

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
R. A. No. S – 53 of 2010

Date of hearing	Order with signature of Judge
-----------------	-------------------------------

Hearing of case (priority)

1. For hearing of main case
2. For hearing of CMA No.216/2010

30-11-2020

Mr. Kalandar Bakhsh M. Phulpoto, Advocate for the applicant.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

.-.-.-.-.-.-.-.-.-.-

This revision application is filed arising out of conflicting findings, wherein the suit for declaration, permanent injunction and cancellation against the present applicant was filed by the respondents, and the same was dismissed by the learned trial Court, however, the said dismissal was partially allowed at the appellate stage resulting in this revision.

2. The background of the case being the private respondents claiming a right through *number shumari* entries had approached the revenue authorities for cancellation of the entries favouring the present applicant, which, on failure till the level of Assistant Commissioner / Collector were brought before the Civil Court, wherein evidence was led, and thereafter, on merits the suit was dismissed. In the proceedings, learned trial Court framed the following issues and gave their findings accordingly:

- 1) *Whether the suit is not maintainable at law? (Negative)*
- 2) *Whether the suit is time barred? (Negative)*
- 3) *Whether the suit is undervalued and insufficiently claimed? (Negative)*
- 4) *Whether Mst. Makhan daughter of Lal Bux Maitlo was lawful grantee of suit land on the basis of number Shumari pertaining the year 1936/37, if yes whether the plaintiffs being legal heirs of deceased Mst. Makhan are owners of the suit land? (Negative)*

- 5) *Whether the Revenue authorities in collusion with defendant No.1 is tampered with the revenue record and inserted the names of Khan son of Noor Muhammad, Soomar son of Boji Lal Dino son of Wadhal and Gabar son of Sulleman, if yes what effect? (Negative)*
- 6) *Whether in the year 1937/37 the suit S.Nos. were shows as Takrari while the name of Mst. Makhan is also mentioned in such survey numbers and the same has been cut by making a line over the name of Mst. Makhan? (Negative)*
- 7) *Whether the entry in the revenue record in the name of Dur Muhammad regarding S.No.285 made in the year 1941/42 and the subsequent entry No.61 dated 22-5-1968 and the entry No.254 regarding S.No.277 and further entries regarding S.No.277 are illegal, manipulated and liable to be cancelled? (Affirmative)*
- 8) *Whether is the effect of orders passed by defendants No.1 and 5 dismissing the claim of the plaintiffs in respect of the suit land? (Accordingly)*
- 9) *Whether the plaintiffs have been disposed from the suit land by the defendants forcibly and illegally? (Negative)*
- 10) *Whether the plaintiffs are entitled for the reliefs claimed? (Negative)*
- 11) *What should the decree be? (Suit dismissed)*

Learned appellate Court, however, despite accepting that *number shumari* entries create no right/s was pleased to partially allow the suit on the ground that the present private respondents being legal heirs of one Mst. Makhan were entitled to the decree of declaration accordingly.

3. In the matter pending since 2010, on 30-10-2020, warning was given for proceeding of the case based upon the record, however, on 16-11-2020, as an abandoned caution notices against the respondents were also issued as no one was appearing for the respondents since long. The record shows that earlier representation on part of the respondents was present. This being a duty of the parties to pursue their case, a fixed date

of today as earlier given with caution, matter was heard and considered on the basis of the record and the assistance as is available, as such respondents have failed to avail the opportunity provided to them.

4. Learned counsel for the applicant contends that the suit was barred on account of not having proper authority / representation and that in this regard no any Power-of-Attorney was produced also. Learned counsel has relied upon the case of Miss Parveen Kassimali Popatiya v. Nizari Cooperative Housing Society Limited, Karachi and 5 others (**PLD 1994 Karachi 348**). Learned counsel also relies upon the case of Mst. Fatima and 2 others v. Najeebullah and another (**2020 CLC 780**) contending that where documents have not been produced by way of being exhibited as part of evidence, the same are not liable to be considered. Learned counsel, however, based his primary contestation that *number shumari* record which was treated as an entitlement is not available in law. In this regard, learned counsel has relied upon **PLD 1985 Revenue 61**, and further contended that on account of Rule 39 of the Land Revenue Rules, 1968, considering Village Form-VI pertaining to crop inspection register, which is termed as *khasra girdawari* in Punjab and *number shumari* in Sindh. This *khasra girdawari* has been denied entitlement of permanent rights by **1994 SCMR 453**. Learned counsel has further stated that long standing entries under Section 52 of the Land Revenue Act as well as the settled law by way of the case of Mazloom Hussain v. Abid Hussain and 4 others (**PLD 2008 Supreme Court 571**) are provided special status, which are not liable to be disturbed. It is also contended that it was required upon the private respondents to have produced the orders passed in the revenue side before the learned Civil Court, and lastly, it is contended that the limitation was applicable in the matter, to which reliance is placed upon the cases of Saleh Muhammad and 2 others v. Province of Sindh

through Secretary and others (2017 YLR 1199) and Muhammad Shafi v. Syed Chan Pir Shah and 4 others (2018 CLC 866).

5. Learned AAG states that the dispute is between the private parties.

6. Having heard the learned counsels and gone through the record, it is observed that the learned trial Court was pleased to frame all the relevant issues (although such a large numbers may be objected) and decided the case accordingly, wherein the legal entitlement is found discussed, whereas, the same legal entitlement was constrained by the learned appellate Court in the form of points of determination being:

1. *Whether the respondent No.1 / defendant No.1 is not lawful owner of S.No. 277 and 285 of deh Pir Shahbazi?*
2. *Whether S.No. 277 and 285 of deh Pir Shahbazi belong to Mst. Makhan?*
3. *Whether the suit is not maintainable?*
4. *Whether the suit is time barred?*
5. *What should the decree be?*

While discussing the said points of determination, the learned appellate Court was pleased to describe the *number shumari* as not a legal entitlement but was pleased to grant relief to the private respondents on account of the alleged inheritance. It is indeed strange that where the legal entitlement itself was found not available, what inheritance was considered by the learned appellate Court, inheritance can only come through a valid entitlement not otherwise.

7. In the present circumstances, without commenting upon other aspects this revision application stands allowed only on the ground that where the legal entitlement was not available and such fact was bearing from the record, no further consideration was required to be considered for inheritance or otherwise. Having come to the understanding as given

before, I have specifically asked the learned counsel for anything on record to show the legal entitlement of the present applicant to which learned counsel frankly admitted that no such legal entitlement is present but the existing available rights on account of possession are bearing from the record. While setting aside the order of learned appellate Court, it is observed that as the present applicant has not been able to show any title against the government, his entitlement is limited to a third party only to the extent of his possession.

With these observations, this revision application stands **allowed** in the specific terms as given above along with costs of the appeal and this revision.

Abdul Basit

J U D G E