

HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

R.A No.211 of 1999

[Mst. Fatima & Others versus Abdul Ghafoor & Others]

Applicants : Through Mr. Abdul Ghafoor Hakro advocate

Official respondents : Through Mr. Allah Bachayo Soomro Addl: A.G

Private respondent : Through Mr. Sunder Das advocate

Date of hearing : 23.02.2024, 01.03.2024, 04.03.2024,
11.03.2024 and 18.03.2024

Date of decision : 19.04.2024

J U D G M E N T

KAUSAR SULTANA HUSSAIN J.- This revision application has been directed against the conflicting findings recorded by two Courts below. Respondent No.1/plaintiff had instituted F.C Suit No.99 of 1997 [*Re: Abdul Ghafoor versus Province of Sindh & Ors.*] for declaration, permanent injunction, implementation of gift deed and cancellation of entry No.39 in respect of land bearing Survey Nos.106/11, 12, 107/7 to 12, 110/3 admeasuring 08-33 acres as also land in Survey No.111/1, 2 and 8 admeasuring 4-24 acres situated in Deh Morhadi, Taluka Matli District Badin (**Suit Land**) before the Court of Senior Civil Judge Matli (**Trial Court**), which was dismissed vide Judgment and Decree both dated 27.05.1999, which was challenged by the respondent No.1/plaintiff before learned IInd Additional District Judge Badin (**Appellate Court**) through Civil Appeal No.16 of 1999, which was allowed and resultantly aforesaid suit was decreed vide Judgment and Decree dated 29.09.1999 (**Impugned Judgments and Decrees**).

2. Respondent No.1/plaintiff instituted the aforesaid suit with the claim that he is real cousin of deceased Muhammad Qasim, ancestor of applicants No.1 to 3, however said deceased Muhammad Qasim was treating him like as son, as his father namely Abdullah alias Diloo was also treating the deceased Muhammad Qasim as son; that his father Abdullah alias Diloo purchased the suit land in the year 1969 in the name of Muhammad Qasim, as he (*plaintiff/respondent*) was not born at that time and took birth in the year 1972, however, suit land was in continuous possession of his father during his lifetime; that in the year 1987 deceased Muhammad Qasim gifted the suit land to him out of love and affection and such will-deed was executed in his favour and the same was also attested by the Mukhtiarkar concerned on 30.06.1988; that thereafter though the suit land

remained in his possession, however the will-deed could not be executed in revenue record due to illness of deceased Muhammad Qasim and on the death of Muhammad Qasim the applicants/defendants in collusion with each other got mutated the suit land in their favour through foti khata badal in the year 1997 under entry No.39 and then it was leased out on verbal promise to applicants No.4 to 6/defendants No.7 to 9; that on coming to know about such facts he (plaintiff/respondent No.1) approached the revenue hierarchy for cancellation of entry No.39 and implementation of gift deed but vide Order dated 16.06.1997 he was advised to approach the Civil Court, thereafter he instituted the aforesaid suit.

3. After institution of suit the summons were issued to defendants. The applicants/defendants filed their joint Written Statement, wherein they stated that gift/will-deed dated 30.06.1988 is a false and fraudulent document arranged by the respondent/plaintiff after the death of their ancestor Muhammad Qasim; that respondent/plaintiff never remained in possession of the suit land during the life time and/or after the death of Muhammad Qasim; that respondent/plaintiff has no legal right, title or possession over the suit land; that they being legal heirs of Muhammad Qasim inherited the suit land in accordance with law, whereas the respondent/plaintiff intends to usurp the same by fraud and misrepresentation; that facts of the suit and the appeal filed by respondent/plaintiff before revenue hierarchy are quite different from each other and that respondent/plaintiff had failed exhaust the remedy available to him before the revenue hierarchy. Whereas despite service official defendants did not file any Written Statement.

4. In support of his claim the respondent/plaintiff examined himself at Ex.41, two private witnesses at Ex.47 and 48 respectively and Tapedar Wali Muhammad Soomro at Ex.51; whereas applicant No.1/defendant No.1 in support of claim examined herself at Ex.72 and one private witness at Ex.73. After completion of all necessary formalities the learned trial Court dismissed the suit filed by the respondent/plaintiff vide Judgment and Decree both dated 27.05.1999, which was challenged by the respondent/plaintiff before appellate Court through Civil Appeal No.16 of 1999, which was allowed and resultantly aforesaid suit was decreed vide Judgment and Decree dated 29.09.1999. The Judgment and Decree passed by the learned Appellate Court hereinafter is referred to as impugned Judgment and Decree.

