

IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No. 201 of 2002

[Abdul Aziz & others vs. Ali Muhammad Shah]

Applicants : Abdul Aziz & others
through Mr. Ravi Kumar Jethanand,
advocate

Respondent : Ali Muhammad Shah
Through Faisal Ahmed, advocate

Date of Hearing : 26.02.2025

Date of Decision : 11.03.2025

J U D G M E N T

Jan Ali Junejo, J:-- This Civil Revision Application is directed against the Judgment dated 15-05-2002 and Decree dated 25-07-2002 passed by the learned District Judge, Thatta (hereinafter referred to as the "Appellate Court"), whereby Civil Appeal No. 12 of 2002, preferred by the Applicants, was dismissed. The said Appeal arose from the Judgment dated 21-12-2001 and Decree dated 31-12-2001 passed by the learned Civil Judge, Sujawal (hereinafter referred to as the "Trial Court") in Third Class Suit No. 01 of 2001, which decreed the Respondent's suit.

2. The key facts relevant to the present Civil Revision Application are as follows: The Respondent filed Third Class Suit No. 01 of 2001 against the Applicants in the Trial Court, seeking "Possession, Mandatory and Permanent Injunctions". The Suit Property is Plot No. 14/1, measuring 4,800 square feet, located in Banno Town, Deh Banno, Taluka Mirpur-Bathoro, District Thatta. This property was previously declared as evacuee property and was later allotted to the Respondent by

the Settlement Department in 1968. The transfer order and offer letter were issued in the Respondent's favor, and his ownership was recorded in the revenue records. Additionally, a Permanent Transfer Order (P.T.O.) was granted, further confirming the Respondent's legal ownership of the property. However, the Applicants Nos. 1 to 3, allegedly driven by greed, illegally encroached upon the subject property two years ago, with the assistance of the remaining Applicants. Despite the Respondent's objections, the Applicants refused to vacate the property and even issued threats. Recently, the Applicants have started digging ditches and attempting to construct permanent (pucca) shops on the property without the Respondent's consent. When confronted, they ignored the Respondent's warnings and continued construction, leveraging their influence. Given the illegal encroachment and construction, the Respondent has sought legal intervention, praying for:

- a. That this Honourable Court may be pleased to put the Plaintiff in possession of Suit Property by dispossessing the [Defendants];
- b. That this Honourable Court may be pleased to issue Mandatory Injunction demolishing the structure raised by the Defendants over the Suit Plot;
- c. That this Honourable Court may be pleased to issue permanent injunction restraining the defendants from raising any construction over the Suit Plot, changing the nature or handing over the possession of Suit Plot to any other persons and doing any act/thing prejudicial to the interest of Plaintiff;
- d. The Defendants shall bear the costs of Suit;
- e. Any other relief which this Honourable Court may deem fit and proper be awarded to the Plaintiff.

3. Upon being summoned, the Applicants Nos.1 to 3, 6, 8 to 12 appeared and submitted a joint written statement in which they declared that Plot No. 14/1 does not exist in Banno Town. They accused the Respondent of fabricating documents in collusion with Revenue staff to create false entries. The father of the Applicant No.1 was lawfully allotted Plots Nos. 13 and 14 through an auction conducted by the Settlement Authorities, receiving a Permanent Transfer Deed (P.T.D.) in 1965, which led to official mutations in 1980. The Union Council Chairman confirmed the boundaries, and the Settlement Authorities reaffirmed the allotment in 1983. The father of Applicant No.1 constructed shops and a residential house on these plots, with some shops rented to other individuals who pay rent to the Applicant No.1. The Applicant No.1 is currently building a shop on his own land, asserting that the Respondent has no ownership, title, or legal claim to the property. The Applicants contend that the suit is baseless, lacks cause of action, and is legally barred under the Land Revenue Act and the Specific Relief Act.

4. From the divergent pleadings of the parties, the learned trial Court framed the following issues:-

1. Whether suit plot No.14/1 area 4800 square feet, situated in Banno Town, Deh Banno, Taluka Mirpur-Bathoro, District Thatta, was allotted to the Plaintiff by the Settlement Department in the year 1968 and the name of Plaintiff was entered in the record of rights?
2. Whether the defendants Nos.1 to 3 about 2 years back encroached upon the suit land with the help of other defendants illegally and about 2 days back the defendants intended to raise construction on the said area?

3. Whether there is no Plot 14/1 and plaintiff has produced false and fabricated documents in collusion of the lower Revenue staff ?
4. Whether Plots Nos.13 and 14 allotted to the defendant No.1 in the year 1965 and such PTD was issued and record was mutated?
5. Whether the defendant 01, raised construction of shop and house and are on rents with defendants Nos.2 to 7?
6. Whether the defendants 1,8, and 9 are tenants of property of Evacuee Trust?
7. Whether the defendant 10 is tenant of shop belonging to defendant No.01?
8. Whether the defendant No.11, is owner of shop adjacent to the shop of Evacuee Property?
9. Whether no cause of action is accrued to the plaintiff to bring the suit?
10. Whether the suit is barred by the law and land Revenue Act ?
11. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?
12. Whether the suit is undervalued and this court has no jurisdiction to try the suit?
13. Whether the plaintiff is entitled to any relief?
14. What should decree be?

