

Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Rev. Application No.S-185 of 2022

Applicants : Mst. Manzooran and another,
through Mr. Tariq G. Hanif Mangi,
Advocate

Respondents
No.1 to 8 : Muhammad Irfan Khan and others
Through Mr. Asif Ali Bhatti Rajput,
Advocate

Date of hearing : **20.11.2023 & 11.12.2023**

Date of Decision : **22.01.2024**

J U D G M E N T

ARBAB ALI HAKRO, J: Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("**the Code**"), the applicants have impugned the Judgment and Decree dated 25.10.2022, passed by Additional District Judge-IV(H), Sukkur ("**appellate Court**") in Civil Appeal No.146 of 2022, whereby, the Judgment dated 04.10.2022 and Decree dated 06.10.2022, passed by III-Senior Civil Judge, Sukkur ("**trial Court**") in F.C. Suit No.193 of 2013, through which the suit of the Respondents Nos.1 to 8 was decreed were maintained by dismissing the Appeal.

2. The facts of the case can be briefly summarized as follows: Respondents No.1 to 8, the plaintiffs, filed a suit seeking a declaration, possession, mesne profit, and a permanent injunction. They claimed that the property bearing C.S No.D-143, measuring 69.06 Sq. Yards out of 82.06 Sq. Yards, situated in Ward-D, Taluka & District Sukkur, was sold by late Muhammad Ibrahim to applicant No.2, who was a co-owner and attorney of other co-owners. An area of 13 sq. Yards (the "**suit property**") remains divided into two portions. A portion measuring 04.03 Sq. Yards will be used as a staircase going upwards to

the property of vendors, and the other portion measures 08.06 sq. Yards will be used by the vendors for any purpose. After the death of Muhammad Ibrahim, the suit property was inherited by the applicants, who are his legal heirs, and the record of rights was mutated in their names in the City Survey record. It is further alleged that the applicants, while raising construction on C.S No.D-143, illegally and malafidely encroached upon the suit property on an area of 82.06 sq. Yards instead of 69.06 Sq. Yards and blocked the passage of respondents No.1 to 8, which was kept for a staircase. It is asserted that upon coming to know this, respondents No.1 to 8 approached the applicants several times and sent a legal notice to hand over the possession of the suit property, but they refused. The demarcation was also carried out by the concerned Mukhtiarkar, who found that a Pacca RCC Building was constructed over C.S No.D-143, measuring 82.06 sq. Yards by applicant No.1, including the excess area/suit property.

3. The defendants No.1 and 2/applicants submitted their written statement and refuted the claim made by respondents No.1 to 8 by stating that the deceased Muhammad Ibrahim had sold the entire C.S No.143, measuring 82.06 sq. Yards, to the applicant No.2 through registered Sale Deed No.41 dated 10.01.1991. After that, applicant No.2 transferred the above property to his wife, applicant No.1, through a registered Deed of Dower dated 05.9.1992. They further claimed that the Correction Deeds dated 27.5.1997 and 04.01.2002 were managed by the deceased Muhammad Ibrahim by reducing the area of 13 Sq. Yards/suit property by cheating with the applicants and obtaining their signatures without them knowing the contents of the above Correction Deeds. They further asserted that, as per the original Sale Deed, space for the staircase of respondent No.1 to 8's property was spared to the extent of 29 Feet and 9 inches as mentioned in the Sale Deed dated 10.01.1991. They also claimed they are in possession of the entire area of 82.06 Sq. Yards, as mentioned

in the Sale Deeds, is where an RCC Building has been constructed since the year 1990, after approval of the map by the Sukkur Municipal Corporation without any objection or protest from the deceased Muhammad Ibrahim. The small staircase still exists for the passage of respondent No.1 to 8, and a multi-storey building was raised long ago, which was noticed and acknowledged by the deceased Muhammad Ibrahim and the applicants, but they did not object.

