

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 119 of 2016

(Ghulam Shabbir Buriro v. Mst. Nabul Khatoon & others)

Date of hearing : 18.10.2024

Date of decision : 18.10.2024

Mr. Tariq G. Hanif Mangi, Advocate for applicant.
Mr. Raj Kumar D. Rajput, Advocate for respondents No.1, 3 & 4.
Mr. Iqbal Hussain Joyo, Advocate for respondent No.2.
Mr. Asfandyar Kharal, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – Through this civil revision application, the applicant / plaintiff seeks to overturn the findings of the Courts below, which include the judgment and decree dated 30.06.2014 passed by learned Senior Civil Judge-II, Sukkur, whereby F.C. Suit No.61 of 2010 was dismissed, as well as the judgment and decree dated 01.11.2016 passed by learned Additional District Judge-III, Sukkur, through which Civil Appeal No.32 of 2014 was also dismissed, upholding the decision of the learned trial Court.

2. The plaintiff (applicant) filed a suit for specific performance of contract and permanent injunction, allegedly asserting that he purchased 0.50 paisa share of Survey No.135 (approximately 3-20½ acres) from late Allah Warrayo (predecessor-in-interest of respondents / defendants No.1 to 4) for Rs.45,000/- through a sale agreement. The total area of the land in that survey number is claimed to be 7-01 acres. The plaintiff paid Rs.30,000/- as earnest money, with an agreement to pay the remaining Rs.15,000/- upon registering the sale deed. Although the sale deed was not executed, late Allah Warrayo delivered possession to the plaintiff, and he has been paying government dues since then.

3. It is alleged that at the time of the agreement, the property was under pending litigation, and late Allah Warrayo was obligated to execute the sale deed upon resolution of the case. After late Allah Warrayo's death in 1997, his legal heirs — defendants (respondents) No.1 to 4: Mst. Nabul Khatoon (wife), Mst. Bhain Bhen (daughter), Mst. Haleema (daughter) and Abdul Raheem (adopted son) — admitted the plaintiff's claim and agreed to execute a new sale agreement, stating that they would execute the sale deed in his favour on 01.06.2010. However, defendant No.4 later filed an application regarding unauthorized possession of the property before the Executive District Officer (Revenue), Sukkur, leading to postponements. When the applicant sought to register the sale deed, the heirs used delaying tactics and ultimately refused, claiming they had received a better offer from another party. Despite multiple attempts to resolve the issue, the heirs avoided executing the sale deed, and on 07.06.2010, defendant No.4 refused outright. Consequently, the plaintiff has filed the Suit with the following prayers:

- a) *To pass judgment and decree for specific performance of contract of suit land as mentioned in Paragraph No.3 and 8 of the plaint in favour of plaintiff against the defendant No.1 to 4.*
- b) *Further order the defendant No.1 to 4 to execute registered sale deed in respect of the suit land in favour of the plaintiff and get the same registered with Sub-Registrar Rohri in case of their failure to do so the Nazir of this Honorable Court be directed to execute the registered sale deed on behalf of the defendant No.1 to 4 in favour of the plaintiff.*
- c) *Since the defendants No.1 to 4 has declined to perform his part of contract and the plaintiff was constrained to file a suit therefore, the defendant No.1 to 4 be ordered to pay the costs of the suit to the plaintiff.*
- d) *To grant permanent injunction thereby restraining defendants from dispossessing the plaintiff and to refrain from selling, transferring, alienating and creating any charge in cumbrance on the suit land by themselves or through his attorney or agents and also restrained the defendants No.5 to 7 from entertaining*

any sale documents or effecting the sale or alienation of the suit land in any way.

e) To grant any other relief deem fit under the facts and circumstances of the case.

4. Defendants No.1, 3, and 4 submitted their joint written statement before the learned trial Court, claiming that the plaintiff incorrectly recognized defendant No.4 as the owner of the property and misnamed the Deh as Bhiro Panhwar instead of Panhwar. They denied the validity of the sale agreement, alleging it is false, fabricated and manipulated, and that the Notary Public, Ghulam Farooque Soomro, falsely attested it. They asserted that late Allah Warrayo did not sell the land or accept any payment, as he and his wife were in Saudi Arabia from 10.03.1991 to 08.09.1991, for Umrah and Hajj. They pointed out a previous litigation (Civil Suit No.09 of 1969) filed by one Muhammad Ramzan, which was dismissed, and they claimed that Ghulam Akbar, the plaintiff's brother, had issued threats regarding the property. They described the plaintiff's possession as forcible and illegal, asserting that the agreement presented by him is fraudulent, and that the signatures on it are not genuine. They also added that a pending application to the E.D.O. (Revenue), Sukkur and a measurement order by the Mukhtiarkar were in process. Furthermore, they submitted that the cause of action for the plaintiff accrued in 1991, making the suit time-barred, especially since the plaintiff's agreement of sale was allegedly signed on 13.03.1991. They stated that the property rightfully belongs to defendants No.1, 2 and 3, and that the plaintiff has no right to interfere with their ownership.

