

IN THE HIGH COURT OF SINDH, KARACHI

Revision Application No.135 of 2004
Revision Application No.135 of 2004
Revision Application No.137 of 2004
Revision Application No.138 of 2004

Present:

Mr. Justice Nazar Akbar

Applicants : Mst. Maryam, Mst. Kazo, Mst. Hawwa,
and Muhammad Umer, through
Mr. Mazhar Ali B. Chohan, Advocate

Intervener : Kalo Jamali and Ganhwar Jamali,
Through Mr. Nasrullah Malik, advocate

Respondent No.1 to 4 : The State, through
Syed Alley Maqbool, AAG alongwith
Ms. Naheed Akhtar, State Counsel

Respondent No.5 : Muhammad Ameen (Absent)

Date of hearing : 10.05.2016

Date of Announcement :

JUDGMENT

NAZAR AKBAR J:- By this common judgment I intent to dispose of four Revision Applications bearing Civil Revision No.135, 136, 137 and 138 of 2004 filed by one Nazeer Ahmed son of Haji Ghulam Hussain as Attorney of four different Applicants namely Mst. Maryam (R.A No.135/2004), Mst. Kazo (R.A. No.136/2004), Mst. Hawwa (R.A No.137/2004) and Muhammad Umer (R.A No.138/2004). All the four revision applications have arisen out of the proceedings started from F.C. suit No.16, 17, 18 & 20 of 2000 filed by the same attorney in respect of different pieces of land. The documents relied upon by the Applicants were identical with almost identical dates and, therefore, except the description of the suit property even the pleadings and evidence were identical. The

judgment both in civil suits as well as in Civil Appeal Nos.72, 73, 74 and 75 of 2002 were identical.

2. Briefly stated the facts of these revisions are that in each and every suit the attorney has claimed that the respective Applicants/Plaintiffs on **02.11.1933** had acquired their respective suit land by an identical order passed by the then Deputy Collector vide Order No.1524 and as such the suit properties were mutated in revenue record in the name of respective plaintiffs vide entry No.24, 25, 26 & 27 all dated **15.11.1933**. He further averred in the plaint on behalf of the plaintiffs that in the year 1966 each one of the plaintiffs had filed identical but separate applications to the then Deputy Commissioner, Thatta claiming that due to river action in the past the suit land was resurveyed and it may be mutated in their names as a Haqq-e-Qabza land and, therefore, the Deputy Commissioner by identical orders dated **05.04.1966** (Mst. Kazo - F.C. Suit No.18/2000), dated **07.04.1966** (Mst. Maryam - F.C. Suit No.17/2000), dated **15.04.1966** (Mst. Hawwa – F.C. Suit No.20/2000) and dated **08.05.1966** (Muhammad Umer – F.C. Suit No.16/2000) accepted their respective claims. Therefore, in **1966** on the basis of the order of Deputy Commissioner the respective suit lands were mutated in favour of respective Applicants/Plaintiffs vide entry No.4 dated **21.04.1966** in favour of Kazo (F.C. Suit No.18/2000). However, it is pertinent to mention here that the documents Ex.45/A, 45/B & 45/C, which are the basic documents in suit No.18/2000 filed by Mst. Kazo do not pertain to the said Mst. Kazo instead of Mst. Kazo all these documents are in the name of one **Fatima** as clearly mentioned on the documents in neat & clean hand writing. Next entry number is again No.4 dated **25.04.1966** (Mst. Maryam – F.C. Suit No.17/2000), entry No.10 dated **24.05.1966** (Muhammad Umer – F.C. Suit No.16/2000) and No.13

dated **28.04.1966** (Mst. Hawwa – F.C. Suit No.20/2000) respectively. He further averred that all the plaintiffs on **01.08.1999** came to know that their respective suit land has been included in the schedule of government land and the Deputy Commissioner, Thatta was going to dispose of the said land in open Kachehri on **07.08.1999** and therefore each one of the Plaintiffs filed separate constitution petition before the Hon'ble High Court of Sindh in which on **07.02.2000** identical status orders were passed and, therefore, the open Kachehri was postponed. In each of the suit Defendants No.1 to 4 were government functionaries and action was proposed by them in accordance with law for disposal of the suit land and Plaintiffs have also impleaded one Muhammad Ameen, a private person, as Defendant No.5. In para Nos.13 & 15 of plaint it was also pleaded that each of the Plaintiffs personally as well as through attorney have approached the revenue authorities to effect mutation of the suit land in their respective names but official defendants have refused to effect mutation in the record and further pleaded that Defendant No.5 being an influential private person they fear that on refusal of mutation in favour of the Plaintiffs, Defendant No.5 will usurp their suit land. In above background, each of the Plaintiffs claiming that cause of action accrued in August 1999 filed suit with the following prayers:-