4. On the divergent pleadings of the parties, the learned trial court framed the following eight issues: -

- i. Whether the suit of plaintiff is not maintainable and time barred?*
- ii. Whether plaintiffs are co-sharers in suit property to the extent of 13 Sq. Yds according to their legal shares?*
- iii. Whether revenue record of suit land mutated in favour of defendants No.6 and 7 is illegal and liable to be cancelled?*
- iv. Whether defendant No.2 executed two different correction deed dated 27.5.1997 and 4th January 2002 in respect of suit property to the extent of 13 Sq. Yds?*
- v. Whether plaintiffs are entitled for mesne profit w.e.f 1st October, 2010 till peaceful possession at the rate of Rs.2000/- per month?*
- vi. What should the Decree be?*

5. In support of their claim, Respondent No.1, for self and being attorney of respondents Nos.2 to 8, examined himself and produced relevant documents, so he also examined two other witnesses. In rebuttal, applicants examined their attorney, Muhammad Asif. The official witnesses, i.e. Mukhtiarkar and Sub-Registrar, were also examined. On completion of the case, the trial court vide Judgment dated 04.10.2022 and Decree dated 06.10.2022 decreed the suit of respondent No.1 to 8, which were challenged through Civil Appeal No.146 of 2022; the appellate Court dismissed the Appeal vide Judgment and Decree dated 25.10.2022 and maintained the Judgment and Decree of trial Court.

6. At the outset, the learned Counsel representing the applicants submits that deceased Muhammad Ibrahim executed a registered Sale Deed dated 10.01.1991 in favour of applicant No.2 for 82-6 Sq. Yds, including the suit property. He contends that after the purchase by applicant No.2, he executed a Dower Deed dated 05.9.1992 in favour of his wife, applicant No.1. Since then, they have been in possession of the entire property, including the suit property. He further contends that deceased Muhammad Ibrahim illegally and unlawfully, in collusion with officials of the revenue department, managed alleged Correction Deeds dated 27.5.1997 and 04.01.2002 without the knowledge of applicant No.2. Even otherwise, applicant No.2 was not the owner of the suit property at that time as he had already executed a Dower Deed in favour of applicant No.1. Such fact was in the knowledge of respondent No.1 to 8 and admitted by their attorney in his evidence. He has also submitted that the burden of proof lies on respondents No.1 to 8 to prove the alleged Correction Deeds, but they failed to discharge their burden by producing two attesting witnesses. He has further submitted that the Sub-Registrar has no power to make a correction deed to reduce 13-00 Sq. Yards/suit property from the actual area of 82-06 Sq. Yds, which is beyond his jurisdiction. In the end, the learned Counsel for the Applicants has prayed that the instant revision application may be allowed by setting aside the impugned judgments and decrees passed by both lower Courts.

7. Conversely, learned Counsel representing Respondent No.1 to 8 contends that the trial Court has rightly decreed the suit of Respondent No.1 to 8, which the Appellate Court maintained. He argues that no gross or material irregularity or illegality is committed by either Court below. He further contends that applicants executed both the Correction Deeds and that division/partition is shown in the second Correction Deed dated 04.01.2002. He also argues that there is no misreading or non-reading of

evidence.

8. Learned A.A.G., while supporting the judgments and decrees passed by both lower Courts, has adopted the arguments advanced by learned Counsel for Respondent No. 1 to 8.

9. The arguments have been heard at length, and the available record has been carefully evaluated with the able assistance of the learned Counsel for the parties, including the case law relied upon.

10. I have also meticulously examined the legality and correctness of the judgments and decrees passed by both the Courts below with a fair opportunity of the audience to the learned Counsel for the applicants to satisfy this Court as to whether the Courts below exercised their jurisdiction either illegally or with material irregularity.

