

Presented on

20/11/2021

Addl. Regd.

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision No. 105 of 2021

Naeemuddin son of Din Muhammad by caste
Chandio, Muslim, Adult, resident of Wakeel
Colony, Larkana.

Applicant

VERSUS

1. Brij Lal son of Radho Mal Hindu (died, thru his L.Rs.)

Kantesh Kumar s/o Brij Lal, Hindu
r/o H. No.1420 ward-C Nawatak Mohallad,
Larkana.

Plaintiff/
Respondent

2. Assistant Administrator Evacuee Trust Property
office at old Sukkur.

3. City Survey Officer/Mukhtiarkar, Larkana.

4. Sub-Registrar, Larkana

5. Province of Sindh, through Secretary Revenue Department,
Government of Sindh, Sindh Secretariat Karachi.

Respondents

CIVIL REVISION U/ S 115 OF C. P. C



**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Civil Revision No.S-105 of 2021

Applicant : Naeemuddin son of Din Muhammad
through Mr. Zamir Ali Shah, Advocate

Respondent No.1 : Brij Lal (since died) through his legal heirs
Kantesh Kumar
through M/s. Sarfaraz Ali & Imdad Ali Mashori, ~~Advocates~~
Advocates.

Date of hearing : 28.02.2025

Date of order : 23.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J – The Revisional jurisdiction of this Court under Section 115 CPC has been invoked, challenging the judgment and decrees passed by the Court of learned Senior Civil Judge in F.C. Suit No. No.331/2019 (old number), later renumbered as F.C. Suit No.125/2019 (new number), whereby Suit filed by Respondent No.1 was decreed vide judgment dated 25.01.2021 and a Civil Appeal No.17/2021 dismissed by the Court of learned Illrd Additional District Judge Larkana vide judgment and decree dated 08.09.2021.

2. The facts of the case, in brief, are that respondent No.1 filed a suit for declaration, cancellation, and permanent injunction against the applicant and four others. He claimed to be residing in a house measuring 927 square feet, with an adjacent shop occupying 300 square feet. The entire property, according to him, belongs to the Evacuee Trust Department and was rented to his father, who had been paying rent to the department for a long time. After his father, Brij Lal, demised on 07.01.2003, the respondent and his family continued to reside in the property and regularly paid rent to the department. Respondent No.1 further claimed that about a month before filing the suit, the applicant approached him and asked to vacate the premises, asserting ownership through a registered sale deed. Respondent No.1, in response, informed the applicant that the property belonged to the Evacuee Trust Department. He later verified the ownership from the relevant department and found entries in the applicant's name. Consequently, he filed a suit for declaration and cancellation of the registered sale deed, asserting the property belongs to the Evacuee Trust Department.



3. In response to the suit, the applicant submitted a written statement, denying that the property belonged to the Evacuee Trust Department. He further denied that respondent No.1 was a tenant, alleging that rent receipts had been manipulated. The applicant claimed ownership through a registered sale deed dated 24.09.2010 and stated he subsequently sold the property to Masood Ahmed Chandio through another registered deed dated 13.01.2017. Respondent No.2 also filed a written statement, acknowledging a dispute over whether the property fell under the Evacuee Trust Department or the Settlement Department. He emphasized that only the Chairman of the Evacuee Trust Property Board, Government of Pakistan, had the authority to determine the property's status.

4. Following the initiation of proceedings, the trial court recorded the evidence of respondent No.1, during which he submitted various documents including a Sanad marked as Exh.46/A, rent receipts, letters numbered 2022 and 2025, and seven electricity bills ranging from Exh.46/A to Exh.46/102. The case was subsequently scheduled for the applicant and co-defendants to present their evidence. However, they failed to do so, resulting in the court barring them from submitting evidence. As a result, the trial court proceeded to decide the matter and decreed the suit in favor of respondent No.1 through a judgment dated 25.01.2021.

5. I have extended anxious consideration to the submissions advanced by learned counsel for respective parties and having meticulously scrutinized the entire record of the case, including the pleadings, documentary evidence, and the impugned judgments passed by the courts below.

6. The crux of Respondent No.1's case rests on the assertion that his late father held lawful tenancy rights over the disputed property under the Evacuee Trust Department, supported by documented rent payments. Contrarily, the applicant's defense is predicated on establishing superior title through two registered instruments; firstly, a sale deed dated 22.10.2010 vesting ownership in himself, followed by a subsequent conveyance dated 12.04.2017, transferring the property rights to Masood Ahmed Chandio, thereby creating competing claims of title that form the central legal controversy in the present matter.



