Judgment Sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision Application No. S-53 of 2006

Applicant	:	Muhammad Akram (deceased) through L.Rs Through Mr. Ghulam Dastagir A. Shahani, Advocate
Respondents No.1 & 4	:	Province of Sindh and others Through Mr. Abdul Waris Bhutto, Asst. A.G
Respondents No.5 & 6	:	Muhammad Hassan and another through LR.s Mr.Nizam-ul-Din Bhutto, Advocate
Respondents No.7 & 8	:	Nemo
Date of hearing	:	**31.10.2024 & 12.11.2024**
Date of Decision	:	**13.12.2024**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through the above-captioned civil Revision Application under Section 115 C.P.C, the applicant has called into question the Judgment dated 07.6.2006 and Decree dated 08.8.2006, passed by the Court of Additional District Judge-IV, Shikarpur ("the **appellate Court**"), whereby Civil Appeal[1], preferred by the applicant, was dismissed. Consequently, the Judgment dated 30.6.2003 and Decree dated 08.7.2003 passed in suit[2], by the I-Senior Civil Judge, Shikarpur ("the **trial Court**"), dismissing the suit was maintained.

2. The salient facts precipitating the aforementioned Civil Revision Application are that the applicant, hereinafter referred to as the **plaintiff**, initiated a suit seeking equitable relief in the form of a Declaratory Judgment and Permanent Injunction against the respondents, hereinafter referred to as the **defendants**. The plaintiff averred that an agricultural land measuring 3-02 acres[3], hereinafter referred to as the "**suit land**" owned by defendants No. 7 and 8, was leased to the plaintiff during the agricultural years of 1979-1980 and 1980-1981. Since then, the suit land has been under the cultivation of the plaintiff and his father, Mir Muhammad Rahoojo, in the capacity of tenant farmers (*Haris*). The plaintiff further averred that he had purchased the suit land from defendants No. 7 and 8 through an oral statement recorded on 26.02.1980 before the Mukhtiarkar, Garhi Yasin, for a consideration of Rs. 72,000/-, and that the

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[1] Civil Appeal No.15/2006 (Re-Muhammad Akram vs. Province of Sindh and others)
[2] F.C Suit No.110/1981 (Re-Muhammad Akram vs. Province of Sindh and others)
[3] Bearing Survey Nos.202 (2-7), 1A (1-3) and 1B (00-01) total admeasuring 03-02 Acres situated in Deh Chango Rahooja

mutation of the record of rights was effectuated in his favour. He asserted that at that juncture, he and his father were the incumbent tenant farmers (*Haris*) of the suit land and were discharging the requisite land revenue obligations. It is additionally averred that defendants No. 5 and 6 falsely laid claim to being the tenant-farmers (*Haris*) of the suit land and subsequently filed a pre-emption petition under Rule 3 of the Sindh Land Commission (Pre-emption) Rules, 1974, before the Deputy Commissioner, Shikarpur. The Deputy Commissioner, vide Order dated 30.12.1980, allowed the said petition. Aggrieved, the plaintiff filed an appeal before the Commissioner, Sukkur Division, Sukkur, which was dismissed per Order dated 10.5.1981. Subsequently, the plaintiff preferred a revision petition before the Senior Member, Board of Revenue, Sindh, who similarly dismissed the revision petition vide Order dated 20.10.1981. The plaintiff alleged that the aforementioned orders were ultra vires, void ab initio, and lacked lawful efficacy, asserting that he and his father were the legitimate tenant-farmers (*Haris*) of the suit land, while defendants No. 5 and 6 were not tenant-farmers at the time of the transaction. Consequently, he instituted the suit seeking redressal.

3. The defendants No. 5 and 6 contested the suit by filing their written statement, wherein they denied that the plaintiff had ever been a *hari* or that the suit land had been leased to him. They also denied that the plaintiff had ever been a lessee. The defendants further asserted that defendants No. 7 and 8 had sold the suit land to them for a consideration of Rs. 5,287.50/-but that the plaintiff had maliciously indicated the purchase amount as Rs.72,000/- in the plaint, solely to defeat their right of pre-emption. They also claimed that they had been paying the land revenue and substantiated their case to the Senior Member, Board of Revenue.

4. From the divergent pleadings of the parties, the trial court formulated the issues upon which both parties adduced their respective evidence and produced relevant documents. Upon the culmination of the trial, the trial court dismissed the suit on 22.04.1998. The plaintiff then preferred an appeal, which was allowed on 27.01.1999, setting aside the Judgment and remanding the case to the trial court. Subsequently, eight issues were framed, and once again, both parties adduced their respective evidence and produced relevant documents. Ultimately, after hearing the parties, the trial court dismissed the suit again vide Judgment dated 30.06.2003 and decree dated 08.07.2003.

5. Aggrieved by the aforementioned Judgment and decree, the plaintiff preferred an appeal before the appellate Court. The appellate Court, vide its impugned Judgment dated 07.06.2006 and decree dated 08.08.2006, dismissed the appeal, thereby upholding the Judgment and decree of the trial court. Consequently, this has culminated in the present Civil Revision.