11. The plaintiffs/respondents No.1 to 8 have based their claim on two Correction Deeds dated 27th May 1997 and 4th January 2002. These Correction Deeds are the foundation for their pursuit of Declaration and Possession. Upon examination of these Correction Deeds, it is revealed that the area of the suit property has been reduced from 82-06 Sq. Yards to 69-06 Sq. Yards. The Correction Deeds clarify that 13 sq. Yards of the suit property were not included in the sale, with an area of 04-03 Sq. Yds are designated for stairs and an area of 8-6 sq. Yds reserved for the vendors' discretionary use. A Correction Deed is a legal instrument used to rectify errors or omissions in the original deed. It is typically employed when a deed has minor mistakes, such as typographical errors, misspelt names, or incorrect legal descriptions of the property. The Correction Deed does not convey the title but amends the information provided in the original deed. It must be signed by the original grantor, notarized, and then recorded in the county where the property is located. However, a Correction Deed cannot be used for major changes or to alter the rights conveyed in the original deed. For such changes, a new deed is

usually required. In the present case, an area of 13-00 Sq. Yards/suit property has been diminished through the execution of alleged Correction Deeds. This reduction was carried out without any justification or explanation of how such a discrepancy occurred in the original Sale and Dower Deeds. The absence of a clear rationale for this significant change raises serious questions about the validity and legality of the Correction Deeds. The Correction Deeds, which are typically used to rectify minor errors or omissions in the original deed, have been employed here to effect a substantial alteration in the property area. This is different from the conventional use of Correction Deeds, which do not convey the title but merely correct the information given in the original deed. In this case, the lack of justification or explanation for this reduction in the property area casts doubt on the legitimacy of the Correction Deeds.

12. Here, it would be conducive to reproduce Rules 123 and 124 of the Sindh Registration Rules, 1940 ("**SRR, 1940**"), hereunder:-

"123(1) When owing to an error or omission in any document has been registered, a supplementary document rectifying such error or omission is presented for registration, a note of such rectification shall be made below the true copy certificate in the register in which the original document is registered in the form "This document has been rectified by document No. ____ of 19 Volume page ____ of ____ (Name of Office)"

(2) If the Volume in which the original document was copied has been sent to the Central Record Roo, the Sub Registrar by whom the deed of rectification has been registered shall write to the Head Quarter Sub-Registrar requesting him to make the necessary note of rectification in the appropriate register, which he shall do under his signature.

124(1)(a) On the registration of a document which revokes, or cancels or rectifies an error in, or modifies the terms of, a document previously registered in the same class of Register Book or of a return of lands acquired under the Land Acquisition Act, 1894, or of a document received and filed

under section 89 of the Act, or on the receipt of a communication from a revenue officer or from a court which intimates similar revocation, cancellation, rectification or modification, a note shall be entered at the foot of the entry of the latter document or communication as under:-

*“This document Communication document No. revokes (cancels, rectifies or modifies) the document filed the return filed
at pages Volume of Book Supplement to Book file “and at the foot of the previous entry” or of the document
previously registered or filed, a note shall be entered as shown below:*

*“This document document has been revoked (cancelled, rectified or modified) by document No. the document filed
return the return filed
at pages Volume Book
of Supplement to Book
file*

Dated 19

(Sd.)
Sub-Registrar

(b) When the revocation, cancellation, rectification or modification is of a document relating to immovable property, a corresponding note shall also be made in Index No.II and when it relates to the rectification of any particular entered in Index No.I, II, III or IV a note of rectification shall also be made in respective index against the particular item rectified”.

13. A careful reading of aforesaid Rules reveals that Rule 123(1) of SRR, 1940, is a key regulation that deals with the correction of mistakes or oversights in any registered document. This rule stipulates that a rectification note must be created if an additional document is submitted for registration to correct a mistake or oversight in a previously registered document. This note is positioned beneath the true copy certificate in the register where the original document is registered. This rule guarantees that any amendments made to registered documents are accurately recorded and connected to the original document, thus preserving the integrity and precision of the registration records. It exemplifies the attention to detail and comprehensiveness of the registration process. According to Rule 123(2) of SRR, 1940, when the volume containing the original copied document has been transferred to the Central Record Room, the Sub Registrar who has registered the rectification deed must send a written request to the Head Quarter Sub-Registrar. This request is for