7. The record reflects, Respondent No. 1, in his capacity as plaintiff, specifically averred in paragraph 10 of the plaint that upon obtaining an

extract from the property register card from the City Survey Office, the disputed property was shown as recorded in the name of Defendant No. 1 (the present applicant), thereby giving rise to the fundamental dispute between the parties concerning whether the property falls under the jurisdiction of the Evacuee Trust Property Department or the Settlement Department. This position finds corroboration in paragraph 8 of Respondent No. 2's written statement, which explicitly acknowledges that the Settlement Department had processed the property transaction involving Mr. Fateh Muhammad (son of Qaabool Ahmed) and had issued the Permanent Transfer Deed (PTD). Significantly, Sections 8 and 10(2) of the Evacuee Trust Property (Management and Disposal) Act, XIII of 1975 mandate that any dispute regarding the status of properties sold by the Settlement Department must be exclusively determined by the Chairman of the Evacuee Trust Property Board, Government of Pakistan; a jurisdictional limitation further reinforced by Section 14 of Act *ibid*, which expressly bars civil courts from entertaining matters pertaining to the determination of properties belonging to the Evacuee Trust Department.

8. At this juncture, it becomes imperative to examine the pertinent statutory provisions governing the present matter, namely Sections 8, 10 and 14 of the Evacuee Trust Property (Management and Disposal) Act, XIII of 1975, the substantive contents of which are set forth hereunder for proper adjudication of the issues at hand:

8. DECLARATION OF PROPERTY AS EVACUEE TRUST PROPERTY: (i) If a question arises whether an evacuee trust property is attached to a charitable, religious or educational trust or institution or not, it shall be decided by the Chairman whose decision shall be final and shall not be called in question in any court.

(ii) If the decision of the Chairman under Sub-Section (1) is that an evacuee trust property, he shall by notification in the official Gazette, declare such property to be evacuee trust property. If a property is declared to be evacuee trust property under subsection (2), the Chairman may pass an order canceling the allotment or alienation, as the case may be, take possession and assume administrative control, management and maintenance thereof.

Provided that no declaration under Sub-Section (2) or order under Sub-Section (3) shall be made or passed in respect of any property without giving the persons having interest in that property a reasonable opportunity of being heard.

10. VALIDATION OF CERTAIN TRANSFERS: (1) An immovable evacuee trust property



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(a) If situated in a rural area and utilized bona fide under any act prior to June 1964 for allotment against the satisfaction of verified claims; and

(b) If situated in an urban area and utilized bona fide under any Act for transfer against the satisfaction of verified claim in respect of which permanent transfer deeds were issued prior to June, 1968.

Shall be deemed to have been validly transferred by sale to the Chief Settlement Commissioner, and the sale proceeds shall be reimbursed to the Board and shall form part of the Trust pool. (2) If a question arises whether a transaction referred to in sub-section (1) is bona fide or not, it shall be decided by the Chairman whose decision shall be final and shall not be called in question in any court. (3) If it is decided that a transaction referred to in a sub-section (1) is not bona fide, the Chairman may pass an order cancelling the allotment or transfer of such property; Provided that no decision under subsection (2) or order under subsection (3) shall be taken or passed in respect of any property without giving the person affected a reasonable opportunity of being heard.

14. **BAR OF JURISDICTION :** Save as otherwise provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Federal Government, or any officer appointed under this Act is empowered under this Act to determine, and no injunction, process or order shall be granted or issued by any court or other authority in respect of any action taken or to be taken in exercise of any power conferred by or under this Act.

9. The crux of the present dispute centers on the chain of title concerning the subject property, which traces its origins to Permanent Transfer Deed (PTD) No. 218 dated 28.11.1967 executed by the Settlement Department in favor of Nizamuddin Shaikh, with this transfer being duly recorded in the City Survey Record of Rights. The property subsequently changed hands through a series of documented transactions, beginning with its conveyance by Nizamuddin Shaikh to the applicant, Naeemuddin Chandio, via registered sale deed dated 22.10.2010, followed by Naeemuddin Chandio's subsequent transfer of the property to Masood Ahmed Chandio through a second registered sale deed dated 12.04.2017, thereby establishing the applicant's claim of a valid title succession.



