

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 93 of 2018

(Muhammad Nawaz Shar & others v. Rahim Bux Kolachi & others)

Date of hearing : 28.10.2024

Date of decision : 28.10.2024

Mr. Nadir Ali G. Chachar, Advocate for applicants.
Mr. Nisar Ahmed Bhanbhro, Advocate for respondents.

ORDER

Zulfiqar Ahmad Khan, J. – Through this Civil Revision, the applicants challenge the judgment and preliminary decree dated 21.12.2017, passed by the learned Senior Civil Judge, Ubauro in two consolidated suits: F.C. Suit No.121 of 2011 (**‘respondents’ suit’**) and F.C. Suit No.38 of 2013 (**‘applicants’ suit’**), whereby the respondents’ suit was decreed, while the applicants’ suit was dismissed. Additionally, the applicants challenge the judgment and decree dated 05.05.2018 and 08.05.2018, respectively, passed by the learned Additional District Judge, Ubauro, through which the applicants’ Civil Appeal No.07 of 2018 was dismissed.

2. The case involves a dispute between two parties over the land in Deh Keinjhur, Taluka Ubauro, District Ghotki. The respondents, claiming ownership of certain survey numbers, alleged that the applicants encroached upon their property about four years ago and began cultivating it. Despite multiple requests to the applicants to vacate the land, they continued to refuse, even after promising to leave once the cotton crop was harvested, but to no avail. The respondents approached the applicants and sought possession of the suit land, mesne profits of Rs.50,000/- per acre per annum, but they again refused. Thereafter, the respondents filed a suit for possession, mesne profits and permanent injunction with the following prayers:

- (a) *To direct the defendants to hand over vacant possession of the suit land bearing S.No.471/4 (00-26) acres, 471/7 (00-24), 473 (2-31) and 474 (1-36) acres, to the extent of full share each, S.No.471/3 (00-25) acres & 471/5 (00-17) acres, to the extent of 32 paisa share each, situated in deh Keinjhur, Taluka Ubauro, District Ghotki.*
- (b) *To grant money decree of Rs.2,40,000/- as mesne profits of suit land for the last three years at the rate of Rs.50,000/- per acre per annum and also grant mesne profits up to decree of the suit land and onward till vacant possession of suit property is handed over to the plaintiffs.*
- (c) *To grant permanent injunction, thereby restraining the defendants from handing over possession of suit land, mentioned in prayer clause (a) above to anybody else and also restraining them from changing the nature and character of the suit property in any manner whatsoever.*
- (d) *To award costs of the suit.*
- (e) *To grant any other equitable relief which this Honourable Court deems fit and proper under the circumstances of the case.*

3. In his suit for specific performance of contract and permanent injunction, applicant No.1 admitted that the respondents (father and sons) were previously the owners of agricultural land bearing Survey Nos.223 (02-03), 225 (02-08), 227 (02-35), 471/7 (00-35), 473 (02-31), 474 (01-36), 228/1 (01-24), 228/2 (00-35), 469 (4-26), 471/3 (00-25), 471/4 (00-26), and 471/5 (00-17), totaling an area of 12-30½ acres, situated in Deh Keinjhur, Tapa Muhammad Pur, Taluka Ubauro, District Ghotki, as per various revenue entries and a registered sale deed (Serial No.3062 dated 22.12.2003). Applicant No.1 counterclaimed that the respondents had entered into a contract with him to sell the suit land on 18.08.2009, receiving an advance of Rs.7,00,000/-, with the balance of Rs.3,21,000/- to be paid by applicant No.1 on 20.04.2010. It is alleged that the respondents agreed orally to sign a sale agreement the following day, and at that time, possession of the land was handed over to applicant No.1. On 20.08.2009, respondent No.1, on his own behalf, signed a written sale

