

IN THE HIGH COURT OF SINDH, KARACHI

Revision Application No. 235 of 2000

Present:

**Mr. Justice Nazar Akbar**

Applicants : Saleh Muhammad Through  
Mr. Shabbir A. Shaikh, Advocate

Respondents : Province of Sindh through  
Syed Alley Maqbool, AAG alongwith  
Ms. Naheed Akhtar, State Counsel.

Date of hearing : 29.03.2016

Date of Announcement : 03.06.2016

**JUDGMENT**

**NAZAR AKBAR J:-** The Applicant has filed this Revision Application against the concurrent findings of the two courts below. The Court of Senior Civil Judge, Sujawal dismissed suit No.99/1998 on **25.11.1999** filed by the Applicant and the IInd Additional District Judge, Thatta maintained the judgment of trial Court by dismissing the Civil Appeal No.01/2000 by judgment dated **28.03.2000**.

2. Briefly stated, the Applicants/Plaintiffs filed suit for Declaration, Cancellation of Entry in Record and Permanent Injunction against the respondents for restraining them from interfering in their legal possession and to sell, mortgage or alienate the property viz agricultural land bearing Survey Nos.233(3-2), 380(5-0), 397(3-24), 680(2-5) total measuring 13-31 acres situated in Deh Babri Tapo Amri, Taluka Mirpur Bathoro,

District Thatta (The suit land). The suit land was jointly owned by the Applicant No.3 and Natho, who has expired in the year 1977 and left behind Applicants as his surviving legal heirs. After the death of said Natho Applicants No.1 & 2 came in possession and cultivating the said agricultural land and also made huge investment in developing the suit land. In **August 1998** Applicants came to know that one Ahmed son of Jamoo Soho, who used to work as Hari on the suit land in collusion and connivance with Respondent No.4, the then Tapedar has illegally, unlawfully and by playing fraud got the suit land mutated in his name and all the revenue record in the name of said Natho and the Applicant No.3 was destroyed and only mutation in the name of Ahmed son of Jumo Soho was available in the record. On an application made to the official Respondents by the Applicant it was revealed that the said land is in the name of Ahmed son of Jumo Soho but not a single document was available to explain that from where or whom he acquired the suit land. Therefore, the Applicants filed suit and sought following relief(s):

- a) DECLARATION that the Plaintiffs are the legal owners of suit land viz Sr. Nos.233 (3-2), 380 (5-0), 397 (3-24) and 680 (2-5) total admeasuring 13-31 acres in Deh Dabri, Tappo Amra, Taluka Mirpur Bathoro District Thatta, and mutation is to be made in their names in record of rights and also that the entry No.1 (without any date) in favour of one Ahmed s/o. Jumoo Soho is null, void, ab-initio, illegal, unlawful, malafide, fraudulent, of no legal effect, liable to be cancelled and not binding on the Plaintiffs.
- b) CANCELLATION OF ENTRY IN RECORD, that this Hon'ble Court may cancel the entry No.1 in the name of one Ahmed s/o Jumoo Soho in the record of rights.

- c) PERMANENT INJUNCTION restraining defendants Nos. 6 to 12 their agents, servants, legal representatives, or any person or persons claiming through them in any way directly or indirectly from interfering in the peaceful possession of Plaintiff in suit land, from changing the Khata or mischeiving in record of land or issuing the threats of forcible dispossession of Plaintiff from the suit land or doing any act/things prejudicial to the interests of Plaintiff s in any manners without due course of law.
- d) The defendants shall bear the costs of suit
- e) Any other relief which this Hon'ble Court may deem fit and proper be granted to the Plaintiffs."

3. The suit was contested by the private Respondents/Defendants by filing joint written statement wherein they claimed that their predecessors were owners of the suit land with the predecessors of the Applicants and suit land was partitioned on the request of predecessor of applicants by an order passed by Respondent No.3. The Applicants were aggrieved by order of partition filed an appeal which was dismissed and even Revision preferred by Applicants against the said order was also dismissed by the Additional Commissioner, Hyderabad. It was also averred by the respondents that Applicants were in possession of survey Nos.232 & 676 which they had sold to one Pir Ghulam Jeelani in 1979.

