

# HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

## R.A No.154 of 2007

[Ahmed Ali & Others versus Government of Sindh & Others]

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Applicants : Through Mr. Abdul Ghafoor Hakro advocate  
Official respondents : Through Mr. Allah Bachayo Soomro Addl: A.G  
Private respondents : Through Mr. Sunder Das advocate  
Date of hearing : 23.02.2024 and 01.03.2024  
Date of decision : 22.03.2024

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## J U D G M E N T

**KAUSAR SULTANA HUSSAIN J.-** This Revision Application has been directed against the concurrent findings of two Courts below. Applicants had instituted F.C Suit No.45 of 2002 [*Re: Ahmed Ali & Ors. versus Government of Sindh & Ors.*] for declaration and permanent injunction in respect of land bearing Survey Nos.80 and 88 admeasuring 09-26 acres in Deh Dadki Taluka Talhar District Badin (**Suit Land**) before the Court of Senior Civil Judge Badin (**Trial Court**), which was dismissed vide Judgment and Decree both dated 23.09.2004, which was challenged by them before learned District Judge Badin (**Appellate Court**) through Civil Appeal No.57 of 2004 however, same was dismissed vide Judgment and Decree dated 09.08.2007.

2. Applicants had filed the aforesaid suit by claiming therein that the suit land was originally owned by Hussain and Umer by equal shares; that the said Hussain and Umer sold out their shares to Mataro and Qabool by way of oral statement in equal shares; that on the basis of oral statement the suit land was mutated in favour of Mataro and Qabool in Record of Rights vide entry No.93 dated 06.06.1942; that said Mataro and Qabool died about 45/50 years back of filing of suit and the suit land was finally devolved upon the applicants/plaintiffs being their surviving legal heirs, who are enjoying peaceful cultivating possession of the suit land since their ancestors; that the suit land had also been privately partitioned between them according to their share; that however, the private respondents filed an appeal under Section 161 of Land Revenue Act before the then Deputy District Officer (Revenue)/respondent No.2 against the dead persons, who expired 40/50 years ago, who without issuing notice passed the Order dated 21.05.2002 and cancelled the entry bearing No.93 dated 06.06.1942 which was in favour of Mataro and Qabool so also entry No.60 dated 02.03.1986. The

applicants/plaintiffs as such filed the aforesaid suit which was dismissed up to the learned appellate Court, hence this Revision Application.

3. After institution of suit the summons were issued to defendants. The defendants/private respondents filed their joint Written Statement, wherein they denied that their ancestors Hussain and Umer had ever sold out the suit land in favour of ancestors of plaintiffs/applicants. They further stated in their Written Statement that suit land was originally owned by Kando father of Hussain and Umer and after the death of Kando the suit land devolved upon his above two sons as also on his widow namely Mst. Maryam. They also claimed that after the death of aforesaid ancestors they are in cultivating possession of the suit land being legal heirs. They supported the order passed by Deputy District Officer (Revenue) and stated that entries in favour of ancestors of applicants/plaintiffs are false and result of manipulation; whereas official respondents adopted the contents of Written Statement filed by private respondents.

4. After completion of all necessary formalities the learned trial Court dismissed the suit filed by applicants vide Judgment and Decree dated 23.09.2004, against which they preferred Civil Appeal No.57 of 2004 before the learned Appellate Court, however same was also dismissed vide Judgment and Decree dated 09.08.2007. The Judgment and Decrees passed by both Courts below are hereinafter referred to as impugned Judgments and Decrees.

5. Learned counsel for the applicants argued that findings of learned trial Court on Issue No.1 that Mukhtiarkar was competent to recorded the oral statement and on Issue No.5 that Order dated 21.05.2002 is illegal void and was set aside and on Point No.6 that civil Court is competent to try the suit and is maintainable are correct; that learned Appellate Court while passing the impugned Judgment and Decree had not set aside the findings on Issues No.1 and 5 thus had illegally held that no entry was made on leaf during the year 1941-42 whereas findings on Issue No.3 are based on misreading of evidence; that learned Appellate Court erred in law while holding that entry No.93 dated 06.06.1942 does not confirm the title, rights to Hussain and Umer by selling to Mataro and Qabool without consent of Maryam; that learned appellate Court illegally held that Kando was the owner, Ex.39 does not show that Hussain and Umer inherited the suit land from their father Kando and moreover entry No.93 dated 06.06.1942 (Ex.39) was old of more than 30 years as such presumption of genuineness is attached, hence same was not required to be proved by the applicants/plaintiffs as provided by Article 100 of Qanun-e-Shahadat Order; that learned Appellate Court had illegally observed that applicants were required to produce the sale statement and original record though same were in possession of respondent No.3 as such it was incumbent upon respondent No.3 to produce the same; that learned Appellate Court erred in law by not appreciating that Tapedar in his deposition (Ex.65) had