The Respondent examined himself and his uncle Miral Shah. The Applicant No.1 examined himself and his witnesses

Muhammad Shabbir and Muhammad Hassan. The learned trial Court decreed the Suit. The Applicants Nos.1 to 9 filed Civil Appeal No.12 of 2002 wherein the Applicants Nos.10 to 12 were arrayed as the Respondents Nos.2 to 4 but on the application, they were transposed as the Respondents Nos.10 to 12. Later on, the Civil Appeal filed by the Applicants was dismissed vide Impugned Judgment dated: 15.05.2002 followed by Decree dated: 25-07-2002.

5. The learned counsel for the Applicants has advanced the following arguments in support of allowing the Civil Revision Application: He contends that the judgments and decrees passed by the learned lower Courts are contrary to the facts, law, and principles of equity, as they failed to properly apply legal principles and factual evidence in reaching their decisions. He further argues that the learned appellate Court committed a procedural illegality by not framing the points for determination as required by law and failed to decide the appeal based on the evidence on record, rendering its judgment liable to be reversed. He further asserts that the respondent/plaintiff failed to produce any sketch or concrete evidence regarding the property in question (No. 14/1), leaving no basis for the lower Courts to order demarcation, and that the lower Courts exceeded their jurisdiction by granting a decree in favor of the respondent while simultaneously ordering demarcation through the concerned department. He further maintains that despite findings on Issues Nos. 4 and 5 in favor of the Applicants, the learned lower Courts exercised jurisdiction not vested in them by decreeing the suit in favor of the plaintiff, which constitutes a fundamental error warranting reversal. He further emphasizes that the lower Courts failed to consider that the father of the Applicant No.1 was the transferee of two plots in 1965 and had constructed shops on the property, whereas the plaintiff claimed to be a transferee in

1968, and that the record of rights in favor of the Applicant No.1's father was mutated in 1980, while the record in favor of the respondent was mutated only in 1996, making the transfer to the respondent, if any, subsequent and irrelevant to the Applicants' rights in the suit property. He further contends that the respondent failed to discharge the heavy burden of proving possession of the property bearing Custodian No. 14/1, as no reliable evidence was adduced to substantiate their claim, and that the lower Courts erroneously decreed the suit based on assumptions drawn solely because the Applicants contested the suit. He further argues that the judgments and decrees of the lower Courts are based on conjectures, surmises, misreading, and non-reading of the pleadings and evidence on record, rendering them liable to be reversed. He further argued that the Suit of the Respondent was not maintainable without seeking declaration of title as the title of the Respondent was under clouds. In conclusion, he asserts that the lower Courts' decisions are fundamentally flawed and requests this Court to allow the Civil Revision Application and set aside the impugned judgments and decrees. The learned counsel has relied upon the Case reported in PLD 2001 SC 213.

6. Per contra, the learned counsel for the respondent argues that the Civil Revision Application is not maintainable under the law, as the petitioner has failed to establish any jurisdictional error or illegality in the impugned judgments that would warrant interference by this Court. He further contends that the suit filed by the respondent is maintainable even without seeking a specific declaration of title, as the title of the respondent was never under dispute, and the relief of possession inherently includes the recognition of the plaintiff's title. He further asserts that the "Declaration of Title" is an inbuilt relief in suits for possession, as the court, while granting recovery of possession, implicitly declares the plaintiff's

entitlement to the property. He further argues that the lower Courts correctly exercised their jurisdiction in decreeing the suit in favor of the respondent, as the evidence on record substantiated the respondent's claim of possession and entitlement to the property. He further maintains that the petitioner's objections regarding demarcation and jurisdiction are baseless, as the lower Courts acted within their authority in granting the reliefs sought by the respondent. He further emphasizes that the respondent has discharged the burden of proving possession and entitlement to the property, and the lower Courts' findings are based on a proper appreciation of the evidence and applicable legal principles. In conclusion, the learned counsel for the respondent prays for the dismissal of the Civil Revision Application, asserting that the impugned judgments are well-reasoned, legally sound, and do not warrant any interference by this Court.

7. After carefully considering the arguments put forth by the learned counsel for both parties and meticulously examining the material available on record, I have reached the following conclusion. The record indicates that the Applicants contend the suit was not maintainable due to the absence of a specific prayer for the declaration of title. However, in a suit for possession, the Court inherently evaluates and acknowledges the plaintiff's title to the property. The relief of *declaration* in possession suits based on title is an implicit component. Once the Court determines that the plaintiff is entitled to recover possession, a separate *declaration* is not a mandatory requirement. Consequently, the absence of a specific prayer for the declaration of title does not render the suit unsustainable, particularly when the plaintiff asserts ownership based on allotment and transfer documents issued by the Settlement Department. The Respondent's ownership claim is founded on the 1968 allotment of the suit property by the Settlement

