

Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Application No. S-15 of 2020

Applicants : Ghulam Shabir and Abdul Ghaffar
Through Mr. Ghulam Muhammad Barejo, Advocate

Respondents No.1 to 3 : Ali Sher, Badaruddin and Bashir Ahmed
Through Mr. Waqar Ahmed A. Chandio, Advocate

Respondent No.7 : Nizamuddin
Through Mr. Abdul SattarHulio, Advocate

Respondent No.9 : Ali Nawaz Junejo
Through Mr. Zahid Hussain Chandio Advocate

Respondents No.8 to 18 : Through Mr. Abdul Waris Bhutto, Asst. A.G.
Nemo for Respondents No.4 to 6

Date of hearing : **16.10.2024 and 22.10.2024**
Date of Decision : **31.10.2024**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Revision Application under Section 115 of the Civil Procedure Code, 1908 ("**C.P.C**"), the applicants impugn the Judgment and Decree dated 18.12.2019, passed by learned III-Additional District Judge (MCAC), Larkana ("**Appellate Court**"), whereby the applicants' appeal was dismissed, thus affirming the Order dated 05.11.2019, rendered in F.C Suit No.63/2019 by learned IV-Senior Civil Judge, Larkana ("**Trial Court**"), which had rejected the plaint under Order VII, Rule 11 C.P.C.

2. In summation, the factual matrix reveals that Applicant No.1, Ghulam Shabir, effectuated the purchase of 00-20 acres from Survey No.838 (04-00 acres) situated in Deh Badeh, Taluka Dokri, District Larkana, from Abdul Sattar through registered Sale Deed No.455 dated 07.11.1995. Applicant No.2, Abdul Ghaffar, subsequently purchased 1-38½ acres of the same survey from Gul Hassan vide Sale Deed No.96 dated 02.02.2002. Possession of the subject properties was duly transferred to the applicants, and the record of rights was accordingly mutated with entries No.402 dated 16.12.2001 and No.1367 dated 13.3.2002. The applicants allege that Respondents No.1 to 7 endeavoured to usurp the land illicitly. Following a demarcation report on 18.5.2016, the

Additional Deputy Commissioner-I, Larkano cancelled all entries on 08.6.2018 without providing the applicants an opportunity for a hearing. Subsequent appeals to the Additional Commissioner and the Board of Revenue were dismissed on 18.9.2018 and 16.9.2019, respectively. On 25.8.2019, Respondents No.1 to 7, abetted by Respondents No.8 to 10, unlawfully occupied the subject property. Consequently, the applicants instituted a suit seeking a declaration of ownership, annulment of the aforementioned orders, repossession of the property, and the issuance of permanent and mandatory injunctions.

3. Upon presentation of the plaint, the trial court, after reviewing its contents and the accompanying documents, rejected the plaint by Order dated 05.11.2019. The applicants, aggrieved by this decision, filed an appeal before appellate Court, which was also dismissed by the judgment and decree dated 18.12.2019. Consequently, the applicants now seek to challenge the concurrent findings of both lower courts through the instant revision application.

4. At the outset, learned counsel representing the applicants submits that the Order dated 08.06.2018, passed by the Additional Deputy Commissioner-I, Larkana, was ultra vires as no notice was issued to the applicants prior to the passing of the Order, and this fact has not been considered by the courts below. He submits that the applicants are lawful owners of the subject property through registered Sale Deeds; hence, the Revenue Authorities lack jurisdiction to cancel the entries based on these registered Sale Deeds. Additionally, he submits that the applicants were in possession of the subject property when the entries were cancelled and were subsequently dispossessed by the private respondents, as stated in the plaint. He further submits that the plaint cannot be summarily rejected as the matter requires evidence to elucidate the question of fraud. Lastly, learned counsel for the applicants prays that the instant revision application be allowed by setting aside the impugned judgment, decree, and Order passed by both lower courts. In support of his contentions, learned counsel relies on the case laws reported as **1996 SCMR 78, PLD 2015 Lahore 687, and 1992 CLC 851**.

5. Conversely, learned counsel representing Respondents No.1 to 3 contended that the learned trial court had rightly rejected the plaint maintained by the learned appellate Court, with no material irregularity or illegality committed by both courts below. It was argued that Survey No.838 was not included in the decree passed in F.C. Suit No.45 of 1986. It was fraudulently

included in the entry, justifying its cancellation by the Revenue Authorities. He placed reliance on the cases reported as **PLD 2024 S.C. 838, 2007 SCMR 741, 2004 PSC 1444, and 2000 PSC 746.**

6. Learned A.A.G., while advocating in favour of the impugned judgment, decree, and order passed by both lower courts, asserted that the subject property is owned by the Government. This assertion was bolstered by the Recordal Statement provided by the Mukhtiarkar Taluka Dokri and the Additional Deputy Commissioner-I, Larkana.

7. Learned counsel representing Respondent No.7 has adopted the arguments presented by learned counsel for Respondents No.1 to 3.

8. The contentions have been meticulously scrutinized, and the accessible records have been assiduously evaluated. To ascertain whether an adequate and exhaustive dispensation of justice was accomplished, it is imperative to scrutinize the concurrent findings articulated by both the Courts below.