6. At the very outset, learned counsel for the plaintiff contended that defendants No. 5 and 6 were not *Haris* when the applicant purchased the suit land and that defendants No. 5 and 6 had not produced a single document to substantiate their possession of the suit land. He further argued that the orders passed by the revenue hierarchy were ultra vires. Additionally, he contended that one survey number indicated the presence of a house while the other was barren, questioning how the Commissioner could have adjudicated the suit land as cultivable. He asserted that both the courts below committed grave legal errors and material irregularities in dismissing the plaintiff's suit, rendering these decisions liable to be set aside. Finally, he offered that the applicants are ready to sell the suit land to respondents No. 5 and 6 at the present market value. In support of his contentions he relied upon the case laws reported in PLD 1991 SC Federal Shariat Court 236, 1968 SCMR 214, PLD 1972 SC 25, 1974 SCMR 356, 1986 SCMR 362, PLD 1986 Quetta 325 & PLD 1957 Karachi 479.

7. Conversely, learned counsel for defendants No. 5 and 6 filed written arguments and submitted that the burden of proof lay upon the plaintiff to demonstrate that he was a *Hari* of respondents No. 7 and 8 at the time of purchasing the suit land. However, the plaintiff failed to establish before the revenue hierarchy and the trial Court. That the impugned judgments and decrees rendered by both the lower courts do not warrant interference by this Court in its revisional jurisdiction. No illegality or material irregularity had been pointed out by the learned counsel for the applicant/plaintiff. They relied upon the case law reported in PLD 2001 SC 137 & 2010 SCMR 1630.

8. While refuting the contention, Learned Assistant Advocate General (A.A.G.) argued that the revision is not sustainable under the law as it pertains to concurrent findings. He maintained that, in revisional jurisdiction, the factual determinations made by the inferior courts cannot be disturbed. Therefore, this revision is not maintainable under the law.

9. The arguments have been extensively heard, and the available record has been meticulously evaluated with the able assistance of the learned counsel for the parties. I have also scrutinized the precision and thoroughness of the judgments and decrees of both the lower courts, providing a fair opportunity for the learned counsel for the applicants to demonstrate any actions by the lower

courts in the exercise of their jurisdiction that were either illegal or involved material irregularity.

10. The main claim of the plaintiff was that, during the agricultural years 1979-1980 and 1980-1981, he and his father remained as *Hari* over the suit land, which had been leased to them by respondents No. 7 and 8. Consequently, as Hari, they purchased the suit land from respondents No. 7 and 8 on 26.02.1980. In opposition to this claim, respondents No. 5 and 6 filed a pre-emption application before the Deputy Commissioner, Shikarpur, asserting that they were the *Haris* in possession of the suit land and, therefore, had a preferential right to purchase it. This pre-emption application was allowed by the Deputy Commissioner. The plaintiff, aggrieved by this decision, appealed to the Commissioner, Shikarpur, but the appeal was dismissed. Subsequently, he sought revision before the Member Board of Revenue, Sindh, which was also rejected. Thereafter, the plaintiff instituted the suit challenging the aforementioned three orders of the revenue hierarchy, but he failed to substantiate his claim, resulting in the dismissal of his suit. The appeal preferred against this decision was similarly dismissed.

11. The central question to be determined is whether the plaintiff has sufficiently proven that he was a tenant (*Hari*) of the suit land at the time of its purchase from respondents No. 7 and 8. In this regard, both the trial court and the appellate Court formulated several issues, including whether the plaintiff/appellant or defendants/respondents No. 5 and 6 were the *Haris* of the suit land at the time of the sale transaction. Both lower courts concluded that the plaintiff failed to establish this crucial fact, resulting in findings against him. The appellate Court's findings on this issue are detailed as follows:

> *"**Issue No.1.***
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> *It is the claim of the appellant/plaintiff that he along with his father Mir Hassan wee peasant worker over the suit land and said land was leased out by the respondent No.7 & 8/defendant No.7 & 8 for the period of 1979-80 and 1980-81 and the appellant is enjoying the peaceful possession of the suit land and it is a matter of great surprise that he is not disclosing the rate of the lease for the said period and even he is not stating such rate during the course of recording his evidence and he has not been able to produce the lease deed or its attesting witnesses and so much so he has not been able to produce the owners of the suit land i.e. respondent No.7 & 8 before the Court to give their evidence if he was bonafide purchaser of the land or he was holding the lease hold rights in the year 1979-80 and 1980-81 and the official document to which Khasra Gridwari has been produced by the Tapedar of the beat Muhammad Siddique and he has recorded the evidence before the Court at Ex: 66 to which text is being reproduced as under:*
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> *"It is fact that plaintiff was not Hari of 202, 1-A & 7-B of deh Chango Rahooja in the year 1980 as per Khasra Gridwari register. The plaintiff as per Khasra Gridwari has not remain as Hari prior to 1980. It is a fact that the defendant No.5 & 6 were Hari in the year 1978 of the suit land. It if fact that the*

defendant No.5 & 6 were also Hari in the year 1980 of the suit land. It is fact that the signature of Officer is not necessary to be obtained on each entry of Khasra Gridwari. I do not know whether the sole price of land is intention by them high. It is a fact that at entry No.61 of Dakhal Kharij register, it is mentioned that as per Order No. dated: 3.2.1980 that the rate of land was fixed on 1500/- per acre and total amount Rs.527.50. It is fact that the defendant No.5&6 have deposited Rs.5287-50, under Challan No.188 dated 06.01.1981 in Sub-treasury Garhi Yasin".