agreement dated 20.08.2009 in favour of applicant No.1, confirming the receipt of the advance. However, since respondents No.2 to 9 (his sons) were not present, respondent No.1 promised that within a week, he would have them sign the agreement, and thus, the agreement would be handed over to him. On 20.04.2010, applicant No.1 approached respondent No.1 with the balance sale consideration, but respondent No.1 refused to accept it, requesting more time. While respondent No.1 did not transfer the *khata*, he did receive Rs.1,88,000/- on different dates, it is alleged. The matter was then referred to a private *faisla* by Advocate Syed Abdul Latif Shah in presence of two *nek mards*, namely Dur Muhammad Sangi and Kako Khan alias Hassan Ali Shar, who, on 20.10.2011, concluded that both parties admitted to the existence of the contract for the suit land. However, the measurement conducted under his supervision revealed that applicant No.1 was in possession of more land than agreed. It was ordered in the *faisla* that applicant No.1 would pay the price for the excess land, and that the respondents would execute the sale deed in his favour. Subsequently, respondent No.1, who had already received the advance, demanded that applicant No.1 either pay him an additional Rs.20,00,000/- or receive a refund of Rs.7,00,000/- and return possession of the land. Ultimately, despite receiving the majority of the agreed payment, the respondents failed to execute the final sale deed.

4. It is the case of the applicants that they have been in continuous possession of the land; however, the respondents have failed to fulfill their contractual obligations and are now preventing the completion of the sale. The applicants further contend that the respondents are refusing to transfer the land despite the existence of an arbitration agreement made in 2011, which acknowledged the contract and set out the terms for finalizing the sale. The applicants fear that they may be forcibly dispossessed by the respondents and, therefore, seek specific performance of the contract,

along with an injunction restraining the respondents from selling or transferring the land to any third party.

5. In their written statement, the respondents asserted that respondent No.1 is not the owner of the entire suit land, except for Survey Nos.471/7, 471/5, 471/3, 223, 225 and 227. According to the respondents, Survey Nos.473 and 474 are owned by Muhammad Hassan S/o Allah Warrayo, while Survey Nos.228, 471/4 and 469 are the property of respondents No.2 to 9. This implies that respondent No.1 is not the sole owner of the entire suit land. The respondents further denied ever executing any sale agreement in favour of applicant No.1, claiming that the applicant has manipulated and misrepresented the situation to unlawfully claim ownership of the respondents' property. Respondents No.2, 3, 4, and 6 have been residing in Karachi since 2009 and have not been involved in any transactions regarding the suit property. As to the possession, the respondents have already filed F.C. Suit No.121 of 2011(respondents' suit) against applicant No.1 and others (the remaining applicants) long before the suit was filed by applicant No.1. The respondents further stated that the so-called *faisla* is a fabrication, as it does not bear their signatures. They contend that, following the institution of the respondents' suit, applicant No.1 fabricated the alleged sale agreement and filed his suit as a counteraction to their claim.

6. Learned trial Court framed the following consolidated issues:

1. *Whether plaintiffs of leading suit FCS No.121/2011 are entitled for possession and mesne profit from the defendants?*
2. *Whether defendants in subsequent suit FCS No.38/2013 sale out land to plaintiffs and executed agreement to sale dated 20.08.2009 for the consideration of Rs.10,21,000/- and received Rs.7,00,000/- from the plaintiffs?*
3. *Whether claim of the plaintiff Muhammad Nawaz in subsequent suit FCS No.38/2013 is false, fictitious and managed one?*

4. *Whether no cause action accrued to the plaintiff Rahim Bux and others in leading suit FCS No.121/2011 for filing the suit for possession and mesne profit and the suit is not maintainable under the law?*
5. *What should the decree be?*

7. Since the respondents' suit was filed earlier and treated as the leading suit, the respondents adduced their evidence first. Respondent No.1 was examined and produced the original sale deed, attested copies of various revenue entries and a general power of attorney in the subsequent suit (F.C. Suit No.38 of 2013). The evidence of Rizwan Ahmed, Farzand Ali and Naeem Ahmed (Sub-Registrar, Mirpur Mathelo) was also recorded. The last witness produced the sale deed (Serial No.3062 dated 22.12.2003). From the applicants' side, applicant No.1 was examined, who produced a photocopy of the agreement, a receipt for the amount paid and a copy of the *faisla*. In support of his case, Haq Nawaz, Allah Diwayo, Haji Muhammad Ilyas, Abdul Latif and Dur Muhammad were also examined. Then the trial Court also called a witness as Court witness i.e. Abdul Sattar (Supervisor Tapedar), who produced certain entries.