5. Defendant No.2 submitted her separate written statement denying the plaintiff's claim. She asserted that her father never sold the land to the plaintiff, who made this claim after her father's death. The *dhal* receipt provided by the plaintiff was allegedly obtained by him after her father's passing. She stated that there was no agreement between the plaintiff and

her father, and he was not obligated to execute a sale deed. Since defendant No.4 is not the owner of the suit land, any approach to him by the plaintiff is unwarranted. In fact, the plaintiff never contacted defendants No.1 to 4, and without an agreement between them, there is no basis for a conflict with them. The official defendants (respondents) were, however, declared as ex parte by the learned trial Court.

6. The learned trial Court on the basis of these pleadings of the parties, framed the following issues:

1. *Whether the suit of the plaintiff is not maintainable under the law?*
2. *Whether the parties entered into transaction of sale in respect of the suit property on basis of sale agreements dated 13.3.1991 and 20.11.2008 are same enforceable?*
3. *Whether the plaintiff is entitled for any relief as claimed so far?*
4. *What should the decree be?*

7. Both the sides led evidence to substantiate their respective claims. Ghulam Shabbir, the plaintiff was examined, who presented the original sale agreement, the original land revenue receipt No.135, a certified true copy of the application made by defendant No.4 to the E.D.O. (Revenue), Sukkur, the second sale agreement executed by defendant No.4 Abdul Raheem in favour of the plaintiff, and a certified true copy of the Deh Form. The plaintiff also examined three witnesses: Asghar Ali Buriro, Sanaullah Buriro and Ghulam Qadir Buriro. From defendants' side, evidence of defendants No.1, 3 and 4: Mst. Nabul Khatoon, Mst. Haleema and Abdul Raheem was recorded, as well for defendant No.2 Mst. Bhain Bhen, her attorney Anwar Khan was examined.

8. Based on above evidence, the learned trial Court dismissed the suit of the plaintiff through judgment and decree dated 30.06.2014. The plaintiff appealed that judgment and decree, but he also failed before the

appellate Court, where the appeal was dismissed by judgment and decree dated 01.11.2016, maintaining the trial Court's decision. Hence, this revision application has been filed.

9. Heard learned Counsel for the parties and perused material available on record with their assistance.

10. The learned trial Court, while addressing issue of maintainability, noted that the plaintiff's suit is completely barred by Section 79, CPC and Article 174 of the Constitution of the Islamic Republic of Pakistan, 1973. As a result, the suit is deemed not maintainable due to the failure to include the Province of Sindh as a party in the case. The learned trial Court further observed as follows:

13. In this regard, the reliance is placed on 2010 SCMR page 115, wherein it has been held by Honourable Supreme Court of Pakistan that "No suit can be filed against provincial government without impleading the province as a party and procedural condition is mandatory in nature and no relief can be sought without its strict compliance and suit would not be maintainable".

11. Elaborating on the same issue, the learned appellate Court observed that the plaintiff (appellant therein) failed to implead the Province of Sindh as a party, as required under Section 79, CPC. Instead, the Government of Sindh was impleaded through its Secretary. During the trial, the plaintiff did not submit any application to the learned trial Court for correcting the title of the plaint in red ink, even though such a correction was curable at that time. Since no request for correction was made, the findings of the learned trial Court are deemed to be in accordance with law.

