

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Civil Revision application No.S- 44 of 2015

DATE

ORDER WITH SIGNATURE OF JUDGE

For Katcha Peshi.

05.5.2017.

Mr. Mohsin Ali Applicant present in person
Mr. Sundardas Advocate for respondent.

ZULFIQAR AHMAD KHAN, J: The present revision application arises out of the judgment and decree dated 17.12.2014 passed by the learned District Judge Badin in Civil Appeal No.87 of 2013 where the learned Judge dismissed appeal of the appellant and maintained judgment and decree dated 07.10.2013 passed by the learned 2nd Senior Civil Judge Badin in Civil Suit No.14 of 2013.

2. The applicant present in person submits that he and his co-applicant sister are legal heirs of Ali Bukhsh who on 17.05.1967 as shown at page No.153, made offer which was accepted in the auction bid in relation to the plot of land bearing No.479 measuring 1650 Sq.feet situated in Badin. The offer was then confirmed by the Additional Settlement Commissioner Hyderabad Division wherein he accepted the sum of Rs.200/- as earnest money and the balance sum of Rs.650/- was required to be paid in 30 days. The attention was drawn to the page 123, which is the document evidencing payment of balance consideration on 16.7.1965 in the name of Ali Bukhsh. It is submitted that Ali Bukhsh and Abdullah were 50-50 partners in respect of the subject property which was registered in the Revenue record of right vide entry No.121-A. The applicant submits that he was abroad since 1973 to 2009 and when returned, his father Ali Bukhsh as well as the

50% partner Abdullah had expired. With regard to the property, he found that legal heirs of Abdullah had occupied the front portion of the property in-question and some part of the property was also in the possession of the present respondent. When the applicants sought the possession of their share of the property, it was refused, which resulted in filing F.C.Suit No.08/2010 against the legal heirs of Abdullah as well as the present respondent. During the course of litigation, the legal heirs of Abdullah accepted the claim of the plaintiff and agreed to co-share the said plot. They further agreed to give an area of 440.Sq.feet of road facing to the present applicant. The said suit was accordingly compromised and a compromise decree dated 03.04.2010 was issued (page No.73 to 79), however, the present respondent denied the said suit and claimed that he had bought his share from one Gul Muhammad through registered sale deed dated 13.11.1994, a copy of which is attached at page No.179 for which the appellant filed F.C.Suit No.156/2010 before the 2nd Senior Civil Judge Badin. Review of the said sale deed shows as rightly pointed in the judgment, that it even does not mention the plot number nor the survey number.

3. When the Learned counsel for the respondent was posed with the question to satisfy this court as to how did the seller of the property namely Gul Muhammad got his title? He had no answers. In this regard however reference could be made to the Ex.No.61 where the respondent admits that he is the bona fide purchaser of the suit land from the '*original owners*' however he even did not provide their names which he mentioned only in the Cross to be Gul Mohammad and Noor Mohammad. While in the said cross he denied that the allotment of Gul Mohammad and Noor Mohammad was cancelled vide Commissioner Hyderabad orders which were upheld by the Member Board of Revenue in case No.SPOR 723 of 1982-83 dated 28.11.1984.

However despite the presence of these impressive documents, the courts below utterly looked on the other side by ignoring these compelling pieces of evidence. It was also alleged that even the said Noor Mohammad preferred an appeal against Abdullah, which was dismissed.

4. The applicant in person submits that some discrepancy was intentionally created by the officials where his property was shown to be falling in Deh *Pathar* rather than in Deh *Badin* which ground was apparently exploited by the present respondent, notwithstanding that no such description of land did exist in the Deh *Pathar* per se. It was also submitted that the said error was duly corrected in the due course, as well as the erroneous entry made in favour of respondent was cancelled by the order dated 23.2.1983 passed by the Commissioner Hyderabad as upheld by the Member Board of Revenue in case No.SPOR 723 of 1982-83 dated 28.11.1984 (Ex: 38) which orders are provided on record. It was also noted that both the judgments while mentioning the sale deed in terms of which the respondent became owner of a part of the plot in question, however, are completely silent as to from where did Gul Muhammad acquire his title as no proof is produced thereof at all in the two judgments in question.
5. To me, the key issue framed with regard to the ownership of the plaintiff was though answered in negative by the trial court, however, no cogent reason or application of mind is apparently having been made in respect of the basic question that neither sale deed dated 13.11.1994 (Ex:62) mentioned the plot/survey number nor does any where it is established that from where did Gul Muhammad get his title. To the contrary the chain of documents presented and referred hereinabove by the applicants and as well support by evidence (Ex:34 (original PTD), Ex:35, Ex:36, Ex:38, Ex:39, Ex:40 and Ex:43) prove

