

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Application No.S-33 of 2023

Chakar Bijarani and Two Others

v.

Abdul Rasool Bijarani and others

Applicant No.1.	Chakar son of Mangeh
Applicant No.2.	Bakar son of Mangeh
Applicant No.3.	Ghulam Nabi son of Mangeh
	All by caste Bijrani through Mr. Abdul Rehman Bhutto, Advocate.
Respondent No.1	Abdul Rasool s/o Shah Ghazi Bijarani. <i>Nemo.</i>
Respondent No.2.	Province of Sindh, Secretary, Board of Revenue, Shahbaz Building, Hyderabad. <i>Nemo.</i>
Respondent No.3.	Mukhtiarkar Revenue, Taluka Tangwani, District Kashmir-Kandhkot. <i>Nemo.</i>
Date of Short Order	: 18.01.2024
Date of Reasons	: 06.02.2024

JUDGMENT

JAWAD AKBAR SARWANA.J.: This revision has been filed by the three Applicants, Chakar (Applicant No.1), Bakar (Applicant No.2) and Ghulam Nabi (Applicant No.3/Defendant Nos.1, 2 and 3)(hereinafter referred to as collectively as "Mangeh's three sons"). Mangeh's three sons, by caste Bijrani, claimed they had purchased for a sale consideration of Rs,1,790,000 about 7 Jarebs land from Plaintiff/Abdul Rasool son of Shah Ghazi, by caste Bijrani, who was owner of 11 Acres 14 Ghuntas of Survey Nos. 341 and 342 Deh Duniapur, Taluka Tangwani (hereinafter

referred to as the "Suit Land"). However, after a dispute arose between them, based on a private faisla by Saeed Ahmed Bijrani, Advocate, the said Plaintiff/Abdul Rasool agreed to sell 4 Jarebs out of the Suit Land to Mangeh's three sons and to refund them a sum of Rs.330,000, which refund was still pending.

2. The Applicants/Mangeh's three sons are aggrieved by the Judgment and Decree dated 01.02.2023 passed by the learned District Judge/MCAC Kashmore at Kandhkot in Civil Appeal No.82/2022 (available on page 115 of the Revision file) upholding the Judgment and Decree dated 21.09.2022 passed by the Senior Civil Judge Kandhkot ("trial court") in FC Suit No.33/2020 (available on page 83 of the Revision file) wherein the trial court held that Plaintiff/Abdul Rasool seeking a declaration in respect of Suit Land of 11 Acres 14 Ghuntas is entitled to a share of 00-33 1/3 Paise of Suit Land viz. Survey No.341 (3-10) acres, 342 (1-34 acres); and, as per entry no.42 of VF-VII/B dated 12.11.2018 of Dey Dunyapur share of 00-22 1/ 6 Paise. The trial court further held that Mangeh's three sons failed to prove the alleged purchase of 7 Jarebts of Suit Lands from Plaintiff/Abdul Rasool. Hence, Plaintiff/Abdul Rasool is entitled to peaceful and vacant possession of the Suit Land as per the trial court's partial decree of Plaintiff/Abdul Rasool's Suit which judgment and decree was upheld by the District Court.

3. The brief facts which emerge from the documents filed with the Revision Application and recorded in the impugned Judgments of the trial courts dated 21.09.2022 and District Court dated 01.02.2023, respectively are that, Plaintiff/Abdul Rasool was the owner of the Suit Lands to the extent of 00-33 1/3 paise.

Plaintiff/Abdul Rasool claimed that he had given part of the Suit Land on Muqqata (Contract) to Mangeh's three sons for two years; however, when the two-year period expired, the latter declined to deliver possession to Plaintiff/Abdul Rasool. Hence, he filed a Suit for Declaration, Possession and Injunction. After recording the evidence and hearing the parties, the learned Judge of the trial court concluded that Plaintiff/Abdul Rasool, his wife, Mst. Begum and their son, Sultan Ahmed, are joint owners of the Suit Land. Therefore, without the consent of the Mst. Begum and Sultan Ahmed there could be no valid contract in respect of the entire Suit Land unless Plaintiff/Abdul Rasool was authorized to bind them. The learned Judge of the trial Court also noted that in paragraph 7 of the Written Statement filed by one of Mangeh's three sons, namely Bakar, he had admitted that the Plaintiff/Abdul Rasool only had 1/3 share in the Suit Land. Therefore, the learned trial judge partially decreed the suit in favor of the Plaintiff/Abdul Rasool.

4. The learned Counsel for the Applicants contended that the trial court and the District Court have misread the evidence as the parties had consented to the faisla by the Saeed Ahmed Bijrani, Advocate. Accordingly, the admissions were duly recorded, and the Plaintiff/Abdul Rasool was bound to honour the same.

5. I have heard the learned Counsel and perused the Revision file.

6. It is an admitted position that the Plaintiff/Abdul Rasool had only 1/3 share in the Suit Land. Therefore, the sale agreement, if any, was not enforceable against the remaining two co-owners,

and neither was it registered as a sale deed. Consequently, Mangeh's three sons had no defence. Plaintiff/Abdul Rasool impleaded them as defendants, and apart from defending, they were in no position to agitate a claim to preserve and protect their interests as merely defendants. They were pleading specific performance as a defence, which would always be an uphill task being impleaded as Defendants. They did not bother to raise a counter-claim in the Plaintiff/Abdul Rasool suit and did not take any other action to agitate and preserve their right as a purchaser. Thus, their defence always stood on thin ice, particularly at the belated stage of revision. Finally, it did not help their (Applicants) cause that the private faisla was not signed by the Plaintiff/Abdul Rasool or witnessed. Further, the Suit Land was not conveyed by a registered sale deed.

7. No jurisdictional error or irregularity in the concurrent findings of facts recorded by the courts of competent jurisdiction or on the point of law has been identified in the impugned judgments and decree of either the trial Court or the District Court that could justify this Court's interference under Section 115 CPC. The Applicants have not shown that the two courts have acted in the exercise of jurisdiction illegally or with material irregularity, which calls for any interference by this Court.

8. In view of the above, the revision was dismissed on 18.01.2024, and these are the reasons for the said Short Order.

JUDGE