IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S-92 of 2023

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.

1, For hearing of main case.
2. For hearing of CMA No. 683/2023(Stay)

Mr. Sarfraz A Akhund, advocate for the applicants.

Mian Abdul Salam Arain, advocate for respondents Nos. 1 to 3

Mr. Karim Bux Kubar, Assistant, Advocate General, Sindh.

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Date of hearing: 25-09-2023.
Date of Order:

O R D E R

KHADIM HUSSAIN SOOMRO, J. Through this Civil Revision Application, the applicants have impugned judgment and Decree dated 08.02.2023, passed in Civil Appeal No.29 of 2023, by the learned of IInd Additional District Judge, Ghotki, whereby an order for the rejection of the plaint under order VII Rule 11 of C.P.C passed in filed F.C Suit No. 04/2020 was maintained. Hence, the applicants have preferred an instant Civil Revision Application before this court.

2. Briefly facts leading to the instant Civil Revision Application are that the applicants filed F.C Suit No. 04/2020 against the respondents for Declaration, Partition, Permanent Injunction and Mandatory Injunction before the Court of Senior Civil Judge, Ghotki stating therein that they are lawful owners of the suit property out of S. No. 185 (1-20) acres, situated in Deh Odherwali, Taluka and District Ghotki and the respondents Nos. 1 to 3 have also purchased an area of 00-06 Ghunta out of same survey number through registered sale deed No. 2079 dated 26-12-2009 showing the same as residential plot instead of agricultural land. Per the claim of the applicants, S.No. 185 was an agricultural land, but respondents No. 01 to 03, in collusion with respondents No. 05 to 07, showed the same residential plot and area admeasuring

6213 square feet instead of 00-06 ghunta with wrong diminutions deliberately and malafidely and without adopting the procedure of conversion of agricultural land into commercial one and are raising construction over the same illegally and without getting the same partitioned through due process of law. The applicants and respondents Nos. 1 to 3, as well as 4, are co-owners of the suit survey number, which is not partitioned one on the spot; therefore, the construction being made by respondents No. 1 to 3 on the valuable portion of S.No. 185 is illegal and unlawful. The applicants moved an application for partition to respondent No. 7, who passed an order dated 20-12-2019 directing Mukhtiarkar Revenue to partition S.No. 185, but Mukhtiarkar, under the influence of respondents Nos. 1 to 3, failed to comply with the order of the Assistant Commissioner for partition, and hence, no partition has taken place as yet. The respondents are raising construction over the same, which has given birth to the cause of action to the applicants for filing the above suit, with the following prayers:-

a) To declare that the plaintiffs are lawful owners of the landed property out of Sv.No.185 admeasuring (01-20), acres situated in Deh Odharwali, Tapo, Taluka and District Ghotki.

b) To declare that the plaintiffs and the defendants No.1 to 3 are joint owners of the landed property out of Sv. No. 185 situated in Deh Odharwali, Tapo, Taluka and District Ghotki and the plaintiffs are legally entitled for partition of Sv.No.185 situated in Deh Odharwali, Tapo, Taluka and District Ghotki according to their share as per record of rights.

c) To direct the defendants No.5 to 7 for partition of joint property of the plaintiffs and the defendants No.1 to 3, viz. (01-20) acres of plaintiffs and (00-06) ghuntas of the defendants No.1 to 3 at the site as per khatta in revenue record in accordance with law by way of mandatory injunction.

d) To declare that the sale deed No.2679, dated: 26.12.2009, showing residential plot in sq.feet instead of agricultural land in ghuntas without conversion of agricultural land in residential/commercial plot and without partition of joint Sv.No. showing the wrong dimensions is illegal hence such note may be ordered to be put on alleged sale deed No.2679, dated: 26.12.2009 to Sub-Registrar Ghotki.

e) To restrain the defendants No.1 to 3, their men, agents, servants, labourers etc from raising any kind of construction over the property of plaintiffs.

f) To award the costs of the suit.

g) To grant any other equitable relief which this court deems fit and proper under the circumstances.

