

**JUDGMENT SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT**  
**H Y D E R A B A D**

**R.A No.53 of 1990**

*[Muhammad Ibrahim & Others v. Mst. Zubaida Begum & Others]*

**Date of Hearing** : **21.12.2023.**  
**Date of Judgment** : **10.06.2024.**

**Applicants** : Through Mr. Abdul Ghafoor Hakro, Advocate along with his Associate Mr. Arshad Ali Keerio, Advocate.

**Official Respondents** : Through Mr. Allah Bachayo Soomro, Additional A.G Sindh.

**JUDGMENT**

**MUHAMMAD FAISAL KAMAL ALAM – J.--** The Applicants have challenged the Judgment handed down in Civil Appeal No.108 of 1987 preferred by predecessor-in-interest of Respondents No.1(i) to viii (Mst. Zubaida Begum) against the dismissal of her F.C Suit No.257 of 1975 {new Number F.C. Suit No. 6 of 1983} instituted against the Respondents, including the predecessor-in-interest of present Applicants No.i to vii, namely, [Late] Muhammad Ibrahim.

The subject matter of the *Lis* are the Plots No.42, 43, 44 and part of 52 (5445 Square Feet), subsequently, mentioned as (4938 Square Feet)-the Subject Property, situated in Tando Muhammad Khan District Hyderabad, Sindh, regarding which adverse claims are raised by the Applicant and Respondent No.1 (Mst. Zubaida Begum).

2. Mr. Abdul Ghafoor Hakro, Advocate has argued that the Decision of the Appellate Court is not correct; that the Applicant (Muhammad Ibrahim) applied

for the allotment of Plots No.A/41 to 44, part of Plot 52, and preferred an Appeal before the Additional Settlement Commissioner, Hyderabad, who has granted the status-quo Order dated 14.05.1960, yet in violation of the same the auction was held on 21.05.1960 and was confirmed in favour of Respondent No.1; that Survey No.52 was never included in the auction. Further contended that Applicant (Muhammad Ibrahim) on 11.05.1962 moved an Application for transfer of Plots No.A/41 and A/44 and a portion of A/52-1 (total area 416 Square Yards), which was in his occupation and was utilized for industrial purpose, a "Grass Cutting Machine" installed there at; eventually, the above Plots were transferred in favour of the Applicant (Muhammad Ibrahim) vide Order dated 01.06.1967 followed by the issuance of P.T.D on 18.02.1971.

3. **Whereas,** the claim of Respondent No.1 (Mst. Zubaida Begum) as averred was that the Applicant and one other person, namely, Sirajuddin made hectic efforts for the transfer of above subject matter but the Application of Sirajuddin was found illegible for the transfer of the plots which was put to auction on 21.05.1960, and were purchased by the Respondent No.1 being the highest Bidder, for a total sale price of Rs.11,100/-. This auction proceeding was challenged by the Applicant before the then Additional Settlement Commissioner Hyderabad. The Official Respondents after considering the rival claims of the parties hereto, rejected the claim of Applicant (Muhammad Ibrahim) for the transfer of Subject Plots and upheld the auction proceeding vide Judicial Order dated 12.08.1960, followed by the issuance of P.T.O in favour of Respondent No.1 dated 02.09.1960. This was contested by the Applicant through Revision Application and it was dismissed vide Order dated 31.08.1963.

4. No one appeared on behalf private Respondents / Legal heirs of Mst. Zubaida. Whereas, Mr. Allah Bachayo Soomro, learned Additional A.G. Sindh has opposed this revision application and argued that the order of the First Appellate Court should be maintained. Learned A.A.G. has stated that **P.T.D** was issued after the death of the Applicant (Muhammad Ibrahim) which is void *ab initio*.

5. Crux of his arguments, is that since the Respondent (late Mst. Zubaida) paid auction price, therefore, the Subject Plots should have been transferred to her instead of the Applicant (Muhammad Ibrahim); although this line of the argument does not conform to the pleadings of the official Respondents.

