

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

Civil Revision Application No.S-55 of 2012

- Applicants:
- 1) Mohammad Azam s/o Mohammad Siddique Jatoi
 - 2) Dr. Altaf Hussain s/o Mohammad Siddique Jatoi.
 - 3) Irshad Ali s/o Mohammad Siddique Jatoi.
 - 4) Imtiaz s/o Mohammad Siddique Jatoi
 - 5) Ashraf Ali s/o Mohammad Siddique Jatoi
 - 6) Manzoor s/o Pehlwan Jatoi
 - 7) Aijaz s/o Pehlwan Jatoi .
 - 8) Gada Hussain s/o Pehlwan Jatoi
 - 9) Amanullah s/o Allah Dino Jatoi.
 - 10) Ghulamullah s/o Allah Dino Jatoi.

ALL muslims, adults, resident of Village Ali Jatoi
Taluka Dokri at present Taluka Bakrani District
Larkana.

Through Mr. Ghulam Dastagir Shahani
Advocate for the applicants

VERSUS

- Respondents:
- 1) Raham Ali s/o Jeewan Jatoi
 - 2) Muhammad Rafique s/o Jeewan Jatoi
 - 3) Dhannar alias Dhani Bukhsh s/o Jeewan Jatoi.
 - 4) Nizamuddin s/o Jeewan Jatoi
 - 5) Mst. Nimi w/o Jeewan Jatoi.

ALL muslims, adults, resident of village Shaddan
Jatoi Taluka Bakrai District Larkana.

Through Mr. Imdad Ali Mashori
Advocate for the respondents

Date of hearing: 16.04.2018 & 20.04.2018

Date of order: .07.2018.

ORDER

AMJAD ALI SAHITO, J: By way of this Revision application the applicants have impugned the Judgment dated 25.5.2012 and the decree dated 01.6.2012 whereby, learned Vth Additional District Judge, Larkana set aside the judgment and decree dated 11.1.2010 of IIIrd Senior Civil judge, Larkana on appeal of respondents and remanded the case to Trial Court to decide the same afresh on merits.

2. The matter has a chequered history as culled out from record, to relate relevant facts it is briefly stated that one Jeewan Khan Jatoi, the propositus of respondents had, in or about 1969, instituted a First Class suit No: 59/1969 in respect of one S. No.217 in deh Fareedabad, Taluka Dokri District Larkana which he withdrew with permission of Court to file a fresh suit. Later, the said Jeewan Khan instituted before Extra Joint Civil Judge, Larkana, a Civil Suit bearing No:18 of 1983, for declaration and perpetual injunction against defendants Haji Pirano & Allah Dino, the propositus of the applicants. He claimed that the suit land viz S.No: 205/1, 800/2 & 217 in deh Fareedabad, Taluka Dokri, District Larkana, are in his possession the same being his ancestral property purchased by his forefathers; whereas, the defendants threatened him to interfere with his possession on the ground that they had purchased the same from a claimant to whom the land stood allotted. The plaintiff also took an alternate plea of adverse possession as, according to him, he had remained in possession of the suit land for more than 12 years. The defendants contested the suit claiming to be lawful owners of the land in question having purchased the same from one Guffran, an allottee,

by Rehabilitation authorities in satisfaction of his claim, the record of rights also stood mutated in their name and they used to pay the Land revenue. Both parties led their respective evidence after the Issue were framed; however, before the controversy could be finally determined, the Court returned the plaint in the year 1993. Later, the controversy in the matter came to be decided by IIIrd Civil Judge, Larkana in Civil Suit No. 01 of 2008 by way of decree dated 11.10.2010 showing that the suit for declaration and perpetual injunction against defendants filed on 30.01.1993 stood dismissed. Here, it will be worthwhile to state that by the time the said decree was passed, it appears, the plaintiff Jeewan Khan and the defendant Pirano had expired and their descendants/ legal representatives were, respectively joined as parties in their place. Therefore, the legal representatives of deceased plaintiff Jeewan Khan preferred an appeal bearing No. 30 of 2010 which has been decided vide Judgement dated 25.5.2012 and the decree dated 1.6.2012, impugned herein, as noted in the opening paragraph.