- a) DECLARATION that the Plaintiff is owner of the suit land (details of land are shown in para-2 of plaint and so also in attached schedule of property with plaint) in Deh Ratole Tapo Goongani Taluka Shah Bunder District Thatta,
- b) DECLARATION that the defendant No.5 has no right, title, interests or any concern with the suit land and the order bearing No.IB/I/-79 dated 7.4.1966 by the Deputy Commissioner Thatta and subsequent mutation basing such order in the name of the Plaintiff vide entry No.12 dated 25.4.1966 is just, proper, legal, justified and within the spirit of law.

- c) DECLARATION that the defendants are bound to record mutations in favour of Plaintiff in the record of rights in respect of the suit land and their act of issuing the threats of forcible dispossession of Plaintiff and disposing of it to some other persons, is/are null, ab-initio void, illegal, unlawful, malafide, without any lawful authority and not binding on the Plaintiff.
- d) MANDATORY INJUNCTION directing the defendants Nos.2 to 4 to record the mutations in respect of the suit land after occurring the block survey in the name of the Plaintiff.
- e) PERMANENT INJUNCTION restraining the defendants, 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 the Plaintiff in the suit land, dispossessing or attempting to disposes her or disposing of it to some other person or issuing the threats and/or doing any act/thing prejudicial to the interests of Plaintiff in nay manners without due course of law.
- f) The defendants shall bear the costs of suit,
- g) Any other relief which this Hon'ble Court may deem fit and proper be granted to the Plaintiff.”

3. Defendant No.2 to 4 filed their written statement in which they denied the allegations against them and clearly asserted that the documents filed by the Applicants/Plaintiffs were managed/forged as the record of **1933** was not traceable and the subsequent record which was prepared in 1958 & 1966 is also in torn position and master copy of Form-VII prepared in **1986** does not show such entries. The order dated **02.01.1933** of the then Deputy Collector, Karachi too, is not available and it appears that these documents are forged and managed. Even the orders of Deputy Commissioner claimed to have been passed on different dates in **1966** were denied and it was alleged that these documents have been managed. It was also averred that suit land was Katcha Government land and therefore it was rightly included in schedule of Government Land for distribution to landless haries through an open Kachehri as per government existing Land

Grant Policy 1999. It was also averred by the official defendants in their written statement that Defendant No.5 has been arranged by the Plaintiff and his name was included in the plaint just to support them as Defendant No.5 is relative of the Plaintiffs and residing in same village.

4. Defendant No.5 also filed his written statement and confirmed the apprehension / allegation of official defendants in their written statement since he admitted all the material contents of the plaint. He simply denied the allegation that he is an influential person and after filing written statement he did not appear in the witness box nor contested the suit. The trial Court from the pleadings of the parties framed the following common issues in each of the suit:-

- 1/- Whether plaintiff is the owner of the suit land and defendant No.5, has no right, title and interest over the same?
- 2/- Whether order dated 7.4.1966 of Deputy Commissioner. Thatta and entry No.12 dated 25.4.1966 in favour of Plaintiff is proper and defendants are bound to record mutation?
- 3/- Whether the plaintiff have no cause of action for filing the present suit and he was not entitle to file the same and the suit land is Govt. state katcha land?
- 4/- Whether the suit is not maintainable under the law?
- 5/- Whether the plaintiff is entitled for the relief claimed?
- 6/- What should the decree be?