4. The trial Court from the pleading of the parties framed the following issues:-

- i) Whether the suit is not maintainable?
- ii) Whether the suit is barred by law?
- iii) Whether the plaintiffs are the owners of the suit land?

- iv) Whether entry No.1 in the record of rights in favour of Ahmed son of Jumoon is illegal and malafide?
- v) Whether the plaintiffs are in possession of the suit land?
- vi) Whether plaintiffs are entitled for the relief claimed for?
- vii) What should the Decree be?

5. In support of their case Applicants/Plaintiffs Saleh Muhammad was examined as Ex. 27/PW-1 who produced Form 'F(S)' and Deh Form VII as Exhibits 27/A to 27/D. The Applicant also examined Dahroon as Ex.28.

6. Respondent/Defendant No.6 Siddique Ahmed was examined as Ex.30 and he also produced copies of orders, Deh Forms at Ex.30/A to 30/D.

7. The learned trial Court after recording evidence and hearing the parties dismissed the suit. The Applicants/Plaintiff preferred an appeal which was also dismissed by the Court of IInd Additional District Judge, Thatta, therefore, this revision.

8. I have heard the arguments and perused the record.

9. Learned counsel for the Applicants has mainly contended that father of Applicants No.1 and 2 and brother of the Applicant No.3 died in 1977, but no issue has been framed by the trial Court about the death of Natho and even the learned Appellate Court has noted in the impugned judgment that the Applicants/Appellants have vehemently contended about the death of Natho, therefore,

the Courts below have erred in law. The learned Appellate Court, he further contended, should have remanded the case back to the trial Court for framing the issue. He has also referred to the order of this Court dated 02.03.2016 whereby learned AAG was asked to produce application for partition moved by the Parties. However, on 29.03.2016, the Court was informed by the relevant Officer that record has been destroyed in flood. The other contention of the learned counsel for the Applicants was that the question framed by the learned Appellate Court regarding effect of partition of the land by the Revenue Authorities, but the learned Appellate Court has not discussed the issue of possession of the Suit land, therefore, the learned Appellate Court's order suffers from defect of non-compliance of the **Order XLI Rule 31 CPC**. In response to the query from the Court that why so-called death certificate has not been filed alongwith Memo of Revision though it was relied upon by the learned counsel and was filed with the Memo of Plaint and it was mandatory requirement of **Section 115 CPC** that all pleadings should have been placed before the Court with Revision Application, the Counsel was of the view that it was not fatal to the proceedings and it can be filed even now. On the question of framing of the issue, learned counsel has relied upon the cases of Mst. Sughran Bibi & others vs. Mst. Jameela Begum & others (**2001 SCMR 772**), Muhammad Bashir vs. Muhammad Hussain (**2009 SCMR 1256**) and Dr. Muhammad Hussain vs. Principal, Ayub Medical College, (**PLD 2003 SC. 143**). On the point of **Order XLI Rule 31 CPC**, he has relied upon the case of Chaudhry Muhammad Shafi & others vs. Government of Sindh (**2014 YLR**

**602)** and Jan Muhammad & 6 others vs. Ghulam Farid & 3 others (**2014 MLD 1141**) and on the last contention about non-filing of the documents with an application under **Section 115 CPC**, he has relied upon the judgment of Mst. Jannat Bibi vs. Faqir Muhammad (**1998 MLD 837**), Abdullah & others vs. Muhammad Haroon (**2002 CLC 1419**) and also Farman Ali vs. Muhammad Ishaq & others (**PLD 2013 SC. 392**).