The back bone of the whole dispute is the issue in hand and it was the prime duty of the plaintiff/appellant to establish the same but unfortunately he has not been able to establish the same and the learned Judge of the trial Court has appreciated the evidence available on record in a rightful manner, hence the reply of this issue No.1 is in negative."

12. This detailed examination highlights the plaintiff's failure to prove his tenancy over the suit land, thus upholding the decisions of both lower courts against his claim. The plaintiff's inability to produce corroborating evidence and witnesses and the consistent records presented by the respondents reinforced the judgments and decrees that ultimately dismissed his suit.

13. It is a well-established doctrine that the concurrent findings of fact recorded by the Tribunals and the Courts below are generally impervious to being set aside within the ambit of revisional jurisdiction. The learned counsel for the plaintiff has failed to elucidate that the impugned judgments and decrees passed by the Courts below are antithetical to the preponderance of evidence. The counsel did not illustrate that the Courts either eschewed material evidence, misconstrued the evidence, or engaged in an unlawful exercise of jurisdiction. Additionally, the learned counsel for the plaintiff has not succeeded in demonstrating that the orders passed by the revenue hierarchy are vitiated by patent illegality or were issued ultra vires. Consequently, the impugned judgments and decrees of the lower Courts and the orders from the revenue hierarchy do not exhibit material illegality or procedural irregularity. Therefore, they cannot be abrogated within the purview of the revisional jurisdiction conferred upon this Court. Reliance is placed on the case of *Mst. Zaitoon Begum* [4].

14. It is an inveterate judicial principle that a Court or Tribunal constituted under ordinary law possesses the jurisdiction to adjudicate specific matters, whether their decisions are correct or erroneous. The mere fact that a decision is incorrect or diverges from the conclusions that the High Court might espouse does not render such a decision ultra vires. This doctrine underscores deference to the jurisdictional remit and factual determinations made by the subordinate

[4] Mst. Zaitoon Begum v. Nazar Hussain and another (2014 SCMR 1469)

judiciary, emphasizing that revisional interference is sanctioned only when there is a manifest legal or jurisdictional error. No such errors have been substantiated in the present case, affirming the legitimacy and finality of the concurrent findings by the Tribunals and the Courts below.

15. The learned counsel's assertion that the plaintiff is willing to sell the suit land to respondents No. 5 and 6 should they agree to purchase it at the present market value requires careful consideration in light of the existing records and legal precedents. The records unequivocally indicate that the Deputy Commissioner, Shikarpur, while passing the Order, directed the concerned Mukhtiarkar to ascertain and report the sale price of the suit land within a week. Following this, upon approval, the Mukhtiarkar was instructed to immediately notify the applicants (respondents No. 5 and 6) to deposit the determined sale price within one month, after which the amount was to be disbursed to the respondent (plaintiff). The compliance with this Order is well-documented; respondents No. 5 and 6 deposited the requisite amount, as substantiated by the testimony of Muhammad Siddique (Tapedar) at Exh.66, who confirmed that defendants No. 5 and 6 had deposited Rs.5,287.50 under Challan No. 188 dated 06.01.1981 in the Sub-Treasury, Garhi Yasin. This compliance indicates that the liability of defendants No. 5 and 6 was duly fulfilled in 1981. Therefore, the proposition of the plaintiff that the suit land be sold to defendants No. 5 and 6 at the current market value stands contrary to legal principles and lacks merit. Moreover, in the context of the pre-emption laws, the plaintiff's offer to sell the suit land at the present market value appears to be an attempt to circumvent the established legal procedures that were meticulously followed and concluded decades ago. The principle of pre-emption, as upheld by the revenue hierarchy, the Deputy Commissioner, and subsequently affirmed by the higher appellate authorities, emphasizes the preferential right of purchase at the time of the original transaction, not at a subsequent revaluation of the market price. Thus, the learned counsel's suggestion regarding procedural propriety and substantive legal principles is untenable. The decisions of the courts and revenue authorities were based on the factual matrix and the evidence presented at that time, which indicated that defendants No. 5 and 6 had fulfilled their financial obligations in accordance with the law. To now propose a resale at current market value disregards these established findings and is not supported by any cogent legal rationale. Therefore, the impugned judgments and orders, having been passed in accordance with due legal process and based on the factual and evidentiary

basis of the time, must be upheld. The suggestion of the plaintiff is contrary to the law and lacks any substantive merit.

16. In view of the above, this civil revision is **dismissed** as being devoid of merit, with no order as to costs.

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