

**HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**Revision Application No. 78 of 2015**

Appellants : Abdul Hameed and others, through Sunder Das, Advocate.

Respondent Nos.1 to 8 : Waqar Hussain Shah and others, through Abdul Ghafoor Hakro, Advocate.

Respondents Nos.9 to 14 : Sub-Registrar Tando Muhammad Khan and others, through Allah Bachayo Soomro, AAG.

Date of hearing : 06.05.2024 &  
14.05.2024.

**JUDGMENT**

**YOUSUF ALI SAYEED, J.-** The captioned Revision assails the concurrent findings of the *fora* below, commencing with the Judgment and Decree dated 14.12.2010 of the learned Senior Civil Judge Tando Muhammad Khan in F.C Suit No.72 of 2008 instituted by the Respondents Nos. 1 to 8 and culminating in the Judgment and Decree of the Additional District Judge, Tando Muhammad Khan, dated 21.01.2015, dismissing Civil Appeal No.21 of 2011 preferred by the Applicant.

2. The backdrop to the matter is that the Respondents Nos. 1 to 8 had filed the Suit for declaration and permanent injunction against the Appellants, claiming ownership and possession of certain lands on the basis that the same had been owned by their father, Yar Muhammad Shah, who had remained the owner and in possession thereof until his death on 17.03.2002, whereupon they had inherited the same as his legal heirs with the fotikhatabadal entry being made in their favour, whereas an Appeal was later filed by the Appellants under Section 161 of the Sindh Land Revenue Act 1967, claiming that the lands had been purchased by them from Yar Muhammad Shah through sale deeds purportedly executed on 15.09.1998 but registered on 18.12.2004. The Suit was thus brought by the Respondents Nos. 1 to 8, eliciting a declaration of their ownership as well as the invalidity of the sale deeds and to restrain the Appellants from interfering with their possession.
  
3. While the Suit proceeded *ex parte* as against the official Respondents, the Appellants contested the matter and took the plea through their joint written statement that the registration of the sale deeds was held in abeyance as Yar Muhammad Shah had obtained a loan against the lands from the Agricultural Development Bank of Pakistan, with the loan clearance certificate being issued and received in December 2004 and the registration of the sale deeds following shortly thereafter.

4. The trial Court examined the evidence presented by both parties and observed that the Appellant's claim regarding the loan obtained by Yar Muhammad Shah was not supported by evidence as the clearance certificate produced in the matter showed that Yar Muhammad Shah had obtained a loan against the suit lands on 26.03.1999, which was after the alleged execution of the sale deeds on September 15.09.1998, hence the discrepancy raised doubts about the Appellants claim as to the reason for registration of the sale deeds being held in abeyance at the time.
  
5. The Court considered this discrepancy to be crucial and concluded that the Appellants could not establish the authenticity and legality of the sale deeds. Therefore, while the Respondents Nos. 1 to 8 were held to have proved their ownership and possession of the suit lands, the sale deeds presented by the Appellants were found and declared to be illegal, forged, and manipulated documents.
  
6. In terms of the underlying Judgment of the trial Court, the Respondents Nos. 1 to 8 were thus declared to be the legal owners and in possession of the suit lands, and the Appellants were ordered not to interfere with their possession. The relevant excerpt from the judgment of the trial Court on that score reads as follows:

“The clearance certificate available with Ex: 65/C show that Syed Yar Muhammad Shah obtained loan on suit lands vide loan case No. 138243 dated 26.03.1999 but defendants deposed that on 15.09.1998 the registration of suit sale deeds were deferred as no clearance certificate was available from Bank. This show that on 15.09.1998 the lands of Syed Yar Muhammad Shah were not under any Bank Loan as the Bank Clearance Certificates show that he obtained loan on 26.03.1999. Therefore the evidence of defendants is falsified by the Bank clearance certificate that on 15.09.1998 Bank clearance certificate was not available hence registration was deferred. But in fact the loan was not obtained in year, 1998 and the sale deeds could be registered. Therefore this show that the sale deeds were not actually presented on 15.09.1998 before Sub-Registrar for registration and the same were not deferred for want of Bank clearance certificate. If the registration of suit sale deeds was deferred due to correction of sale certificate then why these suit sale deeds were registered after Six years of presentation on same sale certificate. The sale deeds show that the same were registered on old and same sale certificate. This all creates doubts in the genuineness of the suit sale deeds. In these circumstances it is also quite unnatural that when Yar Muhammad Shah executed sale deeds on 15.9.1998 then why he obtained loan subsequently on the same suit lands. It means that he did not appear and presented or executed the suit sale deeds on 15.9.1998 before Sub-Registrar or Stamp Vendor. Moreover the defendants also failed to examine the Stamp vendor or the then Sub-Registrar before whom Syed Yar Muhammad Shah appeared and executed the suit sale deeds.

