

R.A. No.S-301 of 2017

Applicant : Through Mr. Kamaluddin advocate.
Respondents : Through Mr. Khuda Dino Saddar advocate.
Date of hearing : 08.04.2024
Date of Judgment : 27-05-2024

JUDGMENT

Khadim Hussain Soomro, J: The applicant, through this revision application, has impugned the judgment and decree dated 26.09.2017, passed by the learned District Judge, Dadu, in Civil Appeal No. 49 of 2013, upholding the judgment and decree dated 05.08.2013, passed by the learned Second Civil Judge, Dadu, in Civil Suit No. 05 of 2011, whereby the suit filed by respondent No. 1 for declaration was decreed.

2. The brief facts of the case are that respondent No. 1, Saifullah, filed a suit for declaration alleging therein that he was born on 04.05.1957 from the wedlock of Muhammad Nawaz Malkani. He obtained early education from Taluka Dadu, and his father's name was recorded as Muhammad Nawaz Malkani. (**The deceased**). For higher education, he went to Karachi. He also acquired all his N.I.C. domicile, P.R.C., and other certificates in his father's name. After completing his education, the respondent secured job at N.E.D University, and he completed his tenure of employment and retired from N.E.D University. Respondent No. 1 further asserted that his father was a bigamist who married Mst Shahzadi and Ashraful Nisa. From his first wife, a consanguine sister named Badshahzadi was born, and Saifullah was born from his second wife (Mst Ashraful Nisa). Respondent No. 1 further claims to be the sole male issue of Muhammad Nawaz Malkani, with Mst Badshahzadi being his sole consanguine sister, and except them, there are no other legal heirs of the deceased. The said Badshahzadi married Shahzaman in 1969, who, after marriage, started residing temporarily in a house bearing city survey No. 670/1. Due to strained relations, Muhammad Nawaz Malkani, during his lifetime, instituted Civil Suit No. 214/1977 against his daughter and his son-in-law. Muhammad Nawaz Malkani passed away. On November 28, 1983, an heirship certificate was issued by Mukhtiarkar Dadu, demonstrating the name of respondent No. 1 as one of the legal heirs of the deceased. However, the applicant developed a dispute with respondent no 1, and denied his legal character; thereupon, he filed the suit. After the admission of

the suit, summons were issued against the defendants, who filed their written statements in complete denial and dispute. From the pleadings, learned trial court framed the following six issues on 12.03.2012:-

ISSUES.

1. Whether the suit is maintainable under the law? O.P.D.
2. Whether plaintiff Saifullah is the son of the late Muhammad Nawaz Malkani? O.P.P.
3. Whether the suit is barred by limitation? O.P.D.
4. Whether the plaintiff has no cause of action to file the suit? O.P.D.
5. Whether the plaintiff is entitled to the relief claimed? O.P.P.
6. What should the decree be?

3. After recording pro and contra evidence of all contesting parties, the suit was decreed on 05.08.2013. The applicant, aggrieved and dissatisfied with that judgment and decree, filed the first civil appeal before District Judge Dadu, which was dismissed through the impugned judgment and decree dated 26.09.2017; hence, this civil revision.

4. It is, inter alia, contended by the learned counsel for the applicant that the learned Courts below, while passing the impugned judgments and decrees, have failed to consider the question of maintainability of the suit on the ground of limitation in its true and legal perspective, as the plaintiff filed the suit for declaration after almost the lapse of two decades; that the case law as cited at the bar by the learned counsel for the applicant has also not been considered by both the courts below; that both the judgments and decrees passed by the learned Courts below are against the law and contrary to the facts and material available on record, which resulted in misreading and non-reading of evidence, as such, the same are not sustainable under the law. The counsel for the applicant asserts that a succession certificate was issued in favour of Mst. Badshah Zadi, daughter of late Muhammad Nawaz Malkani, which was decided in their favour in the year 1986; that the respondent preferred an appeal which was disposed of with a direction to file a civil suit; that the case of the respondent does not fall within the scope of section 42 of the Specific Relief Act 1987. The counsel additionally argued that the suit is time-barred; therefore, both the judgments of lower Courts are liable to be set aside. In support of his contention, learned counsel relied upon the case laws PLD 2006 Supreme Court Page-322, 1991 SCMR Page-1369, PLD 2002 Supreme Court Page-823, 2010 SCMR Page 1097 and 2023 C.L.C Page-252.

5. Learned counsel for the respondents has mainly contended that the deceased contracted two marriages, one with Mst. Badshah Zadi and second marriage with Mst. Ashraf Nisa, from whom respondent No.1 blessed; that the deceased, during his lifetime, did not deny the relationship with respondent No.1 being his son; that there are a plethora of testimonial certificates as well as CNIC, Domicile and P.R.C., which show the name of the deceased as the father of respondent No.1. By contending so, he sought for dismissal of the instant revision application on the plea that the learned trial Court, as well as a learned appellate court, has rightly decreed the suit and appeal against thereof was dismissed after appreciation of evidence so adduced by the parties as well as material on record.

