

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
SUKKUR
Civil Revision No. S-125 of 2021

Applicant: Manzoor Hussain Arain s/o Khushi Muhammad, through Mr. Syed Mujahid Ali Shah, Advocate.

Respondents: Ali Murad Khaskheli and others
Through Mr. Muhammad Aslam Gadani,
advocate

The State: Through Mr. Ghulam Abbass Kuber, A.A.G

Date of Hearing: 06.10.2021.

Date of Order

ORDER

KHADIM HUSSAIN SOOMRO, J :- Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("**the Code**"), the applicant has impugned the Judgment and Decree dated 04.12.2021, passed in Civil Appeal No.183 of 2018, by the learned District Judge, Naushahro Feroze, ("**the appellate Court**"), whereby the Judgment dated 09.08.2018 and Decree dated 15.08.2018, passed by learned 1st Senior Civil Judge, Naushahro Feroze ("**the trial Court**") in new F.C. Suit No.193 of 2014 were maintained and the suit filed by the respondents/plaintiff was decreed.

2. Succinct facts as averred in the plaint are that the plaintiff/respondents filed a Suit for declaration, partition and permanent injunction claiming therein that the agricultural land bearing Sv. No. 491 (0-1) ghuntas, 492 (0-35) ghuntas, 493 (1-30) acres, situated in Deh Padidan, Taluka and District Naushahro Feroze ("**the Suit Land**") belongs to them, as owners, by way of inheritance; and applicant/defendant has got no right, title over the suit land. The plaintiffs/respondents averred that the applicant/defendant came to the suit land 15 days ago and tried to dispossess them. Therefore, the plaintiff/respondents filed the suit with the following reliefs:-

- a) To declare that the plaintiffs are lawful owners of suit land by way of inheritance and the defendants have no right, title, over the same and the act of private defendants is illegal, null and void and against natural justice.
- b) To direct the revenue officials to demarcate the suit land and make partition of share of plaintiffs as per law. In case of failure the same may be done through process of law.
- c) A permanent injunction may be issued against the defendants restraining them from interfering with the peaceful possession of plaintiff and from selling, alienating or transferring the suit land on the basis of any forged and fake document, if any, and also restrain the official defendants from issuance of Fard and from registering any document in respect of suit land either by themselves or through another agent or attorney in any manner whatsoever.
- d) Costs of the suit be borne by the defendants
- e) Any other relief which this court deems fit may also be awarded to the plaintiff.

3. In the wake of service upon the applicant, he submitted his written statement wherein he denied the claim of the respondents/plaintiffs made in the plaint. He further stated that one Ali Muhammad, who had purchased the suit land from Mehmood Khaskheli, father of plaintiff No.1, by way of a sale agreement dated 09.08.1981. and thereafter Ali Muhammad sold out the same to the applicant through sale agreement dated 04.04.1982.

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

- (1) Whether the suit of the plaintiff is not maintainable according to law.
- (2) Whether the plaintiffs are legal and lawful owners of the suit land by way of inheritance?
- (3) Whether the private defendants illegally occupied 0-07 ghutnas out of suit land?

(4) Whether the plaintiffs are entitled to the relief claimed?.

(5) What should the decree be ?

5. The plaintiff in order to establish his case was examined as PW-1, Ali Murad at Ex.42, he produced certified true copy of Village Form-XV, VII-A, VII-B in respect of suit land at Ex.42-A, 42-B, 42-C, PW-2 Wazir Ali, Rustam Ali and Shahnawaz at Ex.44,45 and 46.

6. The defendant Manzoor Hussain Arain was examined as DW-1 at Ex.61, he produced CTC of VF-VII-B at Ex.61-A, original Iqarnana of sale at Ex.61-B, photocopy of sale agreement dated 09.08.1982 at Ex.61-C, original Iqarnana at Ex.61-D, original four receipts from 2014 to 2017 at Ex.61-E to 61-H, C.T.C of the order dated 05.12.2014, passed by Civil Judge-III, Naushahro Feroze at Ex.61-I, C.T.C on an application U/s 345(2) and 345(6) Cr.P.C filed by plaintiff No.1 and the defendant No.1 before learned Civil Judge-III, Naushahro Feroze, photocopy of cheque No.1544150, dated 06.05.2015 of MCB Patidan at Ex.61-K.

7. The learned trial court also called a court witness namely Abdul Latif Maree, Tapedar in Deh Patidan at Ex.66, he produced an authority letter at Ex.66-A, attested photocopy of entry No.13, dated 11.02.1981 of Form XV at Ex.66-D, entry No.42, dated 19.02.2014 of Form VII-B at Ex.66-E and entry No.47 dated 03.04.2014 of V.F. VII-B.