6. Arguments heard and record perused.

7. It is the stance of the official Respondents, that the Applicant (Muhammad Ibrahim) applied much earlier than 1960, in the prescribed Form for the transfer of the premises as industrial concern, which was under his occupation since long; that Subject Plot was wrongly auctioned on 21.05.1960 as stay was operating, and given to the Respondent Lady; the issuance of the Provisional Transfer Order (**P.T.O**) in favour of the Respondent Lady does not confer any right or title as possession was not delivered to her. It is stated in the Paragraph 12, that the Applicant made payment, whereafter the Permanent Transfer Deed (**P.T.D**) was issued to him and he became the owner of the Subject Property.

8. Learned Trial Court after going through the pleadings framed the following Issues\_

1. *Whether the suit is maintainable under law?*
2. *Whether the suit is properly valued and stamped?*

3. *Whether the suit is time barred?*

4. *Whether the orders dated 24.05.1967 and 16.04.1975 are illegal, without jurisdiction, and P.T.O issued on 18.02.1971 on the basis of order dated 24.05.1967 is illegal and void?*

5. *What should the decree be?*

9. The Applicant and the Respondent No.1 led the evidence.

Following crucial facts are undisputed\_

- i. When the Subject Plots were auctioned the *status quo* order was operating, passed by the Respondent No.5 dated 14.05.1960 (at Page No.143 of the present *Lis*), **Exhibit 209**.
- ii. Only **P.T.O.** was issued in favour of Respondent lady; *whereas*, a **P.T.D.** dated 18.02.1971 which is a title document, **Exhibit 137**, was issued in favour of the Applicant.
- iii. The property extract produced in the evidence by the Applicants, shows that the Subject Plots have been transferred through inheritance, in favour of the present Applicants as the Legal heirs of Muhammad Ibrahim (at Page No.169 of the present *Lis*).

10. The First Appellate Court although differed with the findings of the learned Trial Court, but did not discuss the evidence, which itself is an illegality. It is a settled rule that if the First Appellate Court being Court of final facts, has come to a different conclusion, then that should be based on the appraisal of the evidence. On the other hand, since it is a very old matter, it would not be proper to simply remand this *Lis*; thus, the evidence is evaluated.

11. Mr. Siraj Din Shaikh, the son and attorney of Respondent Lady has led the evidence. In cross examination, he has admitted that at the time when the auction was held, the Respondent Lady was not in the possession of the Subject Plots. He did not specifically deny the suggestion, that he

had managed the insertion of part of plot No.52 in the bid sheet and P.T.O.; this reply in fact has damaged the stance of Respondent No.1, because it is averred in Paragraph 5 of the Written Statement of the Applicant that the Plot No. 52 was never auctioned and insertion of this Plot was managed by the private Respondents. Admitted that he had no knowledge about Plot No.41; whereas, the claim of the Applicant is also in respect of Plot No.41 and the P.T.D (**Exhibit 137**), issued in favour of the Applicant includes Plot No.A/41. In this regard, the findings of the learned Trial Court is correct, which was wrongly upset by the Appellate Court.

To a question, he has showed his ignorance about obtaining the Death Certificate of the Applicant (Muhammad Ibrahim), which is produced at **Exhibit 135** (at page No.211 of R&Ps). The witness could not reply that what was the mode of payment on behalf of the Respondent Lady to the official Respondents before the issuance of P.T.O.

The two witnesses from the Applicant side are Haji Khaman and Qamaruddin, who are sons of the Applicant (Late Muhammad Ibrahim).

12. Haji Khaman has categorically denied that his Father (Late Muhammad Ibrahim) got the subject land transferred through misrepresentation and fraud, though, he showed his ignorance that Grass Cutting Machine was installed at the Subject Plots, and has denied the suggestion that the Applicant Muhammad Ibrahim died in 1967. Reiterated in his cross examination that the Applicant (Muhammad Ibrahim) was in possession of the portion of the subject plot. He has produced the Permanent Transfer Deed with his evidence, as **Exhibit 137**.