10. The respondent No. 1's suit suffers from fundamental legal infirmities that go to the root of its maintainability. While admitting his status as a tenant, respondent No. 1 paradoxically sought cancellation of the applicant's registered title documents; a relief for which he lacks the necessary locus standi, as a mere tenant cannot challenge the ownership rights established through a PTD and subsequent registered sale deeds. The suit is further vitiated by fatal procedural defects, including the

conspicuous non-joinder of indispensable parties: firstly, the previous title holder from whom the applicant derived his ownership (despite respondent No. 1's knowledge of this transaction), and secondly, the subsequent purchaser Masood Ahmed Chandio, to whom the property was later conveyed. These material omissions constitute a clear case of non-joinder of necessary parties, rendering the suit legally incompetent and not maintainable in its present form.

11. The respondent No. 2, in his capacity as Assistant Administrator of the Evacuee Trust Property, categorically asserted in paragraph 8 of his written statement that the exclusive jurisdiction to determine the status of the disputed property vests solely with the Chairman of the Evacuee Trust Property Board, Government of Pakistan. This position finds statutory reinforcement under Section 14 of the Evacuee Trust Property Act, 1975, which expressly ousts the jurisdiction of civil courts in matters pertaining to the determination of property status under the Act, thereby rendering the present suit before the civil court fundamentally non-maintainable on jurisdictional grounds. The combined effect of this official admission and the clear statutory bar creates an insurmountable legal obstacle to the adjudication of this matter by civil courts.

12. Section 10 of the Act expressly vests exclusive authority in the Chairman to adjudicate upon the validity of transfers, thereby ousting the jurisdiction of civil courts in such matters. I concur with the submissions of the respondent's counsel that Section 8 of the Act has no application to the present context, and accordingly, I reject the contention that the civil courts retained jurisdiction over the matter once the Chairman had exercised his powers under Section 10. The issue of the Chairman's exclusive jurisdiction, to the exclusion of civil courts, was conclusively determined by this Court in *Evacuee Trust Property Board v. Mst. Zakia Begum and others* (1992 SCMR 1313), wherein it was unequivocally held as under:



"A perusal of the above would show that when a question arises whether a property is evacuee trust property, the decision of the Chairman, Evacuee Trust Property Board, shall be final [S.8(1)]. If so determined, the Chairman may cancel the allotment or alienation [S.8(3)], and such property shall be exempt from the process of courts or other authorities [S.9]. Section 14 excludes jurisdiction of any court in respect of matters determined by any authority under the Act." "A perusal of the above would show that when a question arises whether a property is evacuee trust property the decision of the Chairman, Evacuee Trust Property Board shall be final S.8(1) and if it is so, the Chairman may cancel the allotment or

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alienation (S.8(3)) , further, it shall be exempt from any process of Courts or other authority (S.9). Section 14 excludes jurisdiction of any Court in respect of any matter which is determinable by any authority under the Act."

13. Section 10(1) of the Act provides that where evacuee trust property has been lawfully utilized for transfer in satisfaction of verified claims, and a PTD was duly executed prior to June 1968, such transfer shall be deemed valid as though the property had been sold by the Chief Settlement Commissioner, with the sale proceeds to be reimbursed to the Board and credited to the Trust pool. In case any dispute arises concerning the bona fides of such a transfer, Section 10(2) confers exclusive jurisdiction upon the Chairman to adjudicate the matter, and such determination shall be final, conclusive, and not subject to challenge in any court of law.

14. These provisions unequivocally establish that civil courts lack jurisdiction over disputes pertaining to the validity of such transfers. Had the appellant sought redress, the appropriate recourse would have been to invoke the jurisdiction of the Chairman under Section 8 of the Act. Likewise, Respondent No. 1 could have availed itself of the remedy provided under Section 10 by approaching the Chairman for requisite relief. Consequently, the proceedings initiated before the civil courts were devoid of legal authority and jurisdiction.

15. In view of the foregoing, this Civil Revision is allowed. The impugned judgments and decrees dated 08.09.2021 rendered by the learned appellate court in Civil Appeal No. 17/2021, as well as the judgment and decree dated 25.01.2021 passed by the learned Senior Civil Judge-II, Larkana in First Class Civil Suit No. 125/2019, are hereby set aside on the primary ground that the civil court lacked jurisdiction to adjudicate the suit filed by Respondent No. 1, for the reasons already elaborated. However, it is clarified that the applicant, along with the subsequent purchaser of the property, Masood Ahmed Chandio, retains the right to seek appropriate relief before the Chairman under Section 8 of the Act. Similarly, Respondent No. 1 may also avail the statutory remedy under Section 10 of the Act, if so advised. All pending applications stand disposed of in the above terms.



Shahbaz/PA

Certified to be True Copy

Assistant Registrar

JUDGE

Announced by me

Justice TAN ALI JUMBHO