3. Heard learned counsel for the parties. The main contention of learned counsel of applicants is that the plaintiffs/respondents claimed to be in cultivating possession of the suit land for more than 12 years having inherited the same from their ancestors; however, except production of few land revenue receipts, neither they could produce any registered deed nor revenue record; to say, village Forms VII-A & B, relevant entry in the Mutation register/register Haqdaran, Entry in a register maintained by revenue authorities relating to possession, to establish their right of ownership, and past & present

possession as owners. Learned counsel for applicants has further contended that the plea of adverse possession of the suit land as claimed by them is ill-founded, un-acceptable and not maintainable in the light of authoritative decisions of superior Courts; besides learned counsel has stressed, the same being a plea irreconcilable, contradictory is destructive to the plea of ownership of the suit land. Learned counsel has submitted that learned Trial Court had, rightly, considered the evidence on record after framing appropriate Issues including the ones which covers the case of the plaintiffs/respondents as to ownership and the adverse possession and had rightly dismissed their suit for valid reasons needing no interference; whereas, learned Appellate Court failed to appreciate the facts & circumstances of the case in their actual perspective, illegally & unlawfully set aside the judgment and decree of Trial Court and remanded the case to be decided afresh. He placed reliance on case of Mir Khan V/s Ghulam Farooq and others reported in 1988 SCMR 176, the case of Ghulam Qadir v/s Ahmed Yar and others reported in PLD 1990 SC 1040 and the case of Maqbool Ahmed versus Hakoomat-e-Pakistan and prayed that the impugned Judgment and decree be set aside and the judgment/decree of the Trial Court be maintained. On the other hand, learned counsel for plaintiff/respondent argued that the contentions of learned counsel for appellant were not correct; whereas, specific plea of ownership and that of adverse possession taken by the plaintiff/respondent were fully supported through their evidence while the defendants/applicants failed to prove their case that the suit land was declared evacuee, allotted to the claimant from whom they purchased it under a registered sale deed; therefore, they had no right

to the disputed land. Learned counsel submitted that learned Appellate Court has rightly set aside the impugned judgement/decreed with appropriate reasons and remanded the case to Trial Court exercising its jurisdiction legally and lawfully hence the impugned Judgement and decree merits no interference. He prayed that the same be maintained, whereas, the Revision application be dismissed.

4. I have given due attention to the oral submissions of both the learned counsel and have seen the record with their assistance. Perusal of record shows that learned trial Court had framed following Issues on the pleadings of the parties:

1. Whether possession of the plaintiff is legal valid, according to law as its owner?
2. Whether the plaintiff is in adverse possession of the suit land since his ancestors?
3. Whether suit is not maintainable and not in proper form?
4. Whether the allotment in favour of defendant is illegal ultravires, malafide, null and void?
5. Whether jurisdiction of this court is barred by law?
6. Whether plaintiff is entitled to any relief as sought by him?
7. What should the decree be?

The above noted Issue Nos.1,2 & 6 are based/cover the pleas of the plaintiffs/ respondents. The Trial Court has discussed these Issues and has replied the same in negative. However, nowhere in the impugned judgment of Appellate court, I find a word to show that the findings of the Trial Court on these issues are declared incorrect.

5. Albeit learned Appellate Court framed following points for

deciding the appeal of the plaintiffs/respondents

1. Whether impugned judgment requires interference by this Court?
2. What should the judgment be?

While discussing the point No.1, learned Appellate Court has observed that:

“The appellants/plaintiffs filed a suit for Declaration and perpeture injunction claiming to the owner of the suit land bearing SNos. 205/1, 800/2 and 217 situated in Deh Fareedabad Taluka Dokri, District Larkana on the basis of inheritance and by adverse possession while the respondents/defendants are claiming ownership of suit land on the basis of registered sale deed and are claiming the suit land being evacuee property which was allotted to one Mohammad Gufran in satisfaction of his claim and record of rights was mutated in his name who subsequently sold out the same to the respondents/defendant with possession but from the perusal of issues framed by the trial Court it appears that on these points no any issue has been framed therefore both the parties were deprived from their valuable rights to lead their oral as well as documentary evidence on these points though the appellants/plaintiffs have relied, copy of village form-VII and copy of Form in their plaint while the respondents/defendants have relied on registered sale deed, true copy of Deh Form/Record of rights, True copy of Khasra Girdwari and Deh Form but these documents were not produced by the both parties in their evidence as no such issues were framed by the trial Court. The respondents/defendants have claimed the suit land as evacuee property belonging to Rehabilitation Authority but on this point also no any issue was framed and even it is case of respondents/defendant that suit land was allotted to Ghufran from whom they purchased the same through registered sale deed and it is nowhere mentioned by them that they were allotted the suit land but the trial Court has framed a wrong issue No.4 as under:

“ Whether the allotment in favour of defendant is illegal, ultra-virus, malafide, null and void”.