5. Learned counsel for the applicants argued that the impugned judgment and decree passed by learned Appellate Court is against the law, facts and equity; that learned appellate Court erred in law while holding that respondent/plaintiff is in possession of the suit land being member of joint family, as there is no provision of joint family under Muhammadan law; that learned appellate Court committed material illegalities while passing the impugned judgment and decree as the alleged gift deed, if for the sake of argument only it is presumed to be true, lacks

the mandatory requirement of proposal and acceptance; that learned appellate Court has failed to appreciate that respondent/plaintiff has not filed any documentary evidence to prove his possession over the suit land; that respondent/plaintiff had not exhausted the remedy available to him before revenue hierarchy as to the cancellation of entry in revenue record, but the learned appellate Court had failed to appreciate the same; that the learned trial Court, which is the Court of original jurisdiction by means of reasoning findings denied the claim of respondent/plaintiff and by interfering with such reasoning findings the learned appellate Court has committed illegality and material irregularity, hence this Court has jurisdiction to entertain and allow this revision application. He prayed that instant revision application may be allowed and impugned judgment and decree passed by learned appellate Court may be set aside.

6. On the other hand learned counsel for respondent/plaintiff supported the impugned judgment and decree passed by learned appellate Court by arguing that respondent/plaintiff was/is relative of deceased Muhammad Qasim, who was treating him just like his son, as the father of respondent/plaintiff was also looking after and treating the Muhammad Qasim just like as son; that suit land was purchased by his father Abdullah alias Diloo in the year 1969 in the name of Muhammad Qasim since the respondent/plaintiff was not born at that time, however, his father was in continuous possession of suit land during his lifetime; that respondent/plaintiff took birth in the year 1972 and thereafter the suit land was gifted by deceased Muhammad Qasim to respondent/plaintiff out of love and affection and having been purchased the same by his father Abdullah alias Diloo, which was attested by the Mukhtiarkar concerned on 30.06.1988; that the will-deed could not be executed in revenue record due to illness of Muhammad Qasim and after his death the applicants No.1 to 3/defendants No.4 to 6 in collusion with each other got transferred the suit land in their favour by foti khata badal in the year 1997 under entry No.39 and then it was leased out on verbal promise to applicants No.4 to 6/defendants No.7 to 9; that on coming to know the respondent/plaintiff approached the revenue hierarchy for cancellation of entry No.39 and implementation of will-deed, however, vide Order dated 16.06.1997 he was advised to approach the Civil Court and that the impugned judgment and decree passed by the learned appellate Court is well reasoned and is strictly in accordance with as such requires no interference by this Court. He prayed for dismissal of revision application.

7. Learned Additional A.G Sindh state that the dispute is between the private parties and government has been impleaded as formal party, hence no arguments are being offered.

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

9. In present case the applicants claimed that suit property was inherited by them being legal heirs of deceased Muhammad Qasim, whereas respondent Abdul Ghafoor claimed that deceased Muhammad Qasim during his lifetime had gifted the suit property in his favour as such applicants/defendants had no right/entitlement to claim inheritance rights on the suit property.

10. A Gift Deed is an instrument or legal document which is used to transfer a gift (movable or immovable property) from one person to another as per the provisions of the law. An immovable property like land, building or house etc must be transferred as a gift through registered Sale Deed only i.e written form, which is to be signed by two attesting witnesses. In the present case it appears that deceased Muhammad Qasim executed the Gift Deed before Mukhtiarkar Matli in presence of two witnesses namely Abdullah and Haji Saindad. Both these attested witnesses were examined by the respondent No.1/plaintiff, who fully corroborated his claim. The claim of respondent No.1/plaintiff has further been supported by the Tapedar Wali Muhammad Soomro, who specifically stated that Gift/Will Deed was executed by the deceased and it was signed by aforesaid two witnesses and he had identified them before the Mukhtiarkar. The said Tapedar also confirmed possession of suit land with respondent No.1/plaintiff. All these witnesses were subjected to lengthy cross-examination but they remained consistent

11. Whereas the applicants/defendants in support of their case only examined Muhammad Siddique, however, perusal of record shows that said witness contradicted the version of defendants, as applicant No.1/defendant Mst. Fatima (now deceased) had denied the respondent No.1/plaintiff being cousin of deceased Muhammad Qasim (donor), however such version was contradicted by DW-Muhammad Siddique by admitting that respondent No.1/plaintiff is cousin of deceased Muhammad Qasim. The applicant No.1/defendant Mst. Fatima had also claimed that suit land is in their possession and she leased out the same to one Noor Muhammad Halepoto, however, no such lease deed was produced, whereas, as mentioned above, the Tapedar of the beat during evidence confirmed that suit land is in possession of respondent No.1/plaintiff.

12. The essentials of the Gift Deed i.e offer by donor and its acceptance by donee are very much available in this case since deceased Muhammad Qasim did not challenge the said Gift Deed during his life time and further the execution of Gift Deed by deceased Muhammad Qasim in favour of respondent No.1/plaintiff before the Mukhtiarkar concerned has been confirmed by the aforesaid two witnesses and Tapedar of the beat alongwith possession.

13. The above discussion led me to concur with the findings recorded by the learned Appellate Court, as the impugned Judgment and Decree did not suffer

from any material illegality or irregularity, which may require interference by this Court under revisional jurisdiction. Accordingly captioned revision application stands dismissed having no merit.

JUDGE

Sajjad Ali Jessar