

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision No. S-65 of 2022

Applicant No.1 : Mst. Afroz Begum Wd/o Rajib Ali
Applicant No.2 : Mst. Tahseen D/o Rajib Ali
Applicant No.3 : Azhar Ali S/o Rajib Ali
Through Mr. Ghulam Dastagir A. Shahani,
Advocate

Respondent No.1 : Altaf s/o Muhammad Ramzan Soomro
Respondent No.2 : Aftab s/o Muhammad Ramzan Soomro
Respondent No.3 : Mst. Kamul (late) d/o Muhammad Ramzan
Soomro
a) Mst. Shazia d/o late Kamul w/o Ali Sher
b) Guftar Ali d/o late Mst. Kamul
c) Ghulam Ali Raza s/o late Kamul aged about
4 years
d) Baby Nadia d/o late Mst. Kamul (minor
aged about 10 years)
e) Baby Nazia d/o late Mst. Kamul (minor
aged about 8 years)
f) Baby Ghulam Fiza d/o Mst. Kamul (minor)
aged 6 years

Respondent No.4 : Mst. Tasleem d/o Muhammad Ramzan
Soomro.

Respondent No.5 : Mst. Samreen d/o Muhammad Ramzan
Soomro.

Respondent No.6 : Mst. Ambreen d/o Muhammad Ramzan
Soomro.
Through M/s Sher Ali Chandio/ Muhammad Ali
Kandhro, Advocates

Respondent No.7 : Mst. Naseem wd/o Muhammad Ramzan Soomro

Respondent/ Private Def.8:Muhammad Yakoob s/o Shafi Muhammad.

Respondent No.9 : Province of Sindh.

Respondent No.10 : The DDO Revenue, Mehar, Dadu.

Respondent No.11 : The Mukhtiarkar Land Revenue & City Survey
Officer, Mehar, Dadu.

Respondent No.12 : The City Surveyor Mehar, Dadu
Through Mr. Abdul Waris Bhutto, Asstt.
Advocate General Sindh

Date of hearing : 18.12.2023

Date of Judgment : 19.01.2024

JUDGMENT

Khadim Hussain Soomro, J: Through this Civil Revision under Section 115 of the Code of Civil Procedure (CPC), the applicants have impugned the Judgment dated 13.5.2022 and Decree dated 17.5.2022 passed in Civil Appeal No.14/2020, (re. Mst. Afroz Begum and others vs. Altaf, and others) by learned I-Additional District Judge, Mehar, by which appeal filed by the present applicants/ defendants was dismissed and the Judgment dated 24.12.2019 and Decree dated 30.12.2019 passed in FC Suit No.78/2002 (re. Altaf Soomro and others vs. The Province of Sindh and others) by the learned trial Court, i.e. Senior Civil Judge, Mehar (“Trial Court”) was maintained. Hence this Civil Revision.

2. The factual background giving rise to the present revision is that a house constructed upon C-S No.508, 509 and 468 situated in Ward B, Mehar Town (“Suit Property”), purportedly owned by Muhammad Ramzan, son of Ali Muhammad Soomro, and the father of plaintiffs No.1 to 6,/ respondents as well as the spouse of plaintiff No.7/ respondents. The ownership claim was reflected in the relevant city survey record under his name. The suit property was being used as Otaque [a Sindhi Word that means a place used for guests]. Plaintiffs/respondents No.1 to 6 submitted an application for the measurement and demarcation of the suit property to respondent No.11. Initially, notices were issued to the applicants/ defendants, but subsequently, the Mukhtiarkar recommended that the plaintiffs/respondents resolve their dispute through Naik Mard. It was averted in the plaint that on 19.10.2022, the applicants, in collusion with the official respondents, forcibly occupied the suit property by dint of force. Hence, the plaintiffs/ respondents sought the following prayers in their suit:-

(a) To decree the suit of the plaintiffs against the defendants and declare that the plaintiffs owners of the suit property by way of inheritance and the act of defendants 2 to 6 dispossessing the plaintiffs out of the suit property is illegal, void, ab initio contrary to and natural justice.

(b) The defendants No.5 and 6 may be directed to handover the vacant possession of the suit property to the plaintiffs.

(c) The defendants may be restrained permanently from dispossessing the plaintiffs of the suit property other than in due course of law, with temporary injunction against defendant No.2 for passing any order, during the pendency of the suit regarding the entry in favour of Ramzan.