the Head Quarter Sub-Registrar to make an appropriate rectification note in the relevant register, which he is required to do under his own signature. This rule is in place to ensure that the rectification is correctly documented, even if the volume of the original document has been relocated to the Central Record Room, thereby preserving the precision and integrity of the registration records. Rule 124(1)(a) stipulates that if a document is registered that either revokes, cancels, corrects an error, or alters the terms of a previously registered document in the same class of Register Book or a return of lands procured under the Land Acquisition Act, 1894, or a document received and filed under section 89 of the Act, a notation is required. This rule also applies when a message from a revenue officer or a court is received that indicates a similar revocation, cancellation, correction, or alteration. In these instances, a note should be made at the end of the entry of the latter document or message. This regulation ensures that any modifications to the original document are accurately recorded and connected to the original entry, preserving the precision and integrity of the records. Rule 124(1)(b) states that any changes such as revocation, cancellation, rectification, or modification related to a document linked with immovable property should be noted in Index No. II. In addition, if the change is about correcting a specific entry in Index No. I, II, III, or IV, a correction note should be added in the relevant index against the particular item that has been corrected. This rule is designed to ensure that all modifications concerning immovable property and specific index entries are properly documented, thereby preserving the accuracy of the records. The perusal of alleged Correction Deeds as well as original Sale and Dower Deeds reveals that the above Rules have not been followed or complied with, which questions the execution of the alleged Correction Deeds and said defect is itself sufficient to declare the alleged Correction Deeds against the law.

14. According to Article 79 of the Qanun-e-Shahadat Order, 1984 ('QSO, 1984'), a document's authenticity must be established by presenting two attesting witnesses. However, in this case, the applicants have not been able to provide the required two attesting witnesses to verify the execution of the alleged Correction Deeds. The onus of proof is on the beneficiary of a document. As per the law, the beneficiary of a document is obligated to validate the Correction Deeds by producing two attesting/marginal witnesses. Failure to substantiate such execution will have adverse implications for the alleged beneficiary. This principle is supported by the precedents set in the cases of Wali Muhammad Khan v. Mst. Amina 2018 SCMR 2080, Khalid Dad Khan v. Zeenat Khatoon 2010 SCMR 1370, and Fida Hussain v. Murid Sakina 2004 SCMR 1043. In case of Haji Muhammad Younis (Deceased) through legal heirs and another vs. Mst. Farukh Sultan and others (2022 SCMR 1282), it was held by the Supreme Court of Pakistan that:

"In this regard, we may observe, when a sale transaction of an immovable property is challenged, the ultimate onus to prove the same is on the "beneficiary" thereof. However, this onus is shifted on the "beneficiary", only when the challenger puts forth some evidence to discharge the initial burden to rebut the legal presumption of truth in favour of the disputed long-standing revenue entries or registered sale deed, as the case may be".

15. The execution of a document can be proved only in accordance with the mode provided under Article 79 of QSO, 1984, which reads as under: -

"79. Proof of execution of document required by law to be attested: If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of given evidence.

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not

being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

16. Under the stipulations of the aforementioned article, a document can be admitted as evidence if it is corroborated by two attesting witnesses. These witnesses play a crucial role in the validation of the document. Their testimony serves as a testament to the authenticity of the document in question. However, it is imperative that these attesting witnesses are examined thoroughly. Without their compulsory examination, the document cannot be considered as evidence. This examination process ensures the credibility of the document and upholds the integrity of the legal proceedings. Thus, the role of attesting witnesses is pivotal and mandatory in the proof of a document.

17. Moreover, It is a matter of record that the deceased, Muhammad Ibrahim, the predecessor of the applicants, was a co-sharer and the attorney of other co-sharers. These co-sharers were Muhammad Yaqoob Khan, Muhammad Umer Khan, and Mst. Rehmat-un-Nisa, Mst. Mehr-un-Nisa, and Muhammad Sohail. Muhammad Ibrahim, for himself as well as on behalf of the above-named co-sharers, being an attorney, sold an area of 82-06 Sq. Yards to applicant No.2 through a registered Sale Deed dated 10.01.1991. This means that the deceased, Muhammad Ibrahim, was not the full owner of the property but was a co-sharer. Likewise, the perusal of the Correction Deed dated 27.5.1997 reveals that the deceased Muhammad Ibrahim executed it in his capacity as a co-sharer as well as the attorney of the above-named co-sharers. Through this deed, he reduced an area of 13-00 Sq. Yds of the property from 82-06 Sq. Yards and made it 69-06 Sq. Yards. The Respondent No.1 has also produced a City Survey Extract from the Property Register Card at Exh-37/E, which was kept on the basis of the Correction Deeds dated 27.5.1997