10. Learned counsel for Respondent No.10, has filed written arguments. His main focus was on the limitation for the Suit for declaration and cancellation of Entry in the Revenue Record. He has contended that the Applicants knew since 1980 and even before that the Respondent's predecessor-in-interest Ahmed, is the owner of the property in question and his name has been entered in the Revenue Record in **August 1978**. However, the suit has been filed after almost 20 years of entry and 18 years from the date of knowledge of entry. He has also contended that in terms of **Section 42** of the West Pakistan Land Revenue Act, 1967 (hereinafter the Revenue Act) as soon as Natho has died, Applicants were under statutory obligations to approach the Revenue Officer within **three months** in terms of **Section 42** of the Revenue Act. The Applicants should not have waited for 20 years to check the entry in the Revenue Record in respect of the Suit land. It is not mentioned in the Plaint that on the death of Natho in 1977 anybody has approached the Land Revenue Department on behalf of the legal heirs of the deceased Natho to record entry of his death in the Revenue Record and transfer of

land by way of inheritance. Merely simple oral assertion after 21 years of death of Natho that the Applicants are the legal heir of Natho who died in 1977 is not enough to cancel the entry of suit land in the record and declare it illegal. He has contended that even if Natho was dead, Mst. Fatima, Respondent No.3 is alive and throughout participated in the proceedings before the Revenue Authorities and, therefore, Revenue Authorities has not acted in absence of the Parties. On the question of limitation he has relied on the cases reported as **2006 YLR 1084** (Muhammad Yousuf v Sharifan Bibi) and **PLD 1985 SC 153** ( Muhammad Buta v. Habib Ahmad)

11. I have given due consideration to the contentions raised by the parties and have thoroughly examined the record and the evidence.

12. After hearing the learned counsel for the Parties, I have called R&Ps of the Suit as well as Appeal from the courts below. Therefore, the controversy that whether non-compliance of requirement of **Section 115** CPC for filing of entire record was mandatory or directory and particularly non-filing of death certificate in the case in hand had some wisdom behind it or it was without any reason.

13. The first contention of the learned counsel that the trial Court should have framed the issue about the death of predecessor-in-interest of the Applicants, appears to be out of context in the given facts of the case. The main issue was not the date of death of Natho since nobody has approached the Revenue

Authorities in term of Section 42 of the Revenue Act till date. The suit was filed for declaration of ownership and cancellation of an undated entry No.1 in favour of respondents in the Revenue Record. In the first place, the Entry of the Revenue Record cannot be undated. It may be an Entry of a date which date may be incorrect but it cannot be undated entry. The intelligent Applicants mentioned and relied on copy of undated Entry No.1 and claimed that the entries in favour of one Ahmed were fraudulently entered in the record. In fact, if we examine the West Pakistan Land Revenue Act, 1967, we find that the jurisdiction of Civil Court is totally barred except in terms of **Section 53** of the Revenue Act, which reads as follows:-

**“53. Suit for declaratory decrees by persons aggrieved by an entry in a record.** If any person considers himself aggrieved by an entry in a ‘Record-of-Rights’ or in a periodical record as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act 1 of 1877).”

14. The plain reading of the Plaint shows that the Applicant / Plaintiff has claimed to be in possession of the suit land and aggrieved by an **undated Entry No.1** made in the Revenue Record. The perusal of the Prayer shows that it was not a case of only cancellation of entry in the Revenue Record, it was also a case about declaration of ownership of the suit land. The first prayer of the Applicant/Plaintiff was about declaration of ownership. The question of ownership of agricultural land is not covered by **Section 53** of the Revenue Act. It speaks only about the grievance against the entry in the **Record-of-Rights** or in a **“periodical**