“This issue has been framed by the trial court which does not find place in the pleadings of both the parties. Moreover, the learned advocate for the appellants/plaintiffs in his written arguments has contended that both parties examined ten witnesses in support of their evidence but from the perusal of

R&Ps it appears that appellants/plaintiff have examined Nizamuddin and two witnesses Mohammad Ali and Deedar Ali while the respondents/defendants have examined Azam Khan and one witness Sher Mohammad and there is no any other evidence of the witnesses available in R&Ps therefore it appears that the both the parties have relied the evidence and document produced by them in first round of litigation which cannot be considered in this case as the earlier suit was withdrawn with permission to file fresh one and subsequently present suit was filed in which fresh evidence was recorded therefore both the parties were required to lead fresh oral as well documentary evidence but they have failed to do so as the appellants/plaintiffs in their evidence have only produced land revenue assessment receipts, Zakat receipts and seven land receipts while the respondents/defendants have not produced a single document in their evidence and even the trial court did not bother to call the official record pertaining to the evacuee property and allotment of suit land in favour of Ghufran as claimed by the respondents/defendants and denied by the appellants/plaintiffs and in absence of material issues the trial court decided the case in which there are complicated questions of law and facts involved but the perusal of judgment of trial court reveals that it was concluded in three pages without framing proper issues and discussing the legal and factual material and law quoted by the parties therefore it appears that the trial court has not applied its judicial mind in whole proceedings of the case and in hasty manner decided it without appreciating the law involved in this case and as such the judgment passed by Trial Court is not in accordance with law which is illegal and is not sustainable in a law and requires interference by this Court. Hence this point is answered in affirmative.

6. From reading of above passage it reveals that learned Appellate Court has been influenced to set aside the judgment and decree of the Trial court; firstly, for the reason that applicants/defendants claimed to be owner of suit land on the basis of a Registered Sale Deed whereby they purchased it from the claimant/allotee Ghufran in satisfaction of his claim, their names were mutated in the record of rights, learned court finds that yet no issue was framed on these points; instead a wrong Issue, as noted in the above passage, was framed and secondly, both the parties were required to lead oral as

well as documentary evidence afresh but learned Appellate Court has viewed that **“they have failed to do so as the appellant/plaintiff (herein respondents/plaintiffs) in their evidence have only produced Land Revenue Assessment receipts, Zakat receipts and seven other receipts, while respondents/ defendants (herein applicants/ defendants) have not produced a single document in their evidence and even the Trial Court did not bother to call official record pertaining to the Evacuee property and allotment of the suit land in favour of Ghufran and in absence of material Issues the Trial Court decided the case”** etc. In the first instance it may be mentioned in this behalf that I have gone through the evidence led by both the parties in civil suit No.01/2008 and find that plaintiffs/respondents herein, examined three witnesses namely respondent Nizamuddin s/o Jeewan Khan as PW-01 (Ex.101) and two other witnesses namely Muhammad Ali (Ex.102) and Deedar Ali (Ex.103), when PW-01 Nizamuddin has deposed to be in line with what the plaintiff Jeewan Khan stated in the plaint. To quote this witness has deposed that **“Survey No.205/1, 800/2 and 217 Deh Fareedabad Taluka Dokri is agricultural land. The above property is our ancestral property, before partition agricultural land remained in possession of my forefathers/ elders and now I am in possession of above land, we are paying Land Revenue Assessment to the Government”**. He has produced 18-receipts in support. In his cross examination he has stated that suit land was purchased by his forefathers from co-villagers yet when he admitted that **“It is correct that I have not produced Registered Sale Deed before this Court”**. Other PWs named herein above have orally