3. After admission of the suit, the notices were issued to the defendants, who filed their written statement as well as an application u/O VII Rule 11 C.P.C, and after hearing both the parties, the said application was allowed, and the plaint was rejected, after that the applicants have preferred an appeal against the said order before the Court of District Judge Ghotki, which was transferred to the Court of IInd Additional District Judge Ghotki, but same was also dismissed. Hence, this revision.

4. The learned counsel for the applicants has submitted that the impugned judgment and decree passed by both the courts below are against the law, that the point of jurisdiction has been erroneously decided by the courts below, that the order of Assistant Commissioner was corum-non-judice that's why it has no legal effect; that the nature of the land has been changed at the site, therefore, it excludes the operation of land revenue laws as per Section 3 of the Manual of Land Revenue. He relied upon PLD 1965 W.P 429, PLD 1999 Lah 31, 1988 MLD 1596, 2001 CLC 1741, PLD 2003 Lah 617, PLD 1987 Lah 94, PLD 1972 Lah 196 and 2000 MLD 1155 and prayed for the remand of the case to the trial court to decide the same after leading evidence.

5. The counsel for respondents No.1 to 3 submits that the suit of the plaintiffs/applicants is barred U/s 172 as well as U/s 135, 141 of the Sindh Land Revenue Act; that the Assistant Commissioner has already passed an order for partition of the land in question on the application of applicants/plaintiffs and the same relief cannot be granted by this court. He relies upon the PLD 2016 Islamabad 98, 2012 SCMR 694, and 2012 CLC 1353. He prayed for the dismissal of the instant civil revision application.

6. I have heard the learned counsel for the parties and perused the material available on the record as well as the case laws cited above.

7. The plaint of the applicants was rejected under order 7 rule 11 CPC; it is deemed appropriate to conduct a scrutiny of the provisions delineated under Order VII, Rule 11 of the Code of Civil Procedure 1908 at the present juncture**.** The said provision is reproduced below:

> "(11) Rejection of plaint.---The plaint shall be rejected in the following cases:
>
> (a) Where it does not disclose a cause of action.
>
> (b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
>
> (c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
>
> (d) Where the suit appears from the statement in the plaint to be barred by any law.

8. This is an important provision of law which has often been construed in a wide-ranging series of cases. The interpretation applied thereto falls within a wide spectrum, and I will examine some of the important case-laws at a later stage. Prior to doing so, however, it is important to carry out an analysis of the precise language used in the statute. The salient features contained in the provision are the following:-

> (i) The words used are "rejection of plaint". In other words, the legislature has deliberately refrained from providing that the suit should be "dismissed". A distinction has thus been drawn between a dismissal of a suit and the rejection of a plaint, and it is this distinction that needs to be elucidated.
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> (ii) The opening words indicate that it is mandatory for the court to reject the plaint if one or more of the four clauses is

found to be applicable. This is made clear by the use of the word "shall" in the opening phase.

(iii) The first clause contains a clear statement that in case the plaint does not disclose a cause of action, it is to be rejected. The next two clauses, namely, clauses (b) and (c), relate to the valuation of the plaint and the stamp duty to be affixed thereon and again do not require much discussion. It is the last clause, namely (d), in relation to which most of the litigation has taken place. Therefore, it requires a careful analysis.

(iv) Clause (d) has three constituent elements. The first part uses the important word "appears", the second part relates to statements made in the plaint, (i.e. there is no reference to the written statement), and the third part states the inference to be drawn if a suit "appears" from the statement in the "plaint" to be "barred" by law. This read, in conjunction with the opening words of Rule 11, makes it mandatory for the court to reject the plaint.

9. It is essential to analyze the grounds upon which a plaint is subject to rejection. Substantial jurisprudence exists on this matter, incorporating a broad spectrum. On one hand of the spectrum, there is a notable emphasis on affording paramount importance to the averments within the plaint, to the exclusion of extraneous considerations. Conversely, the spectrum extends to include an examination not only of the plaint itself but also of the attached documents and, extending further, scrutiny of other manifest and unequivocal materials present in the record. The subsequent elucidation presents several pivotal **judgments of the apex court** on this matter.

(i) In the case of Anees Haider and others v. S. Amir Haider and others (2008 SCMR 236), the apex court reaffirmed the doctrinal tenet that reliance on the written statement is untenable.

