

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision Application No.120 of 2012

Applicant Makoo Khan son of Nourang Khan through Mr. Tarique G. Haneef Mangi, advocate.

Respondents No.1 (a) to 1 (f) Jam Shakeel Ahmed & others through Mr. Mian Abdus Salam Arain, advocate.

State Government of Sindh through Ali Mutahir Shar, advocate.

Date of hearing 26.02.2018.

JUDGMENT

YOUSUF ALI SAYEED, J:- This Revision Application impugns the Judgment dated 13.10.2012 passed by the learned Additional District Judge, Ubauro in Civil Appeal No.34 of 2005, whereby the underlying Judgment and Decree made in favour of the Applicant in his capacity as the plaintiff in F.C. Suit No.170 of 1995, filed in the Court of learned Senior Civil Judge, Ubauro, for Declaration, Cancellation, Specific Performance of Contract and Permanent Injunction.

2. Briefly, the case set up by the Applicant in the underlying Suit was that on 10.02.1992 they had contracted with the Respondents No.2 to 7 (who were the Defendants Nos. 2 to 7 in that proceeding) for sale/purchase of land an area of admeasuring 32-00 Acres and 27-00 Ghuntas, situated in Deh Lundo, Taluka Ubauro, District Ghotki. The sale/purchase consideration in respect of which was said to have been settled as Rs.40,000/- only, of which Rs.30,000/- was said to have been paid and the remaining Rs.10,000/- was said to have been paid on 10.02.1994 when the Respondents were to execute the Sale Deed.

3. It was averred that the Applicant then came to know that the property had been sold in favour of the Respondent No.1, hence the Suit was filed wherein it had been prayed as follows:-

- “A. That this Honourable Court may be pleased to declare the sale of land bearing B.Nos. 101/1, 101/2, 101/3, 101/4, 102/1, 102/2, 102/3, 102/4, 106/2, 106/3, 106/4, 106/5, and 106/6 admeasuring 32-27 acres of Deh Lundo, Taluka Ubauro, District Ghotki in favour of the Defendant No.1 by the Defendants No.2 to 7 is illegal, void, malafide and inoperative as such the entry bearing No.96 dated 07.06.1992 effected in respect of said land of Deh Lundo Taluka Ubauro is liable to be cancelled.
- B. That the Defendants No.2 to 7 be ordered to execute regular sale deed in favour of Plaintiff in respect of land bearing B.Nos. 101/1, 101/2, 101/3, 101/3, 101/4, 102/1, 102/2, 102/3, 102/4, 106/2, 106/3, 106/4, 106/5, and 106/6 admeasuring 32-27 acres of Deh Lundo, Taluka Ubauro, on accepting the balance of consideration amounting to Rs.10,000/- and on their failure to do so, the Nazir of this Honourable Court be ordered to execute the regular sale deed of said land on behalf of Defendants No.2 to 7.
- C. To grant permanent injunction restraining the Defendants in peaceful possession of the Plaintiff over suit land.
- D. To grant any other equitable relief which this Honourable Court deems fit in the circumstances of the Suit.
- E. To grant the costs of the Suit.”

4. From examination of the pleadings, the trial Court settled the following Issues:-

- “1. Whether the suit is barred by law and is not maintainable under the law?
2. Whether the Defendants No.2 to 7 on 11.01.1992 sold away the suit land to the Plaintiff for the consideration of Rs.40,000/- and received the sum Rs.30,000/- from him in an advance and remaining amount Rs.10,000/- was to be paid by the Plaintiff at the time of transfer of the suit land in his favour and the Defendants No.2 to 7 delivered the possession to him as an owner and executed such sale agreement?
3. Who has improved the suit land?
4. Whether the Plaintiff is in unauthorized and unlawful possession of an area 15-00 only, out of suit land, which is part of lot No.14 owned and possessed by the Defendant No.1 since July, 1990?
5. Whether the Defendant No.1 was well in knowledge of purchase of the suit land by the Plaintiff and execution of such sale agreement, in his favour by the Defendants No.2 to 7?
6. Whether on 01.01.1994 the Defendant No.1 tried to eject the Plaintiff from the suit land forcibly with the help of his bodyguards disclosing to have purchased the same?
7. Whether the sale of the suit land by the Defendants No.2 to 7 in favour of the Defendant No.1 is illegal, malafide, void and so also the mutation entry No.96 dated 07.06.1992 is nullity and void?
8. Whether the Defendants No.2 to 7 are liable to transfer the suit land in favour of the Plaintiff on receiving the balance amount of Rs.10,000/-?
9. Whether the Plaintiff is entitled for the relief claimed?
10. What should the decree be?

5. After appraisal of the evidence and hearing counsel for the parties, the learned trial Court decreed the Suit. However, on appeal, the learned Additional District Judge, Ubauro came to the finding that in the face of a denial on the part of the defendants, the Sale Agreement had not been proved in as much as the requisites of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 had not been satisfied as the marginal witnesses were never brought forward and examined and that the evidence of the Applicant/Plaintiff was even otherwise at variance, when the statements made in his deposition were examined in juxtaposition with the replies under cross-examination. In view thereof, the learned Appellate forum concluded that the Judgment passed by the learned Senior Civil Judge, Ubauro could not stand, and hence the same was set aside.

6. Needless to say, it is well settled that as per the mandate of Article 79 of the Qanun-e-Shahadat Order, 1984, the proper course to be followed is for both witnesses of a Sale Agreement to be produced so as to confirm the factum of execution in their presence and thus dispel the contention of the defendant that the signatures appearing thereon are not his. The onus in this respect, as already observed, was upon the Applicant, but was apparently not discharged. The view taken by the learned Appellate Court appears reasonable and sustainable on the basis of the evidence, as referred, and the Appellate forum appears to have acted in accordance with law and properly exercised its jurisdiction, bereft of any illegality or material irregularity. Indeed, when queried on this point as well as on the point of the inconsistencies in the evidence, as highlighted, counsel for the Applicant was unable to offer any satisfactory explanation in that regard or demonstrate any error or illegality in the Judgment of the learned Appellate Court.

7. It is equally well settled that the jurisdiction of this Court to interfere in revision is narrow, as interference would only be warranted on the ground that the Court below had assumed jurisdiction which did not vest in it, or had failed to exercise jurisdiction vested in it by law or had acted with material irregularity affecting its jurisdiction in the case.

8. In view of the foregoing, it is apparent that in the matter at hand no case for interference stands made out, and the findings of the Appellate Court do not admit to or warrant interference through this Revision, which is accordingly dismissed, with no order as to costs.

JUDGE

Karachi.

Dated _____