

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Civil Revision No. 44 of 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1- For office objection at Flag 'A'.
- 2- For KatchaPeshi.
- 3- For orders on CMA.No.179/2010

18th. March, 2013

Mr.JamaluddinBaladi, Advocate for the Applicants.

Mr.Moizam Ali Lashari, Advocate for Respondents.

Mr.ShahabuddinShaikh, Advocate for State.

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JUDGMENT

SALAHUDDIN PANHWAR, J:-The applicants have assailed the Judgment dated 25.01.2010 & Decree dated 26.01.2010 passed by learned 2nd Additional District Judge, Khairpur Mir's, whereby, while dismissing the appeal of theappellants the Judgment & Decree of the trial Court was maintained.

02. Succinctly the facts of the case are that the agricultural land bearing S.No.440/1-4, 456/1-4, 456/2 (0-34), 865/1-1, 883/1-21, 884/1-3, 457/2-3, 866/1-0, total area admeasuring (9-30) Acres situated in DehTalpur Wada, TalukaKotDiji, originally belonged to deceased Waryam who happened to be uncle of appellants/plaintifs. Waryam, who happened

to be uncle of appellants/plaintiffs? Late Waryam originally belonged to Sunni sect but he wanted to marry with Respondent /defendant No.7 (Mst.Bhagul) who was real niece of Respondent/defendant No.6 (Mst.Waziran) the first wife of Late Waryam which was not allowed under Sunni Sect, hence he converted to Shia Sect. Waryam died and on the basis of Tahrir (Fatwa) of Shia Scholar MolviKhadimHussainSoomro, the land except S.No.457 and 866 was transferred in the names of appellants/plaintiffs No.1 to 4 as only legal heir of Waryam vide entry No.137 of Village Form No.;VII-B. On 24.5.2004 the Respondents/defendants No.6 & 7 filed joint application before Respondent/defendant No.3, who after enquiry made by Respondent/defendant No.2 cancelled the entry No.137 which was otherwise genuine and legal. The appellants/plaintiffs filed revenue appeal before E.D.O Revenue Khairpur and during pendency of that appeal the attorney of respondent No.6 & 7 claimed that the original owner WaryamKhuwaja had sold out the land to Respondent/defendant No.6 through registered sale deed dated 04.9.1979 and this gave cause of action to the appellants/plaintiffs to file civil suit referred in preceding paragraph.

03. The Respondents No.6 & 7 filed their joint Written Statement, stating therein that the appellants No.1 to 4 have no relationship with late Waryam and the Foti Khan has been arranged by way of fraud. It is further stated that during his lifetime Late Waryam sold out his land to Mst.Waziran through registered sale deed and last is in possession of Respondents No.6 & 7. The Respondents Nos. 1 to 5 did not contest the suit as they were made exparte, therefore, the suit is not maintainable.

04. Record further reveals that issues were framed, parties led their evidence and after hearing the parties' suit was dismissed by judgment and decree. Thereafter the applicants preferred Civil Appeal No. 146 of 2009, same was also declined by judgment and decree impugns in this revision application.

05. Counsel for the applicants inter-alia contends that both the judgments are against the principles of law; no proper appreciation of evidence was given by the trial court as well as appellate court; burden of proof was on the defendants as they were beneficiaries but they failed to discharge the same; they have also approached the Revenue forum and their one portion of their appeal is pending there. He has relied upon 2006 MLD 796 (Lahore).

06. Conversely learned counsel for the Respondents No.6 & 7 while refuting the contentions of counsel for the applicants argued that the suit was hopelessly time barred; registered sale deed was executed in the year, 1979 and they have challenged the same by way of filing suit in the year, 2007; applicants have no relationship with deceased and the also failed to record their evidence to show any relationship and also they failed to produce the registered sale deed which was impugned in the present litigation. This is not a case of misreading and non-reading, therefore, this civil application is not maintainable under the Law.

07. Mr. Shahabuddin Shaikh, State counsel also states that both the judgments are according to law and there is no illegality or infirmity and

this court under revisional jurisdiction cannot disturb the factual controversy which was resolved by the trial court as well as appellate court.

08. Before dilating upon the merits of the case, I am conscious of the facts that law regulating the civil revision is very limited and only it has to be seen that whether the Judgment of appellate court as well as trial court is against the settled principles of law; or there is any departure from mandatory provisions of law or such case falls within the scope of misreading or non-reading keeping in view the said principles, I have examined both the judgments. It is suffice to say that the applicants had challenged the registered sale deed by way of filing civil suit but admittedly they did not produce the same in their evidence, it is also fact that the registered sale deed was executed in the year, 1979 and same is challenged by the applicants in the year, 2007. In this respect, trial court framed the issues No.1 & 2 but perusal of impugned judgment and evidence brought by the applicants reveal that they failed to discharge the onus and even failed to produce such deed which was challenged by them. It is also manifest that specific issue was framed regarding the limitation as there was big gape in filing the suit against the registered sale-deed but plaintiffs had not pleaded any evidence to prove that their suit has not fallen within limitation act. I have also examined the order dated 29.10.2005, which reveals that their appeal before the revenue forum was dismissed on the ground that the registered sale

deed cannot be cancelled in revenue forum. It would be suffice to say that there is no illegality in such order as Section 39 of Specific Relief Act provides mechanism for cancellation of any instatement, thus, the question resolved by the trial court as well as appellate court regarding the legal-heirs of deceased Waryam and the same deed in favour of his wife is according to evidence and there is no illegality or infirmity in the impugned judgments and also this is not a case of misreading and non-reading, therefore, the instant revisional application is devoid of merits and is dismissed along with listed application.

JUDGE

A.R.BROHI