In support of their claim, each of the Plaintiffs examined only attorney Nazeer Ahmed as PW-1 and in each suit he produced following documents:-

- | | | |
|-------|-------------------|---|
| i) | Ex. 53/A | Power of Attorney |
| ii) | Ex. 53/B | Copy of Entry No.25 dated
15.11.1933 |
| iii) | Ex.53/C | Copy of Order of Dy.
Commissioner,
Thatta, Dated 07.4.1966 |
| iv) | Ex.53/D | Copy of Deh Jo Form-VII |
| v) | Ex.53/E-1 to E-32 | Land Revenue Receipts |
| vi) | Ex. F & G | Map and Sketch |
| vii) | Ex.53-H/1 to H/7 | Notices of Mukhtiarkar |
| viii) | Ex.53-I/1 to I/13 | Deh Jo Form No.I/B-B |

In reply one Ghazi Khan, Revenue Mukhtiarkar appeared as witness of official respondents.

5. The learned trial Court after recording evidence and hearing of counsel for the parties decreed the suit of the Applicants/Plaintiffs by judgment dated **27.04.2002**. However, the official Respondents preferred appeals which were allowed by judgment dated **11.05.2004**. The Applicants/Plaintiffs have preferred these Revision Applications against the appellate judgment and decree of dismissal of their suit.

6. The perusal of record of these revisions reveals that on **02.06.2004** these revisions applications were filed. On **23.11.2004** the operation of the impugned order was suspended and since then the applicants and their counsel sought time only. In 2014 one Miscellaneous Application was filed in each of the suits to further delay the proceeding in the name of pendency of the application of intervener. However, after filing of the so called applications for and on behalf of the intervener, their counsel Mr.Nasruallah Malik, never perused the same. These applications of intervener were dismissed. On **03.5.2016** when the applicants offer 12 years again sought the adjournment, in each of the cases, cost of Rs.20,000/- was imposed with directions that on the next date of hearing the parties counsel should be present to argue the case. Therefore, on **10.5.2016** after 12 years, counsel for the applicant ultimately advanced his arguments and at his request he was given chance to file written argument. He has also submitted written arguments.

7. I have gone through the arguments of the parties and thoroughly examined evidence and record of the proceedings. Learned counsel for the applicant has contended that the applicants' name has been entered in the

revenue record in the year 1933 and therefore, documents of over thirty years have acquired legal sanctity under **Article 100** of Qanun-e-Shahadat Ordinance, 1984. According to him the presumption as to the documents of 30 years old should have been accepted by the Appellate Court while reversing the judgment of trial court. He further contended that again in 1966 such entries were made in the revenue record and no adverse evidence has come on record to refute the claim of the applicants. The learned counsel for the applicant emphasized that the reasoning advanced by the trial court was cogent whereas the appellate court dismissed the suit without any plausible and cogent reasons.

8. In rebuttal State counsel categorically asserted that the documents relied upon by the counsel for the applicants on the face of it had no legal sanctity. In the first place any document of **1933** has not been placed on record nor even the order of the then Deputy Collector of **1993** has been filed by the applicant. Counsel for the State has referred to the so-called V.F-VII and pointed out that these are not the official record handed over by the Revenue Authorities to the owner of the properties, these are not even properly granted true certified copies from the office of the Mukhtairkar/Revenue Authority. The applicants themselves claim that these are true copies of village Forms-VII. However, it is nowhere mentioned on any of these form that these are true copies. The name of applicants continues to be the same since 1933 which by all reality cannot be the same in 2000 after the lapse 77 years when the suits were filed. There must have been some change byway of inheritance during the 77 years long period since **02.11.1933**. The attorney of Applicants has filed copy of V.F VII which was obtained in **1973** but these copies do not refer to the revenue record. Learned counsel for the applicant has not been able