and 04.01.2002. It shows that an area of 13-00 Sq. Yds of the property was transferred in the names of Muhammad Yaqoob, Muhammad Umer, Mst. Rehmat-un-Nisa, Muhammad Aslam, and Mst. Mehr-Nisa is a co-sharer, while the name of Respondents No.1 to 8/ Plaintiffs predecessor, Muhammad Ibrahim, is missing. Be that as it may, the said City Survey Extract also shows an entry dated 15.5.2013, which was recorded in the name of the Respondents No.1 to 8/ Plaintiffs after the death of their predecessor, namely Muhammad Ibrahim. However, no specific area is shown to have been inherited by them. It was only mentioned as "out of area 13-00 Sq. Yards". The above instruments, i.e., the original Sale Deed, Correction Deed, and Extract from the Property Register Card, clearly show that the deceased Muhammad Ibrahim was not the full owner of either 82-06 Sq. Yards or 13-00 Sq. Yards. Then, how are the Respondents No.1 to 8 /plaintiffs claiming to be owners of the entire 13-00 Sq. Yards of the property? The other co-sharers/co-owners in the property have not been made parties in the suit, nor have they come forward to claim their rights or support the alleged Correction Deeds, which could potentially affect the validity of the claims being made by the Respondents No.1 to 8. The legal heirs/co-sharers are real parties who could have objected to the claim of the Plaintiffs. In absence of the co-sharers of the Suit Property being real parties to this Suit, the Suit of the Applicant was not maintainable. In Case of The Province of Punjab through Collector, Sialkot v. Feroz Din and others (2015 SCMR 909), it has been observed by the Supreme Court of Pakistan in Paragraph No.5 as under:-

“5. There can be no doubt that the respondents/Plaintiffs could not have been granted a declaratory decree for title because the real parties who could have objected to their claim of title had not been made parties. The decrees in favour of the respondents/Plaintiffs are, therefore, void on this score alone because only the Collector, Sialkot has been impleaded as a Defendant”.

In Case of Abdul Ghani v. Abrar Hussain (1999 SCMR 348), it was held by the Supreme Court of Pakistan that:

“It seems to be a well-settled proposition of law that a co-owner can file ejectment proceedings against a tenant without impleading his other co-owners under the Rent Laws whereas a suit for possession cannot be filed without impleading all the co-owners”.

[The underlining is supplied]

18. Notwithstanding Order 1 Rule 1 of the Code, which mandates the inclusion of all necessary parties for a lawsuit to proceed effectively, the absence of a necessary party can hinder the passing of an effective decree or order. A necessary party is a person whose presence is vital for a thorough and final resolution of the dispute. Without them, the Decree or order may not fully resolve the dispute, potentially leading to further litigation. Hence, it's of utmost importance to include all necessary parties in a lawsuit to ensure that the resulting Decree or order is definitive and holds all parties accountable.

19. Another aspect of the case is that respondents No.1 to 8, the plaintiffs, filed a suit on 03.10.2013 for declaration and possession based on a Correction Deed dated 27.5.1997, after a more than 16 years lapse. The applicable time period to file a declaratory suit under Article 120 of the Limitation Act is six years, and for possession, it is twelve years, as contemplated by Article 142 of the Limitation Act. In a case like the one at hand, where both declaration and possession have been sought, the suit should be filed within twelve years from the date of dispossession. Respondents No.1 to 8, the plaintiffs, have stated in their plaint that the applicants/defendants No.1 and 2 encroached upon the suit property illegally and in bad faith while raising construction. No specific date of encroachment or dispossession is shown, nor have the defendants pleaded or produced any evidence that they remained in possession of the suit property. The Correction Deed is also silent with regard to possession. The plaintiffs were obligated to have proven their earlier possession and