(ii) In the case of Haji Allah Bukhsh v. Abdul Rehman and others (1995 SCMR 459), it was observed that the averments made in the plaint are presumed to be correct.

(iii) In the case of Jewan and 7 others v. Federation of Pakistan (1994 SCMR 826), it was determined that legal sanction allows for the examination exclusively of the contents set forth in the plaint, with the defence enunciated in the written statement deemed inadmissible. However, it was well-known that, in conjunction with the plaint, any other material acknowledged by the plaintiff and produced before the court may be deliberated. Additionally, it was highlighted that the court lacks the entitlement to analyze any supplementary material unless it has been duly entered into the record in conformity with the established rules of evidence.

(iv) In the case of Muhammad Saleemullah and others v. Additional District Judge, Gujranwala (PLD 2006 SC 511), it was observed that Order VII, Rule 11 anticipates the rejection of a plaint only on the basis of averments made in the plaint, and the pleas raised in the written statement are not to be taken into account. It was also observed that the court was entitled to rely on the documents annexed to the plaint.

(v) The case of Saleem Malik v. Pakistan Cricket Board (PLD 2008 SC 650), it is a little difficult to reconcile with the overwhelming weight of authority since that observation in this case was "that the court, may, in exceptional circumstances, consider the legal objection in the light of averment of the written statement but the pleading as a whole cannot be taken into consideration for rejection of plaint under Order VII, Rule 11, C.P.C"

(vii) In the case of S.M. Shafi Ahmed Zaidi v. Malik Hasan Ali Khan (2002 SCMR 338), the following finding was rendered:

> " It was further observed that "it is the requirement of law that incompetent suit shall be buried at its inception. It is in the interest of the litigation party and judicial system itself. The parties are saved their time and unnecessary expenses and the courts gets more time to devote it for the genuine causes."

(viii) In the case of Pakistan Agricultural Storage and Services Corporation Limited v. Mian Abdul Lateef and others PLD 2008 SC 371, it was held that the object of Order VII, Rule 11, C.P.C. was primarily to save the parties from the rigorous frivolous litigation at the very inception of the proceedings.

(ix) In the case of Salamat Ali v. Khairuddin 2007 YLR 2453, it was observed that although the proposition that a court, while rejecting the claim under Order VII, Rule 11, C.P.C., could only examine the contents of the plaint was correct, nevertheless, this rule should not be applied mechanically.

(x) In the case of Arif Majeed Malik and others v. Board of Governors Karachi Grammar School (2004 CLC 1029), it was noted that the traditional view was that in order to reject a plaint under Order VII Rule 11 only the contents of the plaint were to be looked into. It was added, however, that this view had since been modified to the extent that an undisputed document placed on record could also be looked into for the aforesaid purpose.

10. After considering the ratio decidendi in the above cases, I am clear in my mind about the scope of Order VII, Rule 11. The statutory framework does not include any stipulation mandating that the plaint be supposed to incorporate the entire veracity of facts. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity, to decide whether or not a suit is barred by any law for the time being enforced. The sole prerequisite is that the court, prior to rendering a judgment, must analyze the averments made in the plaint. Furthermore, it is evident, through a requisite implication, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint for the purpose of ascertaining the veracity or fallacy of the plaint's averments is expressly precluded. In essence, the court is not tasked with adjudicating the correctness of either the plaint or the written statement.

11. Now turning towards the prayer clause of the plaint, which relates to the declaration sought by the plaintiffs/applicants. For the purpose of convenience and brevity the relevant Section 42 of the Specific Relief Act reads as under:-

> "42. Any person entitled to any legal character or to right as to any property, <u>may institute a suit against any person denying, or interested to deny, his title to such character or right</u> 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". [the underlying for emphasizes]

12. It is admitted that there is no dispute between the parties with regard to the title of the suit property. The established legal doctrine affirms that Section 42 of the Specific Relief Act, 1877, is applicable exclusively to situations wherein an individual initiates legal proceedings asserting a right to a legal status or a claim to

the property, which is denied by the defendants/ respondents, but in the instant case, right, title and the legal character of the plaintiffs/applicants over the land in question have not been denied.