8. Applicant No.1, while he was cross-examined, stated that *"It is correct to suggest that there is no signature of sons of Rahim Bux on sale agreement. Voluntarily says that Rahim Bux is head of his family."* This admission is significant, as it raises the legal question whether Rahim Bux, merely by virtue of being the head of the family, had the authority to bind his sons or transfer the family property without their explicit consent. Under general principles of property law, a person cannot sell or transfer ownership of property without having proper legal authority or consent from all parties with an interest in that property, unless they have been given specific power of attorney or authority to do so. This principle is especially important in cases involving joint family property. Rahim Bux, as pointed out by applicant No.1, may have been the head of his family, but

being the head of a family does not automatically grant him the authority to act on behalf of other family members unless such authority has been explicitly granted by those family members.

9. The head of a joint family may manage the family property, but any transaction concerning joint family property must be approved by all co-owners or legally authorized by them. The head of the family does not have unilateral power to dispose of property belonging to other family members. The absence of signatures of the other co-owners (in this case, Rahim Bux's sons) on the alleged sale agreement raises a serious legal issue. If a person purports to act on behalf of others, especially in family property matters, their action is not binding on the others unless those individuals have explicitly authorized such an act. In the absence of their signatures, the sale agreement cannot be enforced, as it lacks the necessary legal consent of all parties involved.

10. Applicant No.1 has claimed that at the time of contract of the suit land, witnesses Allah Diwayo and Haq Nawaz were present, and in their presence, the respondents received Rs.7,00,000/- as advance and handed over the possession of the suit land to him. When his witness Haq Nawaz was cross-examined, he stated that *"I do not know since when the agricultural land is in possession of Muhammad Nawaz. It is correct to suggest that I am not witness of the payment which was made by Muhammad Nawaz to Rahim Bux after the agreement."* He also stated that he had no knowledge that whether Muhammad Nawaz was farmer of Rahim Bux or not, and whether Muhammad Nawaz refused to give *batai* share of land to Rahim Bux, and then Rahim Bux filed suit for possession and mesne profit. Applicant's witness Allah Diwayo, answered likewise, that *"I do not know since how long Muhammad Nawaz was in possession of suit land"* and *"I do not know whether Muhammad Nawaz refused to give Batai share of land to Rahim Bux and then Rahim Bux filed suit for possession and mesne profit."*

11. The testimony of the witnesses, Haq Nawaz and Allah Diwayo, has an important impact on the credibility of the applicant's claims regarding the sale agreement and the possession of the suit land. Both witnesses failed to substantiate the critical elements of the applicant's case, which involves the payment of the advance amount and the transfer of possession of the land. The applicant claims that the respondents received an advance payment of Rs.7,00,000/- and handed over possession of the land in the presence of the witnesses. However, Haq Nawaz, one of the key witnesses, explicitly stated that he had no knowledge of the payment being made by the applicant (Muhammad Nawaz) to Rahim Bux. This is a crucial point, as it directly undermines the applicant's claim that an agreement was reached with the payment of the advance. Additionally, Haq Nawaz's admission that he was unaware of the payment casts doubt on the authenticity of the sale transaction that forms the basis of the applicant's case.

12. Both Haq Nawaz and Allah Diwayo were unaware of the circumstances surrounding the possession of the land. Allah Diwayo also testified that he did not know how long Muhammad Nawaz had been in possession of the suit land, and did not know about any dispute over the *batai* share between Rahim Bux and Muhammad Nawaz. This lack of knowledge weakens the applicant's assertion that possession was handed over at the time of the agreement and contradicts the applicant's claim that there was a clear transfer of possession, which is a central part of the sale transaction.

13. The failure of both witnesses to corroborate the applicant's version of events, especially with regard to the payment and possession of the land, raises serious questions about the validity of the sale agreement. In property transactions, particularly when large sums of money are involved, the presence of credible, knowledgeable witnesses is vital to establish the

authenticity of the agreement. The lack of clarity and knowledge demonstrated by Haq Nawaz and Allah Diwayo not only weakens the applicant's case but also suggests that the sale agreement may not have been as clear-cut or valid as the applicant contends. Therefore, the applicant's request for the specific performance of the contract and other reliefs must fail, as the evidence presented does not substantiate the claims made in the suit.