In support of the execution of suit sale deeds the defendants only examined their brother Abdul Wahid Shah who was one of attesting witnesses in all suit sale deeds. This witness has deposed that one day before execution of sale deeds he was asked by his brother Yar Muhammad Shah to come at office of Stamp vendor Umar Abro. On next day he reached office of Stamp vendor where Yar Muhammad Shah alongwith other attesting witness Abbas Chhelgari came in Taxi Car. He further deposed that he was asked by Yar Muhammad Shah to sign sale deeds executed by him in favour of defendants No.1 to 5. Regarding sale consideration though he deposed that same was paid to Yar Muhammad Shah but he did not depose that the same was paid in his presence. He further deposed that after signing the sale deeds, he went away, as

parties went to office of Sub-Registrar. It means this attesting witness did not appear before Sub-Registrar. when Yar Muhammad Shah signed registers before Sub-Registrar. The other attesting witness has not been produced by defendants with explanation that he is under influence of plaintiff as per statement of their advocate as Ex: 60. During cross examination defendant Abdullah Shah admitted that the attesting witness Abbas Chhelgari is brother of his wife. Therefore in view of this admission the statement of defendants that attesting witness Abbas Chhelgari is under influence of plaintiff is surprising. The defendants who are beneficiary of sale deeds also failed to examine Stamp vendor in this suit who had scribed the sale deeds.”

7. Furthermore, in the Appellate Judgment it was also observed that while the Appellants claimed that they had paid the sale consideration for the lands to Yar Muhammad Shah, and that the relevant payments were made to him separately by each Appellant in a room adjacent to the office of the stamp vendor and were witnessed by Abbas Ali Chelghari and Abdul Wahid Shah, during the cross-examination of the attesting witness Abdul Wahid Shah, it was revealed that he could not provide specific details of the respective payments made by each Appellant to Yar Muhammad Shah, but mentioned that the payments were made in the presence of the stamp vendor.
8. In the matter reported as Sardar Muhammad Kamal-Ud-Din-Khan v. Syed Munir Syed and others 2022 SCMR 806, the Supreme Court explained the scope of jurisdiction under Section 115 CPC as follows:

“The exercise of revisional powers is circumscribed by section 115 of the Code. Clauses (a) and (b) are attracted when jurisdiction, which is vested in a court, is not exercised or when jurisdiction is not vested in a court yet the court assumes jurisdiction. And, clause (c) is with regard to a court exercising jurisdiction illegally or with material irregularity. Conversely, when the order of a subordinate court is within its jurisdiction and such court has not exercised jurisdiction illegally or with material irregularity revisional jurisdiction cannot be exercised.<sup>3</sup> The power of revision cannot be used by a higher court to substitute its own discretion or authority.<sup>4</sup> A revision also does not lie when the law provides for an appeal. And this Court has held<sup>5</sup> that, 'The words "no appeal lies thereto" are words of general import and there is nothing in the section to confine their operation only to first appeals.' However, it does not follow that whenever an appeal is not provided for a revision would lie. A revision can only be filed if the order/judgment which has been impugned comes within clauses (a), (b) and/or (c) of subsection (1) of section 115 of the Code. The Privy Council explained when section 115 would apply and when it would not:

'Section 115 applies only to cases in which no appeal lies, and, where the Legislature has provided no right of appeal, the manifest intention is that the order of the trial Court, right or wrong, shall be final. The section empowers the High Court to satisfy itself upon three matters (a) That the order of the Subordinate Court is within its jurisdiction (b) That the case is one in which the court ought to exercise jurisdiction and (c) That in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied upon those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the Subordinate Court upon questions of fact or law.'<sup>6</sup>

9. In the matter at hand, learned counsel for the Appellant was unable to demonstrate any misreading/non-reading of evidence or perversity in the findings of the fora below falling within the scope of Section 115 CPC, and on the contrary, the view taken through the concurrent findings at hand appears a reasonable and sustainable one on the basis of the evidence, as referred.
  
10. In view of the foregoing, no case for interference stands made and the Revision Application stands dismissed accordingly, with no order as to costs.

JUDGE