13. Reverting to another relief sought by the plaintiff/ applicants in the prayer clause (c) of the plaint. Section 172 of the Sindh Land Revenue Act, 1967, divests the jurisdiction of a civil court in instances where a Revenue Officer, as authorized by the Act, is empowered to adjudicate upon or address a specific matter. Specifically, sub-section (2)(xviii) of section 172 clearly precludes the jurisdiction of a civil court in relation to "any claim for partition of an estate or holding, or any question connected with or arising out of proceedings for partition, not being a question as to title in any of the property of which partition is sought.

14. When the remedy concerning the partition of an agricultural property falls within the purview of the Revenue hierarchy, any decree issued by the Civil Court in such matters is considered a nullity in the eyes of the law. The apex court of Pakistan in the case of ***QAMAR SULTAN and others V/S Mst. BIBI SUFAIDAN and others, 2012 S C M R 695***, observed as under :-

> "10. The proposition that when the relief vis-a-vis partition of an agricultural property lay within the jurisdiction of the Revenue Court, any decree passed by the Civil Court in this behalf is nullity in the eye of law, is no doubt correct."

15. As far as the plea of the counsel with regard to the nature of the land is concerned, the entry of the land still exists in the Village Form-VII of the revenue record, which has been maintained for agricultural land. It remains an unquestionable reality that, with respect to the transformation of the above-mentioned land, neither party has made application to the relevant department for the conversion thereof from an agricultural classification to a non-agricultural one.

16. It is an admitted fact that antecedent to the commencement of the present litigation, the involved parties pursued the partition of the pertinent land from the Assistant Commissioner, resulting in

the issuance of an order to that effect. Consequently, the initiation of a suit seeking the same relief is deemed legally incompetent.

17. The applicants/plaintiffs have also sought the relief of cancellation of the registered sale deed under Section 39 of the Specific Relief Act 1877. For brevity and convenience, the pertinent section is reproduced herewith:-

> "Section 39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause harm serious injury, a may sue to have it adjudged void or voidable, and the court may in its discretion, so adjudge it and order it to be delivered or cancelled."
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> "If the instrument has been registered under the Registration Act, the court shall also send a copy of its decree to the officers in whose office the instrument has been so registered; and such officer shall not on the copy of the instrument contained in his book the fact of its cancellation".

18. The applicant's failure to bring their case within the parameters of Section 39 is ascribed to the absence of rational apprehension that the written instrument in question, purportedly void or voidable, may cause grave harm or injury if left outstanding. Section 39 provides the avenue for a person facing prospective harm from such an instrument to seek legal remedy by suing to have it adjudged void or voidable. However, the applicant must establish a genuine and reasonable fear of significant harm. Furthermore, Section 39 grants the court discretionary power to adjudge the instrument void or voidable and order its delivery or cancellation. Notably, if the instrument has been registered under the Registration Act, the court is mandated to send a copy of its decree to the relevant registration officers. These officers are then required to annotate the fact of the instrument's cancellation on the copy contained in their records. The applicant's failure to meet the criteria outlined in Section 39 lies in the inadequacy of demonstrating a reasonable apprehension of serious harm arising from the outstanding instrument; hence, the applicants are also not entitled to the relief of cancellation of instruments.

19. It should be noted that the applicants are before this Court in revisional jurisdiction under section 115 of the C.P.C, and that

both of the learned courts below have concurrent conclusions of fact that stand in their way. Additionally, this Court, in its revisional jurisdiction, is quite limited, and concurrent findings of fact are typically not disturbed in that context unless this Court determines that the lower courts conclusions were reached as a result of an incorrect or misreading of the evidence 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 ruled out 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 the light of the above discussion, I am quite clear in my mind that both the courts below, in their unanimous impugned judgments, are not found to have been tainted by failing to read the relevant material, nor are they found to have some jurisdictional flaw that justifies interference. Instead, they fall under one of the exceptions listed in Section 115 of the Code, 1908, whose scope is more limited and restricted to correcting errors of law as well as facts if found to have existed. As a result, for the aforementioned grounds, the instant civil revision application is dismissed along with the listed applications.

Judge

Abdul Salam/P.A