14. The testimony of the attesting witness, Hafiz Muhammad Ilyas, is inconsistent and casts doubt on the validity of the sale agreement. He first stated that he was present at his office near the Mukhtiarkar Office, Daharki on 20.08.2009, the date of the agreement, but later contradicted himself in cross-examination by saying that he was at the Court premises in Ubauro. This inconsistency undermines his credibility as a witness. Additionally, he admitted that he did not verify with Rahim Bux whether he was the rightful owner of the land being sold, which is a fundamental requirement for attesting such an agreement. These discrepancies call into question the authenticity of the sale agreement and weaken the applicant's case.

15. Witness Abdul Latif Shah, who allegedly presided over the private *faisla*, admitted in cross-examination that he based his decision solely on the statements of the parties, without reviewing any records pertaining to the disputed land. He further conceded that the *faisla* did not bear the signatures of the parties involved. Initially, he claimed that the *faisla* was written in the presence of witnesses Dur Muhammad Sangi and Kako Khan alias Hassan Ali Shar, and that he, along with the witnesses, signed the document. However, in cross-examination, he contradicted himself, stating that "*It is incorrect to suggest that Kako Khan and Dur Muhammad Sangi were also available when I held faisla between the parties.*" This inconsistency undermines the credibility of the *faisla*. Witness Dur Muhammad, who was

allegedly present during the *faisla*, stated he did not know who wrote the *faisla*, further discrediting the entire process. Additionally, respondent No.1 denied the suggestion that a private *faisla* took place on 20.10.2011, reinforcing doubts about the authenticity of the document and the proceedings surrounding it. These contradictions between the testimonies of key witnesses and the absence of necessary formalities significantly weaken the reliance on the *faisla* as evidence in the case.

16. The applicant's suit, filed on 25.02.2013, was significantly delayed, despite the cause of action arising as early as 20.04.2010, when he approached the respondents with the balance sale consideration. This delay of nearly three years, without any reasonable explanation, raises concerns about the applicant's urgency in seeking specific performance. Seemingly, the applicant's suit was filed in response to the respondents' suit for possession and mesne profit, which had been filed much earlier in 2011. This suggests that the applicant's claim was a defensive measure rather than an independent pursuit of rights, which further weakens his position. The undue delay in filing his suit, in the face of the respondents' prior legal action, undermines the applicant's case and brings into question the validity and timeliness of his claim for specific performance.

17. The case revolves around a dispute over the ownership and sale of agricultural land, where the respondents have undisputed ownership of various portions of the land. The applicants, on the other hand, claim to have entered into a sale agreement with respondent No.1 for the suit land, but the original sale agreement was never produced in the Court. Despite presenting a photocopy of the alleged agreement, it was found that the photocopy could not be considered as valid evidence. Additionally, no evidence was presented that would substantiate that the other landowners were involved or had consented to the sale, making the agreement binding only on respondent No.1. Furthermore, the so-called private *faisla*

(arbitration) was deemed irrelevant, as it lacked the participation and acceptance of all parties involved. The applicants' claim of having paid the sale consideration was also unproven, and the legal framework for enforcing such agreements, particularly under Section 89-A CPC, was not applicable due to the unilateral nature of the *faisla*.

18. The trial Court correctly dismissed the applicants' claim, recognizing that without a valid sale agreement, proper legal authorization from the other landowners or evidence of payment, the sale could not be enforced. Additionally, the applicants' possession of the land was found to be illegal, as there was no legal basis for the transfer of ownership. In contrast, the respondents were entitled to regain possession of their land, and the trial Court rightly awarded them mesne profits.

19. On appeal, the appellate Court upheld the trial Court's findings, agreeing that the applicants failed to prove their case. The appeal was dismissed, reaffirming that without a valid, executed sale agreement and proper legal authority from all landowners, the applicants could not claim ownership or enforce the contract. Furthermore, the appellate Court confirmed that the respondents had a right to reclaim possession and seek mesne profits, given the applicants' unlawful possession.

20. In view above detailed discussion, both the decisions of the Courts below are well-founded and in accordance with law, and no grounds have been found to interfere with their conclusions. Therefore, this civil revision was **dismissed**, maintaining the integrity of the lower Courts' decisions. Above are the reasons of this Court's short order dated 28.10.2024.

J U D G E