(d) Costs and other relief fit and proper may also be awarded to the plaintiffs in the circumstances of the case.

3. In the wake of the service of notice upon the applicants, they submitted a written statement asserting that C-S No.468 was originally owned by Tulja Ram and Dulha Ram, both sons of Permananand adherents of the Hindu faith. It was contended that the property had been in possession of Shafi Muhammad, who was working as a Chowkidar of the Civil Court. During his lifetime, he executed a Will concerning the suit property, specifying that upon his demise, the property would be inherited by his legal heirs. Subsequent to his death, the Fowti Khata Badal was made in favour of the legal heirs. The applicants further asserted that their possession over the suit property was based on a rightful title. Consequently, they sought the dismissal of the Suit initiated by the plaintiffs/respondents.

4. On the divergent pleading of the parties the following issues were framed:

1. Whether City S. Nos: 508, 509 and 468 Ward-B Mehar Town was the property of Muhammad Ramzan Soomro and he has been using the same as Otak?

2. Whether C.S. No.468 was the property of Tulja Ram and Dulha Ram, if yes whether the said city survey number was in the possession of Shafi Muhammad Soomro?

3. Whether Shafi Muhammad Soomro left his "WILL" and distributed the same amongst his heirs namely Mst. Pathani (wife), Muhammad Yaqoob (son) and Utaz Ali (daughter's son) inequal shares?

4. Whether Mst. Pathani and Mumtaz sold their share to Muhammad Yaqoob through sale deed?

5. Whether Muhammad Yaqoob sold the entire C.S. No: 468 to defendant Muhamad Rajib s/o Buxial Khan Soomro, who is in possession and enjoyment of the same?

6. Whether the suit is not maintainable at law?

7. Whether the suit is bad for non-joinder of necessary parties?

8. Whether the suit is under-valued?

9. Whether the suit is time barred?

10. Whether the plaintiffs are entitled for the reliefs claimed?

11. What should the decree be?

5. The plaintiffs/ respondents, in order to establish their case, examined their attorney, namely Khalique Dino Soomro, as Exh. 42, who

has produced his power of attorney as Exh.44 and the documents, i.e., four copies of Extract Forms of property Register Card in respect to City S. No:468, 508, 509 and 510 at Exh. 45 to 48, respectively. He has also produced the compared copy of the Extract Form City Survey Register with respect to C.S. No.464 and 465 at Exh. 49 and 50 and a true copy of the order of Honourable 3rd Additional District Judge passed in Cr, Case No:04/1995 as Exh. 51, and he was again re-called and re-affirmed and produced the relevant documents, i.e., an attested copy of the property card as Exh. 61 and PTD at Exh.62. The plaintiff also examined the City Surveyor, namely Arshad Ahmed, as Exh.56, who has produced an attested photocopy of the report dated 05.10.2002 in respect of C.S. No.468 at Exh. 59 and attested copy of a letter of DDO Revenue Mehar at Exh. 60. After the examination of PW-2, the evidence of the plaintiff's side was closed vide statement dated 31.05.2005.

6. On the other hand, defendants No.05 and 06 examined the Reader of DO Revenue Dadu, namely Muhammad Sulleman at Exh.74, who produced the authority letter given to him by DO Revenue Dadu at Exh.75 and produced a true copy in respect of property C-468 at Exh.76 and attested copy of the original record regarding entry No.596 as Exh.77. The defendants also examined their attorney namely Nooruddin at Exh.79, who has produced a power of attorney at Exh.80, original sale agreement dated 06.04.2003, original sale agreement dated 20.05.2000, original sale deed dated 15.7.2000, notice issued by City Surveyor dated 30.8.2000 and original water supply bills at Exh. 81 to 85 (01 to 16) respectively. He also produced a photocopy of "Wasiatnama" at Exh.86 and the original calendar of 1800 to 2050 at Exh.87, and thereafter, the side of the defendants Nos.05 and 06 were closed by their advocate vide statement at Exh.88. While the remaining defendants failed to lead evidence.