6. I have heard learned counsel for the parties and considered the material available on record. Indeed, the respondent's birth occurred in 1957, and he acquired education spanning primary, secondary, and tertiary levels, as evidenced by all certificates issued in his favour. The paternal lineage of the respondent is consistently indicated as Muhammad Nawaz Malkani in said certificates. Furthermore, when respondent No.1 attained the age of majority, he obtained CNIC, Domicile, P.R.C. 'C' & 'D' Forms, and in all these documents, his father's name is written as cited supra. The record further affirms that Mukhtiarkar Dadu had issued an heirship certificate in which the name of respondent No.1 is shown to be the son of the deceased. Previously, the deceased was involved in a dispute with her first wife, Mst. Badshah Zadi and his son-in-law Shah Zaman; consequently, the compromise took place wherein the respondent was shown as the son of the deceased. It is also worth mentioning here that the deceased, during his lifetime, proclaimed in widely circulated newspapers, namely "Tardeed" as well as in "Izhar", wherein the deceased stated that respondent No.1 was his real son.

7. Returning to the argument advanced by the applicant's counsel, the succession application initiated by Mst. Badshah Zadi was granted in 1986, and in the presence of a succession grant order, no judgment or decree can be passed. In this regard, I am of the view that the succession proceeding is summarily in nature and cannot afford to decide an interacted question of law and facts, which can only be decided in a regular suit on the basis of ocular and documentary evidence. Therefore, the grant of a succession certificate cannot legally put a heavy stumbling block on the way of the respondent for seeking declaratory relief.

8. The counsel for the applicant states that the suit filed by respondent no 1 was barred under Section 42 of the Specific Relief Act on the ground that respondent no 1 did not have a legal character to file the suit. For the purpose of convenience, the relevant section is reproduced as under:-

"42. Discretion of Court as to declaration of status or right.

Any person entitled to any legal character or to any right 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 that mere declaration of title omits to do so.

Explanation. A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee"

9. The plaintiff has filed the suit and sought a declaration that he is a real son of Muhammad Nawaz Malkhani. A declaration of his legal character stemming from paternity, which is closely tied to inheritance. In the case of *Abdur Rahman Mobashir v Amir Ali Shah* PLD 1978 Lah. 113, the Honorable High Court of Lahore observed the declarations that could be sought regarding one's legal character. In another case of a Full Bench of the Lahore High Court in the case of *Abdul Karim v Sarraya Begum* A.I.R. 1945 Lah. 266, observed that the suit asserting the plaintiff's status as the rightful daughter of Abdul Karim (defendant) is considered valid despite the plaintiff not having a current stake in the defendant's property.

10 Reverting to the point of limitation agitated by the counsel for the applicant. According to Article 128 of the Qanun-e-Shahadat, 1984, there is a specific limitation and only a potential father, within the specified timeframe in Article 128, has the right to contest the paternity of a child. It is a matter of fact and record that the deceased Muhammad Nawaz Makhani has not challenged the respondent's paternity during his lifetime; on the contrary, he claimed that respondent no 1 was his legal heir. In the case of *Mst. LAILA QAYYUM v. FAWAD QAYUM and others*, 2019 PLD 449 SC, the Supreme Court of Pakistan observed that only a putative father, within the time prescribed in Article 128, may challenge the paternity of a child. Similarly, in the case of *Munir Hussain and others v. Riffat Shamim and others*, 2023 SCMR 6, the Supreme Court observed that If someone believes their legal character or rights have been denied, they can file a declaratory suit. The declarations of paternity made by individuals other

than the father may not be subject to the limitation, as they are directly linked with the legal character of the person; if the legal character is denied, the person can not claim the right to the property. Hence, it can be said that legal character and the right to property, as enunciated in section 42 of the Specific Relief Act 1877, are interlinked, and the denial of legal status could consequently lead to the denial of property rights.

11. It should be noted that the applicants are before this court in accordance with its revisional authority under section 115 of the C.P.C and that both the learned courts below have concurrent conclusions of fact that stand in their way. Additionally, this court, in its revisional jurisdiction, is quite limited, and concurrent findings of fact are typically not disturbed in that context unless this court determines that the lower court's conclusions were reached as a result of an incorrect or misreading of the evidence of material available 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."

12 In the light of the above discussion, I am quite clear in my mind that both the courts below, in their unanimous impugned 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. Instead, they fall under one of the exceptions listed in Section 115 of the Code, 1908, whose scope is more limited and restricted to correcting errors of law as well as of facts if found to have existed. As a result, the present civil revision application is dismissed along with the listed applications for the grounds mentioned above.

J U D G E