8. After examining the evidence produced by both the parties and hearing counsels, the trial Court vide Judgment dated 09.08.2018 and Decree dated 15.08.2018 decreed the suit of the plaintiffs/respondents. The applicant against that judgment and decree of the trial court preferred Civil Appeal No.183 of 2018, which was dismissed vide judgment and decree dated 04.12.2021 by the appellate court. Hence this revision.

9. The counsel for the applicant submits that there are two sale agreements, one dated 09.08.1981 through which Ali Muhammad had purchased the suit land from the father of plaintiff No.1, and the defendant/applicant had purchased the same from the said Ali

Muhammad by way of another sale agreement dated 04.04.1982. The counsel further submits that the sale agreements and its genuineness have not been called and questioned by the plaintiffs/respondents by way of filing a separate suit, but they sought the declaration, which is not maintainable, and he prayed for the setting-aside of the impugned judgments.

10. The counsel for respondents submits that the applicant failed to produce the original sale agreements before the trial court as well as before the appellate court. He further submits that the marginal witnesses of the alleged sale agreement have not been examined and sale agreement do not create any right, title and legal character. The suit land was originally owned by the father of respondent no 1 Mehmood Khaskheli, and there are corresponding entries in his favour in village Form VII, and after his death; fowti khatta baddal was made in favour of the respondents, and the applicant has no right over the suit land.

11. I have made extensive deliberations on the arguments advanced by the learned counsels for the applicant, respondents as well as A.A.G and meticulously assessed the material available on the record with their able assistance.

12. The respondents claimed to be the owner of the suit land, on the basis of the right of inheritance and they have produced various documents before the trial court to substantiate their claim. The learned trial court called court witness namely Abdul Latif Maree Tapedar of the relevant Deh, who produced the numerous entries mutated in the name of the father of plaintiff No.1/respondent, and after his death, fowti khatta baddal was made in favour of the legal heirs of the deceased on 19.02.2014, such entry was kept in the relevant revenue record being, entry No.42. The perusal of the written statement shows that the applicant had denied the right, title and legal character of the plaintiffs/respondents over the suit land, and such denial on part of the defendant created the cause of action for filing the present suit. For convenience and brevity, the relevant Section 42 of the Specific Relief Act, 1877 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.”

13. As per spirit of the above section, if any of the rights arising from a title is infringed or threatened, in that case, an aggrieved person has the right to institute a suit in terms of Section 42 of the Specific Relief Act, 1877, for a declaration against any person denying or interested in denying the title to such character or right to such property; the Court may, in its discretion, make a declaration to that effect. A suit for declaration of status or rights is maintainable if it is in accordance with any statute or any law for the time being enforced. The plaintiffs/respondents sought the declaration of ownership on the basis of the right of inheritance being legal heirs of the deceased. However, their right over the suit land was denied by the applicant, and that denial created a cause of action for the initiation of civil proceedings.

14. The defence taken by the applicant is that he had purchased the suit land through a sale agreement dated 04.04.1982 from one Ali Muhammad, who claimed to have purchased the suit land from the father of plaintiff No.1 by way of the sale agreement dated 09.08.1981. It is a settled principle of law that the sale agreement does not create any right, title or legal character. At the most the applicant could file the suit for specific performance of the contract, but he did not file. The applicant claimed to have purchased the suit land from one Ali Muhammad, who was not competent to make a contract and to transfer suit land. For brevity and convenience Section 7 of the Transfer of Property Act 1882 is reproduced as under:-

7. "Person competent to transfer.--Every person competent to contract and entitled to transferable property, or authorized to disposes of transferable property not his own; is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force."

The above-said section entails a legal ability of a person to enter into a lawful contract. Not everyone may have the legal capacity to engage in contractual agreements to be valid. This proposition of the law signifies that if a person is legally capable to contract and has transferable property, or is authorized to handle disputes related to such property, they have the legal capacity to transfer that property. The property in question must be transferable, means it can be legally transferred from one person to another. The person making the transfer should either be the lawful owner of the property or authorized to handle disputes related to the transferable property, even if it's not their own. The transfer must comply with the laws for the time being enforced, which stipulates that the transfer must adhere to legal requirements or regulations that are applicable to such transactions. The applicant asserts that one Ali Muhammad, had purchased the suit land through a sales agreement dated 09.08.1981, who further executed an agreement to sale in favour of the applicant by executing another sale agreement dated 04.04.1982. It is established legal doctrine that a sale agreement does not engender entitlements to rights, titles, or legal character. In this regard the reliance can be placed in the case of COLLECTOR OF CENTRAL EXCISE AND SALES TAX V/S PAKISTAN FERTILIZER COMPANY LTD, 2007 S C M R 351 the relevant portion of the judgment is reproduced as under:-

