

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Civil Revision Application No. S-05 of 2009.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For hearing of C.M.A.No.06/2010.
2. For hearing of main case.

10.09.2020.

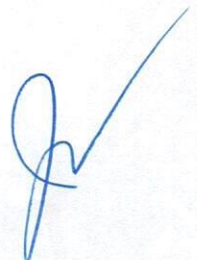
Applicants: Tasleem Shah & Others through Mr. Altaf Hussain Surahiyo,
Advocate

Respondents: Allah Dad Shah through Mr. Ghulam Sarwar Khajro, Advocate for
the respondents.

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Through this Civil Revision Application, the applicant has impugned judgment dated.27.02.2009, passed by the 1st Additional District Judge, Shikarpur, in Civil Appeal No.23 of 2001, whereby the judgment dated 16.10.2001, passed by 1st Civil Judge, Shikarpur, in Civil Suit No.22 of 1998, through which the Suit of the applicants/plaintiffs was decreed has been set aside.

Learned Counsel for the Applicants submits that the plaintiff filed Suit for declaration and injunction and prayed that plaintiffs are the only legal heirs of deceased Sharaf Ali Shah alias Sharif Shah with a further declaration that the claim of the defendant claiming to be the legal heirs of deceased Sharaf Ali Shah alias Sharif Shah is void and illegal; that the trial Court after thread bare examination of the evidence decreed the Suit; however, the Appellate Court has not appreciated the same and has set aside the judgment and decree without valid reasons; that the Appellate Court has failed to examine the evidence and the material placed on record and has misread the evidence led by the plaintiffs/applicants; that Sharaf Ali Shah alias Sharif Shah son of Riasat Ali Shah and Sharaf Shah son of Mehar Shah are not two different persons and such fact was brought in the evidence through order dated 04.11.1998, passed by the Assistant Commissioner, Shikarpur, as Ex-31-C, which has not been appreciated by the Appellate Court and, therefore, this Civil Revision Application be allowed by setting aside the impugned judgment restoring the judgment and decree in the Suit.



On the other hand, learned Counsel for the respondents/defendants submits that the applicants Counsel has made efforts to go beyond the pleadings and prayer in the Suit as the respondents have no objection for a declaration that the applicants are legal heirs of Sharaf Ali Shah son of Riasat Ali Shat; that in the written statement such fact was accepted by the respondents, whereas, now they intend to seek a declaration which is beyond their pleadings, therefore, no case is made out.

I have heard both the learned Counsel and perused the record.

Before coming to the main case, I intend to decide the listed application bearing CMA No.06/2010 filed under Order 41 Rule 27 CPC. Through this application the Applicant has sought permission to lead additional evidence based on certain documents which the Applicants intends to bring on record at this stage of the proceedings. Order 41 Rule 27, though permits, in exceptional cases, leading of additional evidence; however, the said provision is only available before the Appellate Court, whereas, instant proceedings are under section 115 CPC, conferring very limited jurisdiction on this Court. Therefore, the application appears to be misconceived and is hereby dismissed.

The applicants/plaintiffs filed a Suit for declaration and injunction seeking the following prayers:

- i. To declare that the plaintiffs/respondents are only the legal heirs of Late Sharif Ali Shah alias Sharaf Ali Shah.
- ii. Further to be declare that the claim of the defendant/appellant to be the legal heir of deceased Sharaf Ali Shah is null, void, illegal, malafide and will ulterior motive.
- iii. To grant permanent injunction restraining the defendant/appellant from illegally claiming to be the legal heir of Sharaf Ali Shah alias Sharif Ali Shah and further he may be restrained to act illegally from distributing the daily life of plaintiffs/respondents.
- iv. To award the costs of the Suit.
- v. To grant any other relief which this Court deems fit and proper.

Written statement was filed on behalf of the respondents and thereafter the following issues were settled by the trial Court:

1. Whether the Suit of the plaintiff is maintainable according to law?
2. Whether the defendant Allahdad Shah is legal heir of deceased Sharaf Shah ?
3. Whether the plaintiff is entitled for relief?
4. What should the decree be?

After evidence was led by the parties, the Suit of the plaintiff was decreed as prayed and thereafter appeal was preferred by the respondents which has been allowed through impugned judgment dated 27.02.2009 and the judgment and decree of the trial Court has been set aside. At the very outset, learned Counsel for the Applicants was confronted by the Court as to how, and in what manner, the Applicants are now seeking declaration that Sharaf Ali Shah alias Sharif Shah son of Riasat Ali Shah and Sharaf Shah son of Mehar Shah are one and the same person(s), as in the plaint and the prayer clause, no such relief / declaration was sought, as the only prayer was, that the plaintiffs are legal heirs of Sharaf Ali Shah alias Sharif Shah son of Riasat Ali Shah and there was nothing in the entire pleadings to the effect that whether there were two different persons with same name and different parentage. To this he has not been able to satisfactorily respond; however, has made an effort to refer to the documents annexed with his application under Order 41 Rule 27. I am afraid this can't be permitted at this stage, whereas, the said application has been dismissed as above.