13. Qamaruddin son of the Applicant, deposed and was cross-examined. In his cross-examination, he has stated that he was minor when the transaction in question happened. He was put a question about the usage of subject plot by the

Applicant, to which he had little knowledge. To a number of questions about the transaction in question, he had no knowledge, but the main stance of the Applicant, that the property was auctioned while Stay was operating, could not be contradicted in his cross-examination; *secondly*, he remained consistent in his deposition, that part of plot No.52 [*ibid*] was not included in the auction / Bid Sheet, however, admitted that the Applicant's side did not make an application to the Settlement Department about this alleged interpolation in the record. Specifically denied the suggestion that the Applicant [Late Muhammad Ibrahim] expired on 26.05.1967, but he passed away in the year 1971. Reiterated that the Death Certificate produced by the private Respondent, is a forged one.

14. Mr. Muhammad Younus, Record Clerk of Deputy Settlement Commissioner, Hyderabad [Evacuee Property Branch] produced the copy of the Stay Order dated 14.05.1960 [*supra*] as **Exhibit 209**, so also original Bid Sheet of the Subject Property, wherein, Plot No.52 is written with blue ink, although all other details are in black ink, which goes against the claim of Respondent No.1.

15. The argument of learned AAG in support of the stance of Respondent No.1, about death of Applicant (Late Muhammad Ibrahim), before the issuance of P.T.D, has not been proved, because the official record of the relevant time (available in the present *Lis* and exhibited during the evidence) show the presence of Late Muhammad Ibrahim. The **Exhibit 125**, the Order dated 16.04.1975, which has been challenged in the Suit by the Respondent Lady, observes that the Applicant (Late Muhammad Ibrahim) after clearing the dues, secured the P.T.D on 18.02.1971.

16. The P.T.D is also seen. It is mentioned that Late Muhammad Ibrahim has paid the full value / price of the Subject Property including of Plot No.A/41, regarding which, admittedly, Respondent Lady had no claim.

17. In addition to the above, there is another crucial aspect of the Case. Respondent Lady vide her Correspondence dated 11.04.1968 (**Exhibit 122**) had written to official Respondents that she will apply for P.T.D in the prescribed Form as soon as she hear from the official Respondents and get the possession of the Plot. **After this Correspondence of April, 1968**, no other document is placed on record by any of the Parties to show that the official Respondents were approached by the Respondent No.1 for completing other codal formalities.

18. The other factor about which the Case record is silent, but the onus is on the Respondent Lady being claimant, is, a silence of considerable period from the date of issuance of the P.T.D dated 18.02.1971, and challenging the same by Mst. Zubaida Begum (Late). The next document after the last mentioned **Exhibit 122** is the **Exhibit 124**, which is a **Missive dated 12.06.1974** of the Deputy Settlement Commissioner, Hyderabad, to the Settlement and Rehabilitation Commissioner Sindh, containing favourable observation for the Respondent No.1 with a conclusion that her case should be considered in Suo-Moto Revision; even in this Document it is not mentioned that when the Respondent No.1 approached the Settlement Authority/ Official Respondent. Eventually, as recommended above, the Grievance of Respondent No1 was considered in Suo Moto Revision by the Additional Settlement Commissioner, which was dismissed, vide **Exhibit 125**, the Order dated 16.04.1975 [*supra*], subsequently, challenged in the Suit Proceeding by the Respondent No.1. Three years had lapsed between the issuance of P.T.D (dated 18.02.1971) and the above Missive of Settlement Department, which is un-explained either by the private Respondent No.1, or the learned AAG; it means the P.T.D was not challenged in that period. This silence of considerable period is also an acquiescence on the part of Respondent Lady. On the other hand, valuable rights accrue and

flowing from the P.T.D (Ownership document) cannot be interfered with, in the presence circumstances, *inter alia*, in particular, when the present OFFICIAL RECORD shows that the Subject Property / Plots have been further mutated in the name of present Applicants being legal heirs of Late Muhammad Ibrahim.

19. The conclusion of the above discussion is, that the impugned Order of the First Appellate Court suffers from gross irregularities, as already discussed in the preceding paragraphs, which is to be corrected in this revisional jurisdiction, which is accordingly done. Consequently, the impugned Judgment is set aside and the Judgment and Decree of the learned Trial Court is upheld and restored. The Decree to be accordingly modified.

JUDGE

Shahid