" We have also examined C.M.A. No.198 of 2004 which inter alia enumerates that pursuant to the title conveyed to the purchaser (Abdul Rehman Jinnah) on 25th October, 2003 he entered into an agreement with Khawaja Amir Ishaque and Syed Rizwan Ahmed (interveners) to sell 60 Acres of land out of 70 Acres and retain 10 Acres for himself which is not a correct picture of the events as no title could have been conferred upon Abdul Rehman Jinnah on 25-10-2003 as mentioned in ' C.M.A. No.198 of 2004. In fact everything has been done which was not provided under the Indenture of Lease. We are of the considered view that Abdul Rehman Jinnah (auction-purchaser) was not legally entitled to sell sixty Acres of land pertaining to Government of Pakistan and retain 10 Acres of land for his own use. It was neither the

ancestral property nor inherited by Abdul Rehman Jinnah and as such its disposal in such a manner cannot be declared lawful. We have also adverted to the prayer clause of C.M.A. No.198 of 2004 which is reproduced herein below for ready reference:".

15 The transfer comprises all the rights, interests, and ownership capabilities that the transferor, at the time, possesses concerning the property. In other words, the transferee acquires the same level of ownership or interest that the transferor had at the time of such a transfer. Section 8 of the Transfer of Property Act 1882 delineates the definition and scope, which is reproduced as under :-

" 8. "Operation of transfer.--Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof."

16. It is transpired from the record that the applicant produced the photocopy of the sale agreement dated 09.08.1982 at Ex.61-, which carries no value in the eyes of law, irrespective of whether such documents are brought on record and exhibited without objection. The reliance can be placed in the case Khan Muhammad Yusuf Khan Khattak v. S.M. Ayub and 2 others (PLD 1973 SC 160) this Court while dealing with an identical issue held as under:-

"I am of the view that even if such documents are brought on record and exhibited without objection, they remain on the record as "exhibits" and faithful copies of the contents of the original but they cannot be treated as evidence of the original having been signed and written by the persons who purport to have written or signed them, unless the writing or the signature of that person is proved in terms of the mandatory provisions of section 67 of the Evidence Act. If instead of the copy Exh.P.E., the original form "E" which formed the primary evidence, had been exhibited on the record without proving as to who was its author can it be

argued that by merely exhibiting it, the document should be taken for granted as bearing the signature of the appellant without proof that in fact it was written and signed by him. The onus obviously lay on the respondent to prove this fact and his failure to prove it did not cast any responsibility on the appellant to negatively disprove it.”

17. Now, finally, turning towards the scope of the Revisional jurisdiction of this Court, which is very limited, particularly when there exist concurrent findings of facts recorded by the learned trial court as well as the learned appellate Court. There are abundant case laws on this point; however, I seek guidance from the 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 Apex Court 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 preeminently corrective and supervisory in nature. In fact, the Court in its revisional jurisdiction under 5 of 14 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 an 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."

18. Similarly, in the case of *HAJI WAJDAD V. PROVINCIAL GOVERNMENT THROUGH SECRETARY BOARD OF REVENUE GOVERNMENT OF BALOCHISTAN, QUETTA AND OTHERS* reported in **2020 SCMR 2046**, the Apex Court has held that:

“There is no cavil to the principle that the Revisional Court, while exercising its jurisdiction under section 115 of the Civil Procedure Code, 1908 ("C.P.C."), as a rule is not to upset the concurrent findings of fact recorded by the two courts below. This principle is essentially premised on the touchstone that the appellate Court is the last Court of deciding disputed questions of facts. However, the above principle is not absolute, and there may be circumstances warranting exception to the above rule, as provided under section 115, C.P.C. gross misreading or non-reading of evidence on the record; or when the courts below had acted in exercise of its jurisdiction illegally or with material irregularity”.

19. In consideration of the forgoing discourse, I am unequivocal of the opinion that both lower courts, in their judgments, are not tainted with misreading or failing to read the relevant material, nor are they found to have some jurisdictional flaw that justifies interference as enunciated in Section 115 of the Code, 1908, which has very limited scope and restricted to correcting errors of law as well as of facts if found to have existed. Resultantly, in view of the aforementioned discussion, the instant civil revision application is dismissed along with pending applications with no order as to costs.

Judge