Department, supported by a transfer order, offer letter, and P.T.O. In contrast, the Applicants challenge the existence of Plot No. 14/1 by asserting that their father had already been allotted the property. Nonetheless, after a thorough evaluation of the evidence, the Trial Court ruled in favor of the Respondent, a finding that was later upheld by the Appellate Court. While the lower Courts appropriately recognized the Applicants' lawful ownership of Plot Nos. 13 and 14—allotted to their father in 1965—this does not detract from the Respondent's independent claim to Plot No. 14/1, which was allotted to him separately in 1968. This conclusion is supported by the dictum of the Honourable Supreme Court of Pakistan in *Hazratullah and others v. Rahim Gul and others* (PLD 2014 Supreme Court 380), which observed as follows:

“... ..it may be held that in a suit under section 8 of the Specific Relief Act, 1877, the declaration of the entitlement is an inbuilt relief claimed by the Plaintiff of such a case. Once the Plaintiff is found to be entitled to the possession, it means that he/she has been declared to be entitled, which includes the declaration of title of the Plaintiff qua the property, and this is integrated into the decree for possession.”

The underlining is supplied.

The aforementioned stance of the Honourable Supreme Court of Pakistan was further reaffirmed in the case of *Taj Wali Shah v. Bakhti Zaman* (2019 SCMR 84). The lower Courts have not exceeded their jurisdiction by ordering demarcation of the suit property through the concerned department, as this is a necessary and ancillary relief to effectuate the decree for possession. The findings of the lower Courts are based on a thorough assessment of the pleadings and evidence and do not

exhibit any jurisdictional defect or illegality that would justify interference by this Court under its revisional jurisdiction. The Applicants' counsel further argued that the Appellate Court committed a procedural irregularity by failing to frame points for determination as mandated by law. However, the Trial Court had already discussed all relevant issues in detail, and the Appellate Court did not overturn its findings. As such, the Appellate Court substantially complied with the requirements of Order XLI Rule 31 of the Civil Procedure Code (C.P.C.), in line with the precedent established by the Honourable Supreme Court of Pakistan in *Muhammad Iftikhar v. Nazakat Ali* (2010 SCMR 1668), wherein it was held that: *"In the instant case, the findings of facts recorded by the learned trial Court on the issues were maintained by the learned first Appellate Court, therefore, unless the findings are reversed by the first Court of appeal which is not so in the present case, decision on each issue may not to be distinctly and essentially recorded, provided in substance compliance of the provisions of the Order XLI, Rule 31, C.P.C. has been made"*.

8. The scope of revisional jurisdiction under Section 115 of the Code of Civil Procedure is limited. The High Court can interfere only if the subordinate court has: (a) exercised a jurisdiction not vested in it by law; or (b) failed to exercise a jurisdiction so vested; or (c) acted in the exercise of its jurisdiction illegally or with material irregularity. The Applicants have not been able to demonstrate any such jurisdictional error or material irregularity. The lower Courts had the jurisdiction to entertain and decide the suit, and they exercised that jurisdiction in accordance with the law. The mere fact that the Applicants disagree with the findings of the lower courts does not constitute a ground for interference in revision. It is a well-established principle that a revisional court, while

exercising jurisdiction under Section 115 of the C.P.C., generally does not interfere with concurrent findings of fact recorded by the two courts below. This principle is based on the premise that an appellate court serves as the final authority for determining disputed questions of fact. However, this rule is not absolute. There are exceptional circumstances where intervention under Section 115 of the C.P.C. may be warranted, such as in cases of gross misreading or non-reading of evidence on record, or when the courts below have exercised their jurisdiction illegally or with material irregularity. In this regard, reliance may be placed on the dictum laid down by the Supreme Court of **Pakistan in *Haji Wajdad v. Provincial Government Through Secretary Board of Revenue Government of Balochistan, Quetta and others* (2020 SCMR 2046)**. It is a matter of record that the Applicant has not only failed to demonstrate gross misreading, non-reading of evidence, illegality, or material irregularity but has also been unable to establish any exceptional circumstances warranting intervention in the concurrent findings of fact recorded by the learned Courts below.

9. The case law referenced by the learned counsel for the Applicants, ***Muhammad Aslam v. Mst. Ferozi and others* (PLD 2001 Supreme Court 213)**, has been duly considered but is distinguishable based on the facts. The cited case appears to involve a genuine dispute over title, necessitating a specific declaration. In contrast, the present case revolves around the Respondent's claim, which is primarily supported by valid allotment and transfer documents, as affirmed by the lower courts. The central issue between the parties pertains to the "demarcation" of boundaries, as both claim ownership of different plots.

10. For the reasons stated above, this Court finds no merit in the present Civil Revision Application. The Applicants have failed to establish any jurisdictional error or significant irregularity in the impugned judgments and decrees of the lower Courts. The suit filed by the Respondent was maintainable, and the Respondent successfully substantiated his entitlement to the Suit Property. Consequently, as the Civil Revision Application lacks substantive merit, it stands dismissed. The impugned Judgment dated 15-05-2002 and Decree dated 25.07.2002, passed by the learned District Judge, Thatta, are hereby affirmed. The parties shall bear their own costs for these proceedings.

JUDGE