In fact, when written statement was filed in reply to para-3 it has been admitted that the plaintiffs are the legal heirs of Sharaf Ali Shah son of Riasat Ali Shah, then the grievance as raised in the Suit already stood satisfied. This was the main prayer of the Applicants. It was further stated in the written statement in para-4 that plaintiffs are legal heirs of Sharaf Ali Shah alias Sharif Shah son of Riasat Ali Shah, whereas, defendants have no concern with it, then there was nothing left for the plaintiffs to agitate any further. It appears that after passing of the judgment and decree in their favour, in Appeal the Applicants/plaintiffs were able to convince the Appellate Court to settle a point of determination that "*whether Sharaf Shah son of Mehar Shah and Sharaf Ali Shah alias Sharif Shah son of Riasat Ali Shah is one person or two personalities*". The Appellate Court after going through the entire evidence available before

it has been pleased to set aside judgment and decree of the trial Court.

The relevant finding of the Appellate Court reads as under:

" I have considered the submissions advanced by learned advocate for appellant and learned advocate for respondents and perused the material available on record. The dispute existed in this matter is that appellant claims Sharaf Ali Shah S/O Mour Ali alias Mehar Ali and Sharaf Ali Shah alias Shareef Shah S/O Riasat Ali Shah are two different persons and the respondents claim that Sharaf Ali Shah alias Sharif Shah S/O Riasat Ali Shah is only the person and they are his only surviving legal heirs. In this regard copy NIC No.411-16-090337 produced by plaintiffs/respondents shows the name as Sharif Shah S/O Riasat Ali Shah. Plaintiffs/respondents also produced record of right of survey No.77 Deh Karan also shows the name of their father as Sharif Shah S/O Riasat Ali Shah another document (Deh Form VII) bearing entry No.38/59079 dated 29-03-1968 shows father of plaintiffs/respondents as Sharif Shah S/O Riasat Ali Shah and another photo copy of registered sale deed dated 26.10.1971 which also shows the father's name of plaintiffs/respondents as Sharif Shah S/O Riasat Ali Shah. These all documents have been filed by plaintiffs/respondents in support of their plaint before trial Court.


The defendant/applicant in support of his case filed photo copy of his NIC and copy of NIC of his father Mehar Ali Shah and also produced electoral list of Deh Karan in which the name of father of plaintiffs/respondents has been shown as Sharif Shah S/O Riasat Ali Shah at Sr.721 and the name of plaintiff/respondent No.1 Tasleem Shah S/O Sharif Shah is at Sr. No.72. Defendant/appellant also produced photo copy of registration certificate of vehicle No.4931-SHP shows the name of plaintiff/respondent No.1 as Tasleem Shah S/O Mehar Ali Shah issued by Secretary Union Council Karan and copy of registered sale deed dated 31 March 1987 which also shows the father's name of respondents as Sharif Shah S/O Riasat Ali Shah.

The witness examined by the plaintiffs/respondents are admitted to be their close relatives and no independent person from locality has been called and examined and that in rebuttal of the documents produced by defendant/applicant showing the father's name of plaintiffs/respondents as Sharif Shah S/O Riasat Ali Shah, no evidence has been brought on record. The appellant claims that Shareef Shah S/O Riasat Ali Shah is another person and Sharaf Shah S/O Mehar Ali Shah is another person. Whatever record produced by appellant shows that the father's name of the plaintiffs/respondent was Sharif Shah S/O Riasat Ali Shah and not Sharaf Shah alias Sharif Shah S/O Riasat Ali Shah. The documents produced by the plaintiffs/respondents support the version of appellant i.e. NIC of Sharif Shah, electoral list, registered sale deed dated 26-10-1971. The appellant in support of his case has produced certified true copy of Record of Permanent transfer at Ex.53/B, auction sheet at Ex.53/C. The documentary proof produced by appellant and some of documents produced by respondents shows the father's name of the respondents as Sharif Shah S/O Riasat Ali Shah and the appellant has produced documents which show the name of brother of appellant as Sharaf Shah S/O Mehar Ali Shah. Under

287

these circumstances I am of the considered view that appellant has brought on record material which shows that Sharaf Shah S/O Mehar Ali Shah and Sharif Shah S/O Riasat Ali Shah are two different personalities. In the light of whatever discussed above am of the considered view that the Judgment & Decree of learned trial Court requires interference therefore I allow the appeal and set aside the Judge & decree of trial passed on 16.01.2001. The parties bear their own costs."

I have gone through the above findings and is of the opinion that the findings arrived at by the learned Appellate Court is correct in law and facts and does not warrant any interference by this Court inasmuch as the plaintiffs entire Suit was only in relation to their claim that they are the legal heirs of Sharaf Ali Shah alias Sharif Shah son of Riasat Ali Shah. They never sought any declaration that *Sharaf Shah son of Mehar Shah and Sharaf Ali Shah alias Sharif Shah son of Riasat Ali Shah are one and the same person* or as to they being two different persons of the same name but different parentage or not. Insofar as reliance placed on order dated 4.11.1998 (Ex31-C) is concerned, the author of the said document was never examined, whereas, on perusal the same appears of be issued in a slipshod manner, devoid of any cogent reasons or authority; hence, could not have been relied upon for seeking such a declaration. Therefore, the Appellate Order appears to be correct and justified as it is not a case of exercising any jurisdiction which was not vested with the Appellate Court or even a case of misreading or non-reading of facts in the evidence and, therefore, does not warrant exercise of jurisdiction under section 115 CPC so as to upset the finding of the Appellate Court. In view of such position by means of short order dated.10.09.2020, this Civil Revision Application was dismissed and these are the reasons thereof.


Judge
10.9.2020