidence was even otherwise undesirable in revisional proceedings. Notwithstanding, this Court has considered the contentions of the defendant/applicant and has noted the inability to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned judgments are either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is the considered view of this Court that no manifest illegality has been identified in the judgments impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate fora. Resultantly, the Revision Application along with pending application are dismissed in limine and these are the reasons of short order dated 15.01.2024.

Judge,

Ahmed/Pa