supported him in their brief depositions except that PW Deedar Ali in his cross examination stated that he does not know from whom the plaintiffs have purchased the suit property. The defendants/ applicants herein, have challenged their statements in cross examination. I have seen the receipts produced by PW Nizamuddin show do not show that the plaintiffs have made the payment on their own behalf rather receipts Nos.052032, 040505, 3181, 12327, 63712372 show that payments made under these receipts are on behalf of defendants Pirano while receipts No.096866 and 17 show the payment on behalf of defendant Allah Dino and many other receipts bearing Nos.076391, 087012, 076397 and 75 show the payment on behalf of Central Government. On the other hand the defendants, herein applicants have examined applicant/defendant Azam Khan s/o Muhammad Siddique and Sher Muhammad (Ex.112) in their defence. In their depositions recorded in Civil Suit No.01 of 2008. DW Azam Khan has deposed about their case by saying that **“The suit land was purchased by our forefathers from Ghufraan in the name of Haji Pirano and Allah Dino and according to documents it is entered in their names”** and that **“the allotment of Ghufraan has not been challenged in any of the Court and his title has not been rejected by any of the office”**. DW Sher Muhammad has supported him in his evidence. I have gone through the judgment dated 11.01.2010 passed by the Trial Judge Salma Bano Phulpoto while determining the issues No.1 & 2 noted herein above paragraph No.3 which relate to cover the pleas of respondents/ plaintiffs, herein the Trial Judge has referred to the evidence produced by both the parties in Suit No.01 of 2008 and have decided the same in negative, rightly so since the plaintiffs/

respondents herein, have neither produced in their evidence any document of purchase of suit property, such as, Sale deed, Entries in record of rights in the names of their ancestors, no entry in the record of rights in their names on death of ancestors, thus have excepted their oral word challenged by other side in cross examination failed to prove their pleas taken by them to establish their ownership and possession of suit land as owners since time immemorial. It was well settled principle that plaintiffs must succeed on strength of his own and not on weakness of respondent's evidence In support reference be made to the case of Sudhangshu Biswas Vs. M.D Mustafa Chowdhury reported in 1968 219.

7. Learned Appellate Court as in above narrated passage ordered that the defendants/applicants herein, have claimed the land as Evacuee Property belonging to Rehabilitation Authority that suit land was allowed to Ghufran from whom they purchased it through registered sale deed and no where it is mentioned that they were allotted the suit land but the Trial Court framed a wrong issue on the point on which the learned Appellate Court has produced in the above noted passage and has observed that in absence of material issue, the Trial Court decided the case on which there are complicated questions of law and facts involved but the judgment and decree of the Trial Court revealed that it was concluded in three pages without framing proper issue and discussing the legal and factual material and law quoted by parties, therefore, it appears that the Trial Court had not applied its judicial mind. In this behalf firstly it is stated that the Appellate Court has not referred to any law which according to him

was quoted by the parties, secondly it is stated that issue was correctly or not framed in receipt of the pleas/case of the defendants (applicants herein) the material question needing determination in this matter related to the ownership and possession of the suit land by plaintiffs/respondents herein, as per their claim, passed a decree accordingly as prayed. I have already observed in preceding paragraphs that plaintiffs/respondents failed to prove their pleas taken by them to establish the ownership and possession of the suit land as since time immemorial and in this to succeed by dint of own strength and not on weakness of respondent's evidence. Therefore, seen in the light of the forgoing discussion the question of framing any on the question/pleas raised in the defence, seen to be of no consequence hence not sustainable for the purpose of the suit.

8. Now coming to the question of plea of adverse possession in respect of the suit land as taken by the plaintiffs/respondents herein, it is suffice to mention that they have taken their plea side by side and claimed that suit land was purchased by their ancestors and on their death it has devolved on them by way of inheritance. In this behalf it is stated that during the course of his arguments learned counsel for the applicant invited our attention to an authenticative decision of apex Court reported in PLD 1990 SC 1049 "Ghulam Qadir Vs. Ahmed Yar and others" and stressed that in the light of cited decision the plea of adverse possession loses its weight and force and is not entertainable where a party beside such plea has also pleaded his claim on the basis of purchase and subsequent inheritance as is in the present case. I have gone through cited case wherein respectfully stated that it

has been observed that **“In our view when a party pleads that it had a valid title, as in the present, through purchase and subsequent inheritance as stated by learned counsel would become impossible for such party to succeed in the alternative on the plea that the possession being open and hostile title has matured otherwise on account of inflex of time through adverse possession”**, also in another case reported in 1988 SCMR 1765 Mir Khan Vs. Ghulam Farooq and others, as cited by learned counsel, it has been held that pleas of purchase and adverse possession could not stand together. The clash was irreconcilable. Thus, evaluating the plea of adverse possession of plaintiff in the light of cited case, I feel inclined to agree with learned counsel for the appellants.

9. In view of above what has been discussed hereinabove, I am of the clear view that learned Appellate Court has exercised its jurisdiction illegally and so set aside the judgment and decree of the Trial Court. Accordingly I accept this revision application, set aside the impugned judgment and decree and resultantly maintain the judgment and decree dated 11.01.2010 of the Trial Court with no order as to costs.

JUDGE