**record**” as to any right of which he is in possession, but not about ownership. Therefore, **Section 53** of the Revenue Act, has to be read with **Section 42** of the Revenue Act, which deals with making of that part of the periodical record, **which relates to the land owners**. It means ownership is directly linked/dependent on the timely entry in the Revenue Record. The Plaintiff has claimed ownership by virtue of inheritance and claimed that their predecessor-in-interest Natho had died in 1977, therefore, in terms of **Section 42 (1)** of the Revenue Act, the death of Natho should have been reported **within three months** from the date of his death and a copy of such report, free of cost should have been obtained under **Clause (b) of Subsection (1) of Section 42** *ibid* by the Applicants as new landowner by inheritance. If they were minors, then **Subsection (2) of Section 42** *ibid* should have been followed and entry should have been made by legal Guardian. **Section 42** of the West Pakistan Land Revenue Act, 1967 for convenience sake is reproduced below:-

**“42. Making of that part of periodical records which relates to landowners.** (1) Any person acquiring by **inheritance**, purchase, mortgage, gift or otherwise, any right in an estate as a landowner, or a tenant for a fixed term exceeding one year, shall, **within three months** from the date of such acquisition, report his acquisition of right to the *patwari* of the estate, who shall-

- (a) record such report in the *Roznamcha* to be maintained in the prescribe manner.
- (b) furnish **a copy** of the report so recorded, free of cost, **to the person making the report**; and
- (c) send **a copy of the report within a week** of its receipt by him, to the Union Committee, town Committee or **Union Council** within which the estate is situated.

(2) If the person acquiring the right is a minor, or is otherwise unable to report his **guardian or other person** having charge of his property shall make the report to the *patwari*.

(3) The *patwari* shall enter in his register of mutations every report made to him under **subsection (1)** or **subsection (2)**, and shall also make an entry in the *Roznamcha* and in the register of mutations respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place, and of which report should have been made to him under either of those subsections and has not been so made.

(4) The report made to the *patwari* under **subsection (1)** or **subsection (2)** or recorded by him under **subsection (3)** shall be displayed in such manner as may be prescribed.

(5) If the *patwari* fails to record or to display a report made to him under **subsection (1)** or **subsection (2)**, the person making the report may make the report in writing, to the Revenue Officer concerned and the “**Chairman** of the Union Committee, Town Committee or **Union Council**” in which the estate is situated, by registered post acknowledgement due and the Revenue Officer shall thereupon cause such report to be entered in the register of mutations.

- (6) -----
- (7) -----
- (8) -----
- (9) -----
- (10) -----
- (11) -----”

It is not the grievance of the Applicants that the **Patwari** has failed to enter the report of death of Natho in his record that is why in accordance with **Section 42(5)** *ibid* the Applicants have not reported such report to the Chairman Union Council concerned. However, in 1998, the same Chairman, Union Council has issued an undated death certificate instead of issuing certificate of certain entries in the Revenue record on account of death of said Natho. The perusal of annexure ‘C’ to the plaint which is photocopy of the so-called death certificate by itself is undated and it does not

disclose the day and month of death of Natho. But for this reason in my humble view, the Applicants till date have never filed its original with plaint, in appeal and even before this Court and yet he wants that after 18 years this case be remanded to frame the issue of death of Natho. The Appellate court was not required to remand the case for a non-issue and perhaps the perusal of photocopy of death certificate was enough to ignore it. And non-filing of death certificate with memo of Revision was not devoid of wisdom.

15. Regarding claim of possession, as stressed fully argued by the learned counsel for the Applicants that it was not examined by the Appellate Court, suffice it to say that there was no controversy between the Parties on the issue of possession of the so-called suit land. The private Respondents in their written statement have categorically stated in Paragraph-13 that:-

“It is submitted that the answering Defendants are also in possession of the suit land, hence, no question of dispossessing arises.”