7. The learned counsel for the applicants submits that the suit property was originally owned by Shafi Muhammad, who passed away and whose estate was devolved upon his legal heirs, namely Mst. Pathani (widow), Muhammad Yaqoob (son) and Mst. Mumtaz (daughter). Counsel further contended that Yaqoob, son of Shafi Muhammad, sold out the Suit Property through an agreement to sell to Rajib Ali, spouse of applicant No.1 and father of applicants No.2 and 3, for a lawful consideration and lawful object and since the date of the sale agreement, they had been enjoying the possession of the Suit Property being a bonafide purchaser. Counsel further contended that there is no evidence of dispossession of the Suit Property as alleged by the plaintiffs/ respondents. Neither the

plaintiffs/ respondents moved an application nor was FIR registered against the applicants. He argued that Yaqoob, being the owner of the property, executed a registered sale deed in favour of Rajib Ali and further contended that, admittedly, the property was owned by Hindus and the plaintiffs/ respondents failed to produce evidence of their title prior to 1974. He further argued that the occupants of the property were not examined by the learned trial Court. He lastly contended that the Mukhtiarkar failed to produce the original documents in favour of the plaintiffs/ respondents, and the present case falls within the ambit of misreading and non-reading of the evidence, which comes within the purview of Section 115 of CPC.

8. The learned counsel for respondents submits that before instant Civil Revision, the applicants filed RA No.02/2021 in the first round of the proceedings, which was allowed, and the matter was remanded to the trial Court to decide afresh after summoning the original record. Counsel pointed out that in the first round of proceedings, as well as in this round, there are concurrent findings in favour of the respondents. He further contended that the Suit Property was owned by Muhammad Ramzan, and there was PTD issued in his favour under the Scheme of Rehabilitation Department by the Deputy Settlement Commissioner, and subsequently, there was an entry in the CS Form. He lastly requests for dismissal of instant revision.

9. Heard the learned counsel for the parties and perused the material available on record.

10. The record reflects that in the first round of proceedings, the Suit of the respondents was decreed; against judgment and decree they preferred an appeal, which was also dismissed. Thereafter, they filed a Civil Revision No.26/2011 before this court, which was allowed, and the matter was remanded to the trial Court with the following directions:-

“In the light of the above discussion and circumstances, present civil Revision application was allowed vide my short order dated 14.12.2018 and the impugned Judgment and decree passed by learned trial Court as well as the learned Appellate Court were set-aside and the matter was remanded to learned trial Court i.e. Senior Civil Judge, Mehar with direction to summon the original record from the concerned department(s) in the light of the documents either produced or relied upon by the either party, examine their representatives as Court witnesses and pass fresh Judgment in accordance with law. The parties are at liberty to adduce their further oral as well as documentary evidence. These are the reasons for the said short order. Parties to bear their own costs.”

11. In the course of the second round of proceedings, both the courts below decided the matter in favour of the plaintiffs/respondents. The applicants failed to produce any title documents with respect to the suit property in their favour, whereas the respondents produced various entries in the name of their father, Muhammad Ramzan. The perusal of the written statement shows that the applicants had denied the right, title and legal character of the plaintiffs/respondents over the suit land that creates the cause of action for filing the present suit. For convenience and brevity, the relevant Section 42 of the Specific Relief Act reads as follows:-

“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.”

12. Suppose 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 under Section 42 of the Specific Relief Act for a declaration against any person denying or interested in denying the title to such character or right to such property. In its discretion, the Court may declare that he/she (plaintiff) is entitled. A Suit for declaration of status or rights is maintainable if it is by any statute or in accordance with a law for the time being enforced. The applicants sought the declaration of ownership on the basis of the right of inheritance being legal heirs of the deceased. However, the applicants denied their right over the suit land; hence, they initiated the civil proceedings.

13. The applicants endeavored to correlate survey number 468 with survey number C-468, asserting them to be identical. However, the evidence and documents brought on the record distinctly demonstrate that both survey numbers are not only dissimilar in terms of their description, location, and origin but also came into existence through separate Permanent Transfer Deeds (**PTD**), lacking any apparent connection between them. The respondents/plaintiffs assert their claim to the aforementioned survey number on the basis of PTD issued by the Deputy Commissioner Settlement Commissioner, Dadu, on 13-09-1963, and this document has not been called into question by the applicants throughout the proceeding. The applicants, however, were unable to produce any title documents pertaining to the suit property in favour of Shafi Muhammad or Yaqoob, son of Shafi Muhammad Soomro, as per the available record before the concerned Mukhtiarkar. Moreover, the applicants failed to

establish their possession, whereas respondents no 1 to 7 produced the City Survey Extract Form in their favour, which was exhibited before the learned trial court at exhibits No 45 to 47 and 100-A to 100-C.