subsequent dispossession within twelve years, but they have utterly failed to achieve this goal. The Supreme Court of Pakistan has held time and again that an aggrieved person must pursue his legal remedy with diligence, and if the suit is filed beyond the period of limitation, each day's delay must be explained. In the instant case, no explanation whatsoever was given in this respect. Indeed, the law of limitation plays a crucial role in property disputes. If a person has been in possession of a piece of land, the law of limitation should be given significant consideration. This law discourages frivolous claims that are brought after the stipulated period has elapsed. It ensures that property rights are protected, and legal claims are made promptly. This not only maintains the sanctity of the legal process but also prevents unnecessary litigation. Therefore, it is essential to adhere to the law of limitation when dealing with property possession cases.

20. In addition, Order VII Rule 6 of the Code refers to the **“Grounds of exemption from limitation law”**. It indicates that if a suit is filed after the time frame set by the law of limitation, the plaintiff must include the reason for which an exemption from this law is sought. This implies that if a legal action is initiated after the deadline established by the law of limitation, the plaintiff must detail the justifications for their exemption from this law in the plaint. The Court may allow the plaintiff to seek an exemption from the law of limitation on any basis not mentioned in the plaint, provided that such basis does not contradict the basis mentioned in the plaint. Such ground for exemption from the law of limitation are also absent in the plaint's contents of the present case.

21. It is a well-established principle that a revisional court typically does not intervene in the concurrent factual findings of the first two fact-finding courts. However, exceptions are made in cases where there is a noticeable misreading or non-reading of evidence on

record. In such instances, the revisional Court is permitted to interfere and overturn the concurrent findings. This also applies when there is an error in the jurisdiction exercised by the lower courts or when these courts have acted illegally or with significant irregularity in the exercise of their jurisdiction. The above discussion indicates that the lower courts have, in a way, overlooked credible documentary evidence. Therefore, the concurrent factual findings, being erroneous due to the misreading and non-reading of evidence, are not inviolable. This does not prevent this Court from intervening in its revisional jurisdiction to correct such factual and legal errors as highlighted in the preceding paragraphs. In the case of case of Mst. Faheeman Begum (deceased) through L.Rs and others vs Islam-ud-Din (deceased) through L.Rs and others, reported in 2023 SCMR 1402, in which Supreme Court of Pakistan has held as under: -

"If the concurrent findings recorded by the lower fora are found to be in violation of law, or based on misreading or non-reading of evidence, then they cannot be treated as being so sacrosanct or sanctified that cannot be reversed by the High Court in revisional jurisdiction which is pre-eminently corrective and supervisory in nature. In fact, the Court, in its revisional jurisdiction under section 115 of the Code of Civil Procedure, 1908 ("C.P.C."), can even exercise its suo motu jurisdiction to correct any jurisdictional errors committed by a subordinate Court to ensure strict adherence to the safe administration of justice. The jurisdiction vested in the High Court under section 115, C.P.C. is to satisfy and reassure that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law, or with material irregularity, or by committing some error of procedure in the course of the trial which affected the ultimate decision. The scope of revisional jurisdiction is restricted to the extent of misreading or non-reading of evidence, jurisdictional error or illegality in the Judgment of the nature, which may have a material effect on the result of the case or if the conclusion drawn therein is perverse or conflicting to the law."

[Emphasis supplied]

In Case of Noor Hussain and others v. Mst. Hussain Bibi and others (2007 SCMR 378), it was held by the Supreme Court of Pakistan

that:

“It is a settled proposition of law that when the Appellate Court had decided the case in violation of law laid down by this Court, then it is termed as material irregularity or illegality within the meaning of section 115 of C.P.C. as law laid down by this Court in Shaukat Nawaz's case 1988 SCMR 851”.

22. For the foregoing reasons, considering the arguments and also perusal of the record, the judgments and decrees passed by both the Courts below are the result of misreading and non-reading of the record, and law, so also committed illegality and therefore the same are unwarranted. Accordingly, while **allowing** this civil revision, I set aside impugned Judgments and Decrees passed by the learned Courts below and dismiss the suit of respondents/plaintiffs. Parties are left to bear their own costs.

Faisal Mumtaz/PS

JUDGE