12. It appears that there are significant discrepancies in the plaintiff's claims. He has stated that the suit was filed on 20.11.1998, but the actual filing date was 10.06.2010. Furthermore, the plaintiff stated that the first agreement indicates that late Allah Warrayo sold him the suit property,

while the second agreement specifies that the *khata* will be transferred to him once he pays the remaining sale amount to the defendant. While he claimed the first transaction occurred on 13.03.1991 and the second on 20.11.1998, he produced second agreement allegedly dated 20.11.2008, which raises questions about the timeline and authenticity of the transactions. During cross-examination, the plaintiff was unable to identify who wrote or attested the first agreement, or the specific time of the day it was created, highlighting a lack of clarity regarding its origins. Moreover, both attesting witnesses of the first sale agreement had passed away which further weakened the plaintiff's position. He has also acknowledged that he filed the suit over 20 years after the alleged first agreement, making the case time-barred, as under Section 12 of the Specific Relief Act, 1807, the period of filing suit for specific performance is three years, as provided by Article 113 of the Limitation Act, 1908.

13. Witnesses presented by the plaintiff are not eyewitnesses to the alleged transaction (first agreement) dated 13.03.1991, and in fact, these include his son and son-in-law, who are interested witnesses. Moreover, the plaintiff examined only one attesting witness, Asghar Ali, from the subsequent sale agreement dated 20.11.2008, and the second attesting witness, Muhammad Usman, was not examined during the trial and has since passed away. Consequently, the requirements of Article 79 of the Qanun-e-Shahadat Order, 1984 have not been fulfilled.

14. It is also noteworthy that regarding the alleged attestation made by Muhammad Usman in the subsequent sale agreement, the plaintiff's third witness, Ghulam Qadir, admitted that he is not an expert in identifying Muhammad Usman's LTI (left thumb impression). His further deposition raises questions about the authenticity of the agreement, as he stated that Muhammad Usman placed his LTI on one chit, then claimed it was on a stamp paper, and ultimately admitted that he did not see Muhammad

Usman putting his LTI on the stamp paper. Furthermore, he could not recall the date when Muhammad Usman applied his LTI on the stamp paper.

15. The defendants have completely denied the plaintiff's assertions, the alleged sale, and the sale agreements. Mst. Nabul Khatoon, an elderly lady, acknowledged that the plaintiff is her relative and stated that neither she and her husband, nor her daughters and son-in-law, Abdul Raheem, sold the suit property to the plaintiff. She claimed that when they moved from their village to Rohri, the plaintiff forcibly occupied the suit property. In her cross-examination, she testified that the original sale agreement (Ex.36-D) does not bear her RTI (right thumb impression) as well as RTIs of her daughters. The learned trial Court observed that although she was cross-examined at length, being around 77 to 78 years old, she successfully withstood the test of cross-examination. One daughter of the deceased and another daughter, who was represented by an attorney, were also examined and reiterated the same facts as Mst. Nabul Khatoon. Abdul Raheem, the fourth witness / defendant and son-in-law of the deceased, denied the sale agreement and his signature on it. He reiterated that when they moved to Rohri, the plaintiff took over the land. He referenced an application that he submitted to the E.D.O. (Revenue), Sukkur, which was forwarded to the D.D.O. (Revenue), Rohri, for demarcation and possession. The D.D.O. passed an order in his favour. Since the plaintiff had filed the suit, no further action was taken by the revenue authorities.

16. A review of the judgments of the Courts below shows that neither any of these Courts decided the case perversely, nor it could be said that they acted illegally or with material irregularity in the exercise of their jurisdiction. Where a lower Court passes an order in exercise of its jurisdiction, the High Court has not to interfere with it in revision unless the

order (being sought revision), if allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury, which is not the case at hand. In the absence of any defect in the concurrent findings of both the Courts below, interference of High Court in civil revision as held by the Supreme Court in the case of Abdul Mateen and others v. Mst. Mustakhia (2006 SCMR 50), amounts to improper exercise of revisional jurisdiction.

17. In light of the attempts of the applicant / plaintiff to occupy the land of the respondents / defendants based on disputed sale agreements, the authenticity of which remains seriously questioned, this Court, exercising its revisional jurisdiction, finds no basis to intervene in the well-reasoned judgments of the Courts below, based on a thorough analysis of the evidence presented. It has come on record surface that the applicant acted malafidely to disentitle ladies from acquiring their right of inheritance which is an offence under Section 498-A, PPC. Consequently, the instant civil revision application is **dismissed**. The applicant is ordered to pay costs of Rs.5,00,000/- to the respondents / defendants No.1 to 4, and an additional Rs.25,000/- is imposed on the Counsel for the applicant to be paid to Library of High Court at Sukkur Bench.

Above are the reasons of my short order dated 18.10.2024.

J U D G E

Abdul Basit