that Ali Bukhsh and Abdullah, as of 1967, were the owners of the property in question and the fact that legal heirs of Abdullah are still in part-possession of the property in question, leaves no doubt that other co-sharer Ali Bukhsh also had 50% share therein as there are no legs on which the bogus and vague sale deed in the name of the respondent could stand since there is no proof as to how Gul Muhammad got his title which he transferred to the present respondent.

6. At this juncture it would be useful to consider as to how the trial court answered the first issue of “*whether plot bearing No.479 measuring 825 Sq.Ft is owned by the plaintiff*” in negative. Relevant portion of the trial court’s judgment is reproduced in the following:

The burden to prove this issue lies upon plaintiffs; the plaintiffs in contents of plaint on the one side have mentioned in Para No.2 of the plaint that the suit plot is situated in Deh Patar and on the other hand in his examination in chief and in cross examination he states that his plot is situated in Deh Badin. Apart from both of those averments another contradictory situation is that the Village Form II (Ex.35), which is in the name of Father of plaintiff shows the Deh to be Deh Badin and two other copies of Village Form II (Ex.38 & 39) are also produced by the plaintiff in his evidence, amongst them Ex.38 shows the name of Deh to be Deh Badin and Ex.39 shows Deh to be Deh Patar, then there is over writing on the same and by making it another Deh Badin is mentioned and a separate note is also mentioned clarifying the Deh to be Deh Badin, this situation created heavy discrepancy into the title of plaintiff, but plaintiff did not bother to examine a single official witness in order to prove the authenticity of documents produced by him or even to remove the discrepancy that as to in which Deh his plot is situated. Plaintiff has submitted in his plaint and evidence that the sale deed produced by the defendant is forged and fabricated, because the grant of one Gul Muhammad Chandio was cancelled by the commissioner Hyderabad and such order was also maintained by the Member Board of Revenue vide

order produced by him at Ex.38, hence when the grant of those persons was cancelled, then the sale deed in favour of defendant is also null and void. Plaintiff impeaches the title of defendant vide Ex.38, but nowhere in the said order the name of the father of plaintiff is mentioned, nor there being any number of the plot mentioned which can clarify that to which plot the said order refers. Claim of the plaintiff is that he was abroad for many years and when he returned in the year 2010 he came to know that defendant has occupied his plot, plaintiff has also failed to produce any documentary proof before court or even has not examined a single witness to establish his contention that he was abroad for a large period. On one side plaintiff claims that defendant has managed a bogus sale deed and occupied his plot, but in now number 10, page No.3 of evidence of plaintiff, which is Ex.33, plaintiff himself states that he has no concern with the plot of defendant. In view of the above reasons, it is pointed out that plaintiff has failed to establish his title/ownership over the suit plot, therefore this issue is replied as not proved.

7. As it could be seen, the learned trial court has only considered Ex:33, Ex:35, Ex:38 and Ex:39 but failed to consider other documents. With regards Ex:35 the learned judge affirms that the name of father of the applicants and location of the property is in Deh *Badin* (which fact could have been easily reaffirmed by referring to Ex:37), however cloud of confusion is created as to true location of the plot as if it was located in Deh *Patar*, which was erroneous as Exhibit 38 clarified that the property was located only in Deh *Badin*. Only if the trial court could have fully considered contents of Ex:38, there was not possibility that a negative finding could have been recorded in respect of Issue No.1.
8. I therefore am of the view that in respect of Issue No.1, the findings given by the trial court is patently wrong and outcome of clear misreading of the evidence and I have no hesitation in reversing it. Having set the direction right, the other issues decided against the

applicant fall flat on their face coupled with the fact the Ex:62 failing to mention plot or survey number is hit by Section 21 of the Registration Act, 1908 which requires that *no non-testamentary document relating to immovable property should be accepted for registration unless it contains a description of such property sufficient to identify the same.*

9. It is for the above the reasons, the instant revision application is allowed and both the impugned judgments and the decree passed by the below courts are set aside and the applicants are put to title and possession of their 50% (850 Sq.feet) share in the suit property bearing No.479 measuring 1,650 Sq.feet situated in Deh *Badin*.

JUDGE