9. Upon scrupulous examination of the case record, it is manifestly apparent that the foundational entry No.222, dated 27.11.1986, in the name of Ghulam Rasool son of Jan Muhammad, was predicated on a Judgment and Decree dated 30.06.1986, passed in F.C. Suit No.45 of 1986 by the III-Senior Civil Judge, Larkana, ostensibly in favour of the aforementioned Ghulam Rasool. This Judgment and Decree purportedly included Survey No.838, among other survey numbers. Leveraging this initial entry, Ghulam Rasool subsequently alienated 00-20 acres out of Survey No.838 to Abdul Sattar vide a registered Sale Deed, resulting in entry No.612 dated 28.02.1994, being recorded in Abdul Sattar's favour. Thereafter, Abdul Sattar transferred the said 00-20 Ghuntas to Applicant No.1 through another registered Sale Deed, culminating in entry No.402 in favour of Applicant No.1. Additionally, Ghulam Rasool disposed of 02-00 acres of Survey No.838 to Gul Hassan vide a registered Sale Deed, leading to entry No.617 dated 04.04.1994, in favour of Gul Hassan. Subsequently, from the aforementioned 02-00 acres, Gul Hassan sold 01-38½ acres to Applicant No.2 through a registered Sale Deed, resulting in entry No.1367 dated 13.03.2002, in favour of Applicant No.2.

10. However, it is a trite proposition of law that if the basic structure is illegal, all the superstructure erected thereupon is similarly tainted with illegality. In this context, the Additional Deputy Commissioner-I, Larkano, by an Order dated 08.06.2018, annulled the foundational entry No.222 and all

subsequent entries on the premise that Survey No.838 was fraudulently incorporated into entry No.222. The Judgment and Decree dated 30.06.1986, upon which entry No.222 was predicated, did not encompass Survey No.838, and the original record exhibited conspicuous overwriting. Consequently, the entire chain of transactions predicated on illegitimate entry No.222, including the sales to Abdul Sattar and the applicants, is vitiated by the initial illegality, rendering all derivative entries null and void *ab initio*.

11. It is well-established that the function of a Revenue Officer is to prepare accurate revenue records based on evidence regarding one's title or interest. Consequently, the law restricts the jurisdiction of Civil Courts from undertaking functions assigned to Revenue Officers, including the methodologies they adopt in performing their duties. The Civil Courts do not have jurisdiction to correct entries made by the Revenue Officer in the course of his duties. In the present case, the Additional Deputy Commissioner-I, Larkano passed the Order dated 08.6.2018 thoroughly after verifying the original records within the scope of his powers.

12. Concerning the contention that no notice was issued to the applicants before passing Order dated 08.06.2018 by the Additional Deputy Commissioner-I, Larkano, allegedly resulting in the applicants being condemned unheard: Upon a scrupulous examination of the case record and considering the fact that the applicants subsequently availed themselves of appellate and revisional remedies against the said Order, it is manifest that they were afforded an opportunity to be heard at these subsequent stages. The principle of *Audi alteram partem*, which mandates that no person should be condemned unheard, is satisfied if the affected parties are provided with a reasonable opportunity to present their case at any stage of the proceedings. Therefore, any procedural lapse at the initial stage, assuming there was one, has been rectified by the subsequent hearings. Thus, the applicants' argument that they were condemned unheard before passing of the Order dated 08.06.2018 by the Additional Deputy Commissioner-I, Larkano, is devoid of substantive merit, given the subsequent opportunities provided to them to address their grievances.

13. The plaintiff's averments fail to delineate that the Orders passed by the Revenue hierarchy were either *ultra vires* or exceeded the statutory confines of their authority. Furthermore, it does not establish that these orders were vitiated by any jurisdictional infirmity, thereby rendering them susceptible to scrutiny under the jurisdiction of the Civil Court, in view of dicta laid down by the Supreme Court

of Pakistan in the cases of *Abdul Rab and other*¹ and *Bashir Ahmed and others*².

14. Indeed, the discretionary nature of declaratory relief under Section 42 of the Specific Relief Act of 1877 is well-established. The plain reading of Section 42 underscores the principle that the courts have the latitude to grant or deny such relief based on the merits and equity of each case.

15. In light of the aforementioned considerations, I hold the view that the alleged foundational entry, deemed fabricated, false, and fraudulent by the Revenue hierarchy upon thorough verification of the original record, of which they are the custodians, does not inherently provide the applicants with a cause of action to challenge such Orders by filing a declaratory suit. This is especially pertinent given that the applicants are admittedly not in possession of the subject property.

16. It is a fundamental tenet of legal jurisprudence that an incompetent suit should be dismissed at its inception³. This approach serves the dual purpose of safeguarding the interests of the litigating parties and preserving the resources of the judicial institution. For the litigants, the early dismissal of an untenable claim conserves both time and financial resources, sparing them the protracted ordeal of a meritless legal battle. From the perspective of the judiciary, eliminating such suits at the outset allows the courts to allocate their time and efforts more effectively towards genuine and substantial causes. Both the Courts below, in addition to the plaint, looking into the admitted/undisputed documents and facts, such as record before the revenue authorities relating to Judgment and Decree dated 30.6.1986 passed in a F.C Suit No.45 of 1986, rightly rejected the plaint, for, an incompetent suit should be buried without further proceedings.

17. In light of the foregoing, I am of the considered view that the trial Court, while rejecting the plaint and the appellate Court by dismissing the appeal against the Order of the trial Court, has not transgressed any legal boundaries, nor is there any discernible infirmity or jurisdictional defect in their exercise of jurisdiction in rendering the impugned Order, judgment and decree, invoking the provisions of Section 115 C.P.C. Accordingly, the instant Civil Revision Application is devoid of merit and is hereby **dismissed**.

JUDGE

¹Abdul Rab and others v. Wali Muhammad and others (1980 SCMR 139)

²Bashir Ahmad and others v. Manzoor Ahmad and others (1987 SCMR 1620)

³Rashid Ahmad v. Federation of Pakistan through Secretary, Ministry of Communication (Communication Division), Islamabad and another (1998 SCMR 405)