14. The record reveals that the applicants have challenged the ownership of respondents no 1 to 7 over the suit property; on the contrary, the attorney of the applicants, namely Nooruddin, in his evidence, admitted that the deceased Muhammad Ramzan, was the owner, of the suit property. It is a well-established principle of law that admitted facts need not be proved. In legal proceedings, the burden of proof denotes the obligation of a party to produce evidence to establish their claims or defences. It is generally the party stating a claim, either as plaintiff or defendant, who has the burden of proving that particular claim. The statement denotes that definite facts do not need to be proven if the parties involved or their agents agree to admit them. The relevant article, Qanun-e-Shahadat Order, 1984, highlights that in a definite situation, parties can agree to admit facts either during or before a hearing, and such admissions may relieve another party to proceed from the formal burden of proving those facts through evidence.

113. Facts admitted need not be proved. It need by proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they redeemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission.

15. No doubt, under Islamic Law and subject to the limitation, every Muslim of sound mind can dispose of his property by Will. However, in the instant case, the deceased Shafi Muhammad was not the property owner, so how could he execute a Will in favour of the legal heirs? Moreover, the alleged Will did not contain the description of the suit property.

16. Now turning towards the plea of applicants that the ownership of the suit property originally belonged to Shafi Muhammad. Following his demise, two shareholders, namely Mst. Pathani and Mst. Mumtaz sold their respective shares to Muhammad Yaqoob, the son of Shafi Muhammad. Subsequently, Muhammad Yaqoob conveyed the suit property to the deceased Rajib Ali. Now the question is, when the deceased Shafi Muhammad was not the owner of the suit property, how could the legal heirs of the said deceased be entitled to the transferred property. Section 7 of the Transfer of Property Act 1882 Specifies that a person holding the legal capacity to enter into contracts, having

transferable property, or being duly authorized to transfer such property holds the legal authority to effectuate the transfer of said property. 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 handle disputes 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."

17. The above-mentioned section states the lawful ability of a person to enter into a contract. Not everyone may have the legal capacity to engage in contractual agreements. The section denotes that if a person is legally capable of contracting 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, meaning 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 enforced at the time. This indicates that the transfer must adhere to any legal requirements or regulations that are applicable to such transactions. The applicants contend that they acquired legal title to the subject property from Muhammad Yaqoob under a valid sale agreement. Furthermore, Muhammad Yaqoob acknowledges the aforementioned transaction in favour of the applicants. It is an admitted fact that neither father of the said Muhammad Yaqoob was holding the title over the suit property, nor was the same devolved upon the legal heirs. 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:".

18 The transfer comprises all the rights, interests, and ownership capabilities that the transferor presently 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 the transfer. Section 8 gives a clear definition and scope. The section 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."

19. Finally, shifting focus to the ambit of the Revisional jurisdiction of the High Court, it is imperative to highlight that the applicants approach this Court in adherence to its revisional authority as delineated in Section 115 of the Code of Civil Procedure (C.P.C). Both lower courts have arrived at concurrent factual determinations, posing a heavy obstacle. Additionally, this Court, in its revisional jurisdiction, is quite limited, and concurrent findings of fact are typically not disturbed unless it discerns that such conclusions by the lower courts resulted from an erroneous conclusions were reached as a result of an incorrect or misreading of the evidentiary material on record or in violation of established law. Reliance in this regard may be placed upon the case of Noor Muhammad and others v. Mst. Azmat Bibi (2012 SCMR 1373) wherein the august Supreme Court has observed as under:-

"There is no cavil to the proposition that the jurisdiction of High Court under section 115, C.P.C. is narrower and that the concurrent findings of facts cannot be disturbed in revisional jurisdiction unless courts below while recording findings of facts had either misread the evidence or have ignored any material piece of evidence or those are perverse and reflect some jurisdictional error. "Muhammad Akhtar v. Mst. Manna 2001SCMR 1700; Ghulam Muhammad v. Ghulam Ali 2004 SCMR1001; Abdul Mateen v. Mustakhia 2006 SCMR 50 and Muhammad Khaqan v. Trustees of the Port of Karachi 2008SCMR 428."

20. In consideration of the preceding discussion, it is unequivocally ascertained that both the courts below, in their unanimous judgments, are not found to have been tainted with misreading or failing to read the relevant material, nor are they found to have some jurisdictional flaw that justifies interference. The applicants failed to bring their case within ambit of Section 115 of CPC, 1908, whose scope is very limited and restricted. As a result, the present civil revision application is dismissed along with the listed applications.

J U D G E