The Suit was filed on the allegation that the Respondents No.6 to 10 have attempted to dispossess the Applicants from the suit land. It was denied by the private respondents and till date they have not filed even suit for recovery of possession against the Applicants. Not only this, the trial Court had categorically mentioned in the impugned order that the Applicants have not produced any documentary evidence to establish their physical and cultivating possession on the suit land. The Applicants have not produced Dal Receipts, Khasra gardawari or any document of possession. The

private Respondents have not challenged possession since they themselves claim to be in possession and the Applicants have not sought order from the Court for recovery of possession from the Respondents, therefore, it was not a dispute between the Parties. If Applicants were in possession of suit land, their possession was not under threats as the private respondents have denied the allegation of attempt to dispossess the Applicants by force. In this context the perusal of evidence shows that the Applicants and their witness have not corroborated the contents of Paragraph-13 of the Complaint. In their evidence not a single word was uttered by the Applicant in his Examination-in-Chief that the Respondents a week before filing of suit had attempted to dispossess the Applicants. The issue was either practically abandoned by the Applicants or it was not at all an issue before the trial Court. Apparently the Applicants have declared in the complaint that they are in possession only to bring the suit within the ambit of **Section 53** of the Revenue Act. The Appellate Court has categorically stated that the Applicants have not taken any other ground except one discussed by the Appellate Court and, therefore, contention of the Applicants that the issue of possession of the suit land has not been discussed or examined by the Appellate Court is of no consequence.

16. I have perused the very brief evidence adduced by the Applicant Saleh Muhammad himself as PW-1 Ex.27. He had admitted the date of knowledge of alleged undated entry in his own examination-in-chief, which is as follows:-

“My father was expired in the year 1977 at that time my age was 5/6 years. At that time Defendants No.6 to 10 were haries of my father. **In the year 1980 I came to know about the fraudulent entries in the record made by the defendants in their favour.** I also made application to D.C in this respect wherefrom DC called report from Mukhtiarkar and Tapedar reported that entries in favour of Ahmed are fraudulent in the record. Entry in favour of Ahmed in the record of right is fraudulent and false. I am and co-plaintiff are in possession and cultivating the same.

In the Plaint as well as in his evidence reproduced above, the Applicants have claimed that they made an application to the Deputy Commissioner, but neither they have filed the said application nor they have disclosed even the date of their application and the fate of it, which ought to have been filed in 1980 when they came to know about undated fraudulent entry in the Record of Rights. The private Respondents with their written statement have filed the record showing entries in the name of their predecessor-in-interest dated **16.08.1978** on the basis of the order of the Assistant Commissioner and it is Entry No.**158** and not the undated **Entry No.1**. They have also filed the orders passed by the Revenue Authorities, but even after going through the written statement the Applicants did not bother to impugn the said orders, as fraudulent or manipulated on the ground that Natho has died by the time nor they have challenged **Entry No.158 dated 17.08.1978** in favour of the Respondents' father Ahmed son of Jumoo Soho. The Applicants relied on the so-called certified copies of the record, (Ex.27-A, which is Form F (S) for the year 1959-60) obtained on **03.09.1998** and at the same time they have alleged in the plaint that the record prior to **1978** was

destroyed, when the name of Ahmed was entered in the Revenue Record. They have failed to explain that how they got certified copies of record upto 1960 in 1998 and why they failed in getting certified record from 1960 onward. Why the **Entry No.158** dated **16.08.1978** has not adversely affected them? The averments of the Plaintiff that the so-called undated entry in the name of private Respondents was not showing any method of acquiring the property by respondents also stands belied, when the documents showing transfer with details for such transfer had come on record.

17. Learned counsel for the Applicants has also contended that the issue of maintainability had been decided in favour of the Applicants and the private Respondents have not challenged the findings and, therefore, the Appellate Court was not required to re-examine the said issue and the same cannot be agitated before this Court in Revision. This contention of the learned counsel is misconceived. The question of maintainability on the factual controversy between the Parties once decided and not challenged in Appeal may not be re-agitated before the Revisional Court, but the question of limitation is such that it cannot be buried as finally decided if it can be shown that the suit was barred by time and conclusion drawn by the trial Court was wrong and incorrect. The issue of limitation is not an issue between the Parties alone. In terms of **Section 3** of the Limitation Act, 1908, the limitation for filing a lis is an issue of the Court and that is why time and again it has been held that it is the "**duty of the Court**" to dismiss a cause which is barred by time even though the limitation **has not**