to controvert the findings of the appellate court to the effect that the so called copies of mutation does not bear round seal of Mukhtairkar of Taluka Shah Bunder which was supposed to be affixed on these documents. Learned appellate court has reproduced in impugned judgment the orders of Deputy Commissioner passed in 1966 to appreciate its authenticity. The contents of the orders of the Deputy Commissioner passed in 1966, as discussed by the learned Appellate Court, are such that it negate the sanctity of the documents. I have also examined it and if we believe that the order of the Deputy Commissioner was passed on an application of Mst.Maryam or any of the applicants in 1966 and by that time the applicants were alive since 1933 then why he has ordered that entry should be made in the name of the applicants and his "co-sharers" in the current record of rights. Even the subsequently entry in the revenue record on the basis of the said order continues to be the same as it was in the record in 1933. There is hardly any difference in the two V.F. VII produced by the Applicants . In both the V.F.VII in column No.5 it is stated that entry has been made on the directions of Deputy Collector in 1933 and on the order of Deputy Commissioner in 1966 and rest of the contents of two village forms including the column of owners were same. It means from 1933 to 1966 and till 1973 when these so called true copies were obtained, there was no change in the owners. Even in 2000, suits were filed by the same person who were shown owner in 1933. The applicants did not disclose who were the co-sharers with him/her in 1966 till date and the co-sharers referred in the so-called order of Deputy Commissioner have not been disclosed even to the Court.

9. In view of the above facts the true copies of the documents of 1933 which were not corroborated by any other cogent evidence have rightly not

been accepted by the appellate court as title documents of the Applicants. The language of the order of the Deputy Commissioner in 1966 suggests that applicant alone were not the legal heirs of actual owners who were granted land by the then Deputy Collector in 1993. No record of actual owners or even their names prior to the Applicants has been disclosed by them. Nor the applicants have produced any other witness to make even oral assertion that the applicants were sole legal heir of the actual owner of suit land in 1933. It is not mentioned on any of the documents that these are true certified copies issued by the competent authority. It is unbelievable that entries from **1933** to the date of filing of suit in 2000 that is to say for 77 years continued to be in the name of one and the same party. Not only the names of the ancestor of Applicants were suppressed, the Applicants have not mentioned the date or even year of river action and the date, time of re-survey of the suit land and report of such survey. In one of revision application as noted earlier namely civil Revision No.136/2004 the title shows that it has been filed by **Mst. Kazoo** daughter of Muhammad Ishaque who has initially filed **F.C. suit No.18/2000** through the same attorney. Her named does not appear in any document irrespective of authenticity of the documents. Deh. Form VII exhibited in F.C suit No.18/2000 filed by Mst. Kazoo shows the name of owner as **Mst. Fatima**. Even the name of applicant who filed an application to the Deputy Commissioner in 1966 is **Mst. Fatima** and subsequent Deh Form VII of 1966, the name of applicant is **Mst. Fatima** and not **Mst. Kazoo** therefore, on the face of it, the attorney was not reliable at all who has produced these documents.

10. I may mention here that on examination of power of attorneys I have noticed that all these power of attorneys are in English language and bear

thumb impression of the executants. These power of attorneys are said to have been executed on **24.3.2000** on the stamp paper purchased by the attorney Nazeer Ahmed himself. These powers of attorneys do not disclose the NIC number of the executant though by that time each and every citizen was supposed to have NIC. None of the documents relied upon by the applicants was sufficient to be considered as title documents. The learned Appellate Court has also discussed the law on the subject of value of mutation entry into the revenue record for the purpose of seeking declaration of ownership and none the documents placed on record were documents of more than 30 years old official record. The documents were said to be copies which were not proved to be genuine copies as the issuing authority did not disclose when and why and from which record these copies were prepared sometime in 1971-72 and referring to the record of 1933. Admittedly the documents produced in Court were bearing the name of the person who were not even born in 1933. They have not been able to disclose relationship with the persons whose name, if any, were entered in the revenue record in 1933. Precisely, none of the documents were confidence inspiring and therefore, learned trial court has misread the evidence and the appellate Court after examining the evidence has rightly allowed appeals by reversing the findings of the trial court. The contention of applicants' counsel that nothing has been produced in evidence in rebuttal is misconceived. The first burden was on the applicants to prove their entitlement of property through cogent evidence and since their own burden has not been discharged, Respondents were not under any legal obligation to prove anything against the applicant. Before concluding I must mention here the character of Respondent No.5 Muhammad Ameen who was common in all four civil revisions filed by the Plaintiff was true to

the allegations of official respondents in their written statement that his name has only been impleaded to obtain favour.

11. In view of the above facts and discussion, these revisions are dismissed with no order as to costs.

JUDGE

MAK/PS