admitted that entry No.11 (Ex.66) is not attested by Revenue Officer and that the entry made by way of foti khata badal is attestable by Mukhtiarkar concerned and entry No.11 (Ex.66) does not contain signature of Tapedar and that learned Appellate Court erred in law by not appreciating that entry dated 06.06.1942 is not cancelled and Order dated 21.05.2002 was declared illegal by the trial Court. He lastly submits that both the impugned Judgments and Decrees may be set aside and suit filed by applicants may be decreed as prayed. In support of his arguments learned counsel has relied upon the cases reported in (i) PLD 2007 Karachi 358, (ii) 1993 MLD 195 Lahore, (iii) 1990 SCMR 629, (iv) 1984 SCMR 724 and (v) 1968 SCMR 145.

6. On the other hand learned counsel for the private respondents argued that concurrent findings of two Courts below are available and the applicants have failed to point out any material illegality in the impugned judgments and decree as such same require no interference by this Court and the Revision Application is liable to be dismissed; that suit land was originally owned by the ancestor of defendants/respondents namely Kando and on his death the suit land was not only devolved upon Hussain and Umer, who were sons of Kando, but it was also devolved upon the widow of Kando namely Mst. Maryam; that ancestor of defendants Kando was in possession of the suit land and was paying taxes to Government and after his death suit land was devolved upon his aforesaid three legal heirs and such entry bearing No.11 dated 16.04.1955 was made in revenue record and his legal heirs used to cultivate the suit land and pay taxes; that before the year 1972 there was no provision under the law to sale the land on the basis of oral statement and that entry No.93 dated 06.06.1942 was false and result of manipulation and it was rightly cancelled by Deputy District Officer (Revenue) vide Order dated 21.05.2002. He lastly prayed for dismissal of Revision Application.

7. Learned Additional A.G Sindh supported the impugned judgment and decrees.

8. I have heard the learned counsel for the parties and have perused the material available on record.

9. Perusal of record shows that suit land was originally owned by Kando, who was ancestor of private respondents/defendants. The claim of the applicants/plaintiffs is that their ancestors Mataro and Qabool had purchased the suit land through oral statement from the sons of Kando namely Hussain and Umer and such entries were made in their favour in record of rights in the year 1942. However, it appears that at the time of death of ancestor of private respondents/defendants namely Kando, he had not only left his two sons Hussain and Umer as his legal heirs but his wife namely Mst. Maryam was also alive and

as such all the said three legal heirs of Kando inherited the suit land according to their respective share, therefore, Hussain and Umer had no authority to sale entire suit land.

10. In addition to above, the applicants/plaintiffs claimed that their ancestors had purchased the suit land in the year 1942, however, vide entry No.11 dated 16.04.1955 the foti khata badal in respect of suit land was made in favour of the legal heirs of Kando namely Hussain, Umer and Mst. Maryam according to their respective share. Now question arises that, if the ancestors of applicants/plaintiffs had purchased the suit land in the year 1942 then how foti khata badal was made in the year 1955 in favour of aforesaid legal heirs of Kando and why they remained mum/silent and did not challenge the entry No.11 dated 16.04.1955 before the revenue hierarchy as provided under the law.

11. Further the applicants/plaintiffs had instituted the suit and being beneficiary burden was on them to prove their claim, however, nowhere they mentioned the amount of alleged sale consideration to substantiate their claim with regard to purchase of suit land by way of oral statement, whereas on the other hand private respondents/defendants in support of their claim had examined the revenue official(s), who had deposed in their favour.

12. Perusal of impugned judgments and decrees shows that Courts below have dealt with each and every aspect of the case while passing the said judgments and decrees. It is trite law that the concurrent findings coupled with a preponderance claim supported by the evidence may not be ordinarily interfered with by a Court in exercise of revisional jurisdiction. It is also within the contemplation of this Court that the exercise of revisional jurisdiction does not generally entail reappraisal of evidence. Reliance in this regard is placed on the cases reported in (i) 1997 SCMR 1139, (ii) 2000 SCMR 431, (iii) 2004 SCMR 877 and (iv) 2002 CLC 1295.

13. Learned counsel for the applicants has failed to point out any illegality and/or material irregularity in the impugned judgments and decrees, which may require interference by this Court under revisional jurisdiction. Accordingly captioned revision application stands dismissed being meritless.

**JUDGE**

Sajjad Ali Jessar