**been set up as a defence** whether agitated in Appeal or Revision or not, it can still be examined by the Court seized of the cause. In this context in addition to the case law relied upon by the counsel for respondents, I would refer to the latest pronouncement of Supreme Court reported as Muhammad Javaid Shafi v. Rashid Arshad (**PLD 2015 SC 212**). His Lordship Mr. Justice Saqib Nasir while speaking for the bench has observed as follows:

“The object of the law of limitation and the law itself, prescribing time constraints for each cause or case or for seeking any relief or remedy has been examined by the courts in many a cases, and it has been held to be a valid piece of legislation, and law of the land. **It is ‘THE LAW’ which should be strictly construed and applied in its letter and spirit;** and by no stretch of legal interpretation it can be held that such law (*i.e. limitation law*) is merely a technicality and that too of procedural in nature. **Rather from the mandate of section 3 of the Limitation Act, it is obligatory upon the court to dismiss a cause/lis which is barred by time even though limitation has not been set out as a defence.** And this shows the imperative adherence to and the mandatory application of such law by the courts. The said law is considered prescriptive and preventive in nature and is held to mean and serve as a major deterrent against the factors and the elements which would affect peace, tranquility and due order of the State and society. **The law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law; as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire.** Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. (Emphasis provided)

In the case in hand, as discussed in the earlier paragraph, the Applicants were short of giving details about themselves i.e. actual date of their birth and particulars of persons, who were their legal guardian and looking after the suit property after the death of Natho when they were minors. However, from evidence on record the Applicants themselves have said that in **1977**, they were 5/6 years of age and in 1980 they have acquired knowledge of entry in the Revenue Record in favour of the father of the private Respondents, therefore, point of limitation to challenge the entry from the date of knowledge by invoking **Section 42** of the Specific Relief Act, 1887, was either **1980** or from the date when they attained the age of majority. If in the year 1980 they were nine (9) years of age as per their evidence then by all means they have attained the age of majority in **1989** and adding three years to their age of majority then latest by **1992** they should have challenged the so-called undated entry No.1 which came to their knowledge in the year 1980 or which is actually dated **16.08.1978**. The suit was filed in 1998. The suit under **Section 42** of Specific Relief Act, 1887 for seeking declaration is supposed to be filed within **three years** from the date of knowledge of forgery of an instrument issued or registered in terms of **Article 92** of the Limitation Act, 1908. In the case in hand, the Applicants to bring suit within the ambit of Limitation alleged accrual of cause of action in 1998 when they obtained certified copies of so-called undated Entry No.1, but they admitted knowledge of such entry in 1980 and they have not given details that when and from whom they came to know about such entry as forgery and why they could



not obtain such certified copies during long period from 1978 to 1998. Therefore, the reference and reliance of lower appellate court on **Article 114** of the Qanun-e-Shahadat Order, 1984 were correct legal approach in the given facts of the case. The Suit was hopelessly time barred and again referring to the requirement of **Section 42** of the Land Revenue Act, 1967, the Applicants have not bothered even after attaining the age of majority to get the date of death of their father recorded in the Revenue Record and get the entries in the record in their favour by virtue of inheritance. The Applicants, interestingly enough, even through the Suit in hand have not prayed for the entry of their names in the Revenue Record. Generally, the Suit under **Section 53** of the Land Revenue Act, 1967 is filed by such landowners whose names are already entered in the Revenue Record and they seek declaration of subsequent entry in Revenue record as illegal, fraudulent entry, even on the basis of any order of the Revenue Authorities. In the case in hand, the names of the Applicants have never been entered in the Revenue Record in terms of **Section 42** of the Revenue Act and, therefore, the Suit even on this ground ought to have been dismissed.

18. The Crux of the above discussion is that concurrent findings of the two Courts below cannot be disturbed. Consequently, Revision Application is dismissed with no order as to cost.

JUDGE