

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.04 of 2019

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Appellant No.1 : Muhammad Yaqoob S/O Muhammad Moosa
Appellant No.2 : Muhammad Ishaq S/O Muhammad Moosa
Appellant No.3 : Muhammad S/O Muhammad Moosa
Appellant No.4 : Muhammad Hassan (late) through LRs.
a) Ibrahim
b) Zain-ul-Abdin
c) Allah Bachayo
d) Hamzo
e) Mst. Hajran
Through Mr. Noor Ahmed Domki, advocate.

Versus

Respondent No.1 : Province of Sindh
Respondent No.2 : The Senior Member Board of Revenue, Sindh
Respondent No.3 : The Senior Member (Gothabad) Board of
Revenue Sindh, Hyderabad.
Respondent No.4 : The Deputy Additional Commissioner, Thatta
Respondent No.5 : The Deputy Commissioner, Thatta.
Respondent No.6 : The Assistant Commissioner, Ghorabari.
Respondent No.7 : The Mukhtiarkar, Thatta.
Respondent No.8 : The Barage Mukhtiarkar, Thatta.
Respondent No.9 : The Sub-Registrar, Thatta.
Respondent No.10: Mst. Almas
Respondent No.11: Mst. Farhana Yousuf Shah
Respondent No.12: Mustafa
Respondent No.13: Kamal
Respondent No.14: Mst. Sadia Sherin Rasheed
Respondent No.15: Muhammad Abbas
Respondent No.16: Muhammad Ibrahim
Respondent No.17: Abdullah.

Date of hearing : **26.04.2019**

Date of Decision : **10.05.2019**

JUDGEMENT

NAZAR AKBAR, J. The appellant through this IInd Appeal has challenged the concurrent findings. The Senior Civil Judge, Thatta by judgment dated **26.09.2017** dismissed F.C suit No.108/2012 filed by

the appellants and the Ist-Additional District Judge, Thatta by judgment dated **22.10.2019** passed in Civil Appeal No.10/2018 maintained the said findings of the trial Court.

2. To be very precise the facts of the case are that the appellants have filed **F.C Suit No.108/2012** for Declaration, Cancellation and Permanent Injunction to the effect that the land survey Nos.70, 71, 79, 80, 82, 86, 87, 97, 98, 100, 102, 106, 108, 109, 110, 349, 351, 352, 353, 354, 355, 356, 357 and 363, admeasuring 159-27 acres in Deh Palki, Tapo Garho, Taluka Ghorabari, District Thatta (the suit land) is a na-qabooli land being brought on government record for granting to the local landless haries. The appellants claimed that they are landless haries having actual physical and cultivating possession of the suit land since their forefathers. The appellants averred that deceased Ameer Sultan Chenoy was neither landless hari nor resident of the area and he had failed to pay the installment in 1980-81. After demise of Ameer Sultan Chenoy, his legal heris/ Respondents No.10 to 14 appeared and applied for restoration of the suit land in 2009 which was restored by Respondent No.2 by order dated 19.03.2009. The appellants filed review petition before Respondent No.3 but the same was withdrawn on the ground that the appellants were not in contact with the advocate. The appellants further averred that the order dated 19.03.2009 passed by Respondent No.2 after 29 years restoring the grant in favour of Ameer Sultan Chenoy by order dated 19.12.2011 passed by Respondent No.3 disposing of the review petition of the appellants/plaintiffs as well as T.O Form in favour of Respondents No.10 to 14 and conveyance deed No.297 dated 30.04.2009 and microfilm No.414/1429 dated 02.05.2009 followed by mutation entry in their

favour are ab initio void and illegal. Therefore, the appellants have filed F.C suit before the trial Court.

3. The trial Court after recording evidence and hearing the parties dismissed the suit filed by the appellants by judgment dated **26.09.2017**. Against said judgment, the appellants filed Civil Appeal No.10/2018 before Ist-Additional District Judge, Thatta which was also dismissed by judgment dated **22.10.2018**. The appellant filed instant IInd Appeal against both the judgments of trial Court as well as Appellate Court.

4. I have heard learned counsel for the appellants and perused the record.

5. The record shows that Amir Sultan Chenoy was granted suit land as per the land grant policy 1963 in open katchery on **30.06.1968** being the highest bidder which fact has been admitted by the appellants/plaintiffs in cross-examination that *“before auction the suit land was kept in schedule through publication of notice”*. The said Amir Sultan Chenoy had paid an amount of Rs.48,267 on 30.07.1968 being 1/4th price of the suit land and later paid three installments on 31.12.1975, 10.12.1976 and 05.01.1980. Subsequently the land was cancelled by order dated **20.01.1981** due to non-payment of one installment which was subsequently restored in favour of legal heirs of late Amir Sultan Chenoy. In this context the relevant observations of the appellate Court in para-12 and 13 are reproduced as follows:-

12. *The record shows that the an area of 63-25 acres from survey Nos.349, 351 to 357 and 70 to 71 was restored in favour of Defendants No.10 to 14 by order dated 19.03.2009 passed by Respondent No.2 but the plaintiffs have sued for*

the entire 159-27 acres of land. It is within the prerogative and competence of authority concerned to keep any government land in the schedule for disposal amongst the landless haries as per the directions of government. The Authorities may not be advised or put under obligation to do so at the whims of any person as in the present case. Merely moving applications for grant of land does not create any title. The whole claim of the appellants is based upon conjectures and surmises as manifest from the contents of the plaint.

13. *The appellants/plaintiffs had filed a review petition against the order dated 19.03.2009 before revenue forum which was dismissed as withdrawn. The appellants/plaintiffs have presented lame excuses that the their advocate had withdrawn the petition on the ground that the appellants/plaintiffs were not in contact with the advocate but in-fact the advocate was won over by the opponent side, which is not tenable.*

6. Having examined the above contents of the impugned order of the appellate Court maintaining the order of dismissal of the suit of the appellants/ plaintiffs by the trial Court, the counsel for the appellants was directed by this Court to satisfy that how the above decision is contrary to law or to some usage having force of law and also that is there any failure of the Court to determine the material issues of law or to some usage having the force of law. The learned counsel for the appellants on **25.04.2019** took one day's time to satisfy the Court on the requirement of **Section 100** of the CPC. On **26.04.2019** the learned counsel for the appellants only asserted the factual controversy that they are in possession of the suit property for a very long period but even this stand is belied by the appellants themselves in their own plaint when they averred that the suit property has once been auctioned by the Government in terms of State Policy in **1966-67** and the predecessor-in-interest of Respondents No.10 to 14 was the highest bidder. The appellants have also failed to point out any substantial error or defect in the

procedure provided in the Civil Procedure Code, which has caused any error or defect in the decision of the case on merit. The record shows that both the Courts have very elaborately examined the evidence and law to come to the conclusion that the appellants have no locus-standi to raise any question on the validity of grant of suit land in favour of Amir Sultan Chenoy and subsequent restoration of land 63-25 acres in favour of legal heirs of Amir Sultan Chenoy/ Respondents No.10 to 14. In view of the findings of the two Courts below even if the appellants are in possession of the suit land, their possession is illegal and unlawful.

7. In view of the above, instant second appeal is dismissed in limini with no order as to cost.

JUDGE

Karachi
Dated:10.05.2019

Ayaz Gul