

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
R.A No.53 of 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
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12.09.2017.

Mr. Aqeel Ahmed Siddiqui, Advocate for applicant.
Mr. Ghulam Abbas Sangi, Assistant A.G
None present for private respondents.

J U D G M E N T

ABDUL MALIK GADDI, J:- Through this revision application, the applicant has assailed the legality and propriety of the judgment dated 23.12.2009 passed by the learned VIIth Additional District Judge, Hyderabad, in Civil Appeal No.167 of 2008 filed by appellant Mst.Rani against the respondents, whereby the learned Judge dismissed the appeal of the appellant and maintained the judgment & decree dated 27.11.2008 and 29.11.2008 respectively passed by the Senior Civil Judge, Hyderabad, in F.C Suit No.227 of 2007 for Declaration and Permanent Injunction filed by the plaintiff (hereinafter referred to as the “Applicant”).

2. Facts in nutshell for deciding this revision application are that applicant/plaintiff filed F.C Suit No.227 of 2007 for Declaration & Permanent Injunction against the respondents/defendants, contending therein that respondents/defendants No.1 to 3 are her real brothers and sisters-in-law. On 15.09.1991 respondent/defendant No.1 gifted her one acre of land and respondents/defendants No.2 and 3 gifted her 20 Ghuntas of land, totaling 2-0 acres of land from survey No.104 of Deh Vesro Taluka Matiari to applicant/plaintiff in writing, which was accepted

and physical possession of the same was handed over to her on the said date in presence of witnesses. Thereafter, on 24.09.1991 the applicant/plaintiff, respondents/defendants No.1 to 3 and the witnesses of the gift deed had appeared before the Mukhtiarkar (Revenue) Matiari and admitted the execution of the gift deed and delivery of possession of suit land to the applicant/plaintiff, therefore, the concerned Mukhtiarkar attested gift deed. The applicant/plaintiff further contended in her plaint that respondents/defendants No.1 to 3 have agreed for mutation of suit land in her name in the revenue record of rights. She also contended in her plaint that she came to know that the respondent/defendant No.4 (Mukhtiarkar Revenue) has not changed the Khata of the suit land in her favour for want of registered gift deed in her favour but they kept the applicant/plaintiff on hollow hopes and did not execute the registered deed in her favour, hence, she sent legal notice to respondents/defendants No.1 to 3, which was also published in daily newspaper "IBRAT" Hyderabad vide its publication dated 28.09.2005. Thereafter, the applicant/plaintiff on 04.11.2005 approached the respondents/defendants No.1 to 3 for settlement of dispute but they refused to do so, therefore, the applicant/plaintiff filed the aforesaid suit for Declaration and Permanent Injunction against the respondents/defendants.

3. It is stated by the learned Counsel for the applicant that the impugned judgment and decree passed by the learned Trial Court and maintained by the First Appellate Court are against the facts and law and do not disclose that the suit is barred under any provision of law. According to learned Counsel for the applicant, the findings passed by the two Courts below appear to be on conjectures and surmises and that the applicant/plaintiff was not allowed to produce the witnesses in

support of her claim and that law always provides that in exparte matter suit should be decreed even after perusal of plaint and evidence available on record, which is not done by the Trial Court in the instant matter and that impugned judgment and decree has been passed in hasty manner without providing opportunity to the applicant/plaintiff to produce relevant witnesses, therefore, the judgments and decree be set-aside and this revision be allowed as prayed as valuable rights of the applicant are involved in the suit property.

4. Learned Assistant A.G supported the impugned judgments and decree of the two Courts below.

5. On perusal of record, it appears that in Para-3 of the plaint filed before the trial Court, the applicant/plaintiff claimed that she is in possession of the land in question on the basis of gift dated 15.09.1991, which is not registered document, but in Para-6 of the plaint, the applicant/plaintiff herself admitted that respondents / defendants No.1 to 3 are cultivating the subject land, which shows that the applicant/plaintiff was not in possession of the land to have been claimed. The applicant/plaintiff herself produced Form-VII of Revenue Record, which also shows that there are 4-0 shareholders in S.No.104 in equal share of 25 paisa, where, shareholders are Mitho, Sono, Rafiq and Manthar, all sons of Gamoon, which shows that they are jointly possessing the land, being share-holders. The question arises that how Manthar, Rafiq and Sono gave the land by way of gift to the applicant/plaintiff, when they were cultivating the land and are still in possession of that land. In view of these reasons and grounds, it is proved that the suit of the applicant/plaintiff filed before the Trial Court was on false grounds on the basis of void document, which is not

registered, therefore, the suit of the applicant/plaintiff was not maintainable, hence, the applicant/accused had no cause of action to file the suit, which has been rightly dismissed by the Trial Court.

6. Having observed above, it is clear that both the Courts below have rightly concluded that the suit filed by the applicant/plaintiff was time-barred. No misreading or non-reading of evidence or any other defect in exercise of jurisdiction by Courts below stood proved. No case was made out that Courts below had exercised jurisdiction not vested in them or that they had acted illegally or with material irregularity. Such case having not been made out, concurrent findings of Courts below, could not be interfered with by High Court while exercising its revisional jurisdiction. Findings recorded by the Trial Court as also by Appellate Court were not perverse, irregular or illegal but were based on documents and on record. Courts below were competent to have jurisdiction to pass judgments and decrees questioned in revision. No justification was pointed out to interfere with concurrent findings of Courts below and same were maintained in circumstances.

7. In view of the above, this civil revision application is dismissed with no order as to costs. These are the reasons for my short order dated 12.09.2017 pronounced in Open Court, whereby this revision application was dismissed.

JUDGE