

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

**Civil Revision Application No.74 of 2005 &
Civil Revision Application No.75 of 2005**

Date Order with signature of Judge

Present: Mr. Justice Nazar Akbar

1. Civil Revision Application No.74 of 2005

Applicant No.1 : Ghulam Sarwar
Applicant No.2 : Ghulam Jilani
Applicant No.3 : Qamaruddin
Applicant No.4 : Badaruddin
Applicant No.5 : Fakharuddin
Applicant No.6 : Mst. Attia Begum
Applicant No.7 : Mst. Almas Begum
Applicant No.8 : Mst. Durdana
Applicant No.9 : Sikandar
Applicant No.10 : Shahid
All sons and daughters of Abdul Ghafoor
through Mr. Muhammad Sadiq Hidayatullah,
Advocate.

Versus

Respondent No.1 : Mst. Rahima
Respondent No.2 : Ghulam Sheedi
Respondent No.3 : Rafiq Ahmed Shah
Respondent No.4 : Bibi Najmu Nisa
Respondent No.5 : Shafquat Hussain Shah
Respondent No.6 : Inam Hussain Shah
Respondent No.7 : Bibi Munawar Sultana
Respondent No.8 : Bibi Azra Begum
Respondent No.9 : Bibi Jamila Begum
Respondent No.10: Mst. Bushra Bibi.
At Sr. No.3 to 10 sons and daughters of Syed
Nawaz Ali Shah. (Nemo for Respondents).

2. Civil Revision Application No.75 of 2005

Applicant No.1 : Badaruddin
Applicant No.2 : Qamaruddin
Applicant No.3 : Fakharuddin
Applicant No.4 : Ghulam Jilani
Applicant No.5 : Ghulam Sarwar
Applicant No.6 : Sikandar
Applicant No.7 : Shakeel
Applicant No.8 : Mst. Atiya Begum
Applicant No.9 : Mst. Almas Begum
Applicant No.10 : Mst. Durdani
All sons and daughters of Abdul Ghafoor
through Mr. Muhammad Sadiq Hidayatullah,
advocate.

Versus

Respondent No.1 : Province of Sindh through its Secretary,
Government of Sindh, Revenue Department.

Respondent No.2 : The Mukhtiarkar/City Survey Officer,
Sujawal Town.

Respondent No.3 : The Sub-Registrar, Sujawal

Respondent No.4 : Abdul Hameed

Respondent No.5 : Ali Muhammad

Respondent No.6 : Muhammad Ismail.
(Nemo for Respondents).

Date of hearing : **03.03.2020**

Date of judgment : **18.05.2020**

JUDGMENT

NAZAR AKBAR, J:- By this common judgment I intend to dispose of both the above Revision Applications as that applicants in both the Revision Applications are common and they are aggrieved by concurrent findings of the two Courts below whereby suit No.02/2001 and suit No.164/1996 filed by them in respect of property bearing Custodian No.146/1/A, Sujawal District Thatta (the suit property) were dismissed and their appeals were also dismissed.

2. The order sheets of Revision Application No.75/2005 shows that from **02.2.2009** the orders passed in Revision Application No.74/2005 have been treated as same in Revision Application No.75/2005. Revision Application No.75/2005 has arisen from dismissal of applicants' suit No.164/1996 (Old No.31/1995) on merit both by the trail Court as well as the appellate Court. Whereas, Revision Application No.74/2005 has arisen from the dismissal of their another suit bearing suit No.02/2001 (Old No.08/1973) for non-prosecution and even Civil Miscellaneous Appeal No.05/2002 against dismissal of suit No.02/2001 for non-prosecution was also dismissed. To understand commonality in the two suits, I believe we

need to look at the prayer clauses of the two suits since in both the suits the subject property is common and in both the suits applicants have, amongst others, prayed for possession of suit property from the respondents who are different in each suit. In suit No.02/2001 the applicants have prayed only for the following relief:-

It is, therefore, prayed that this Hon'ble Court will be pleased to decree the suit of the plaintiffs by ordering the defendants **to hand over vacant possession of the suit property to the plaintiffs** with costs."

In suit No.164/1996 they have prayed as follows:-

- a) That this Hon'ble court may declare that the plaintiffs have inherited the property bearing Custodian No.146/1/A, Sujawal corresponding to C.S. No.90/A and 53/A, Sujawal from late Abdul Ghafoor s/o Abdul Shakur who was the owner of the said suit property to whom it was transferred through Permanent Transfer Deed (P.T.D) issued by the Settlement Authorities, Thatta.
- b) To adjudge the Sale deed Vide entry No.198, dated 17.8.1982 of Sub-Registrar, Sujawal executed by the defendant No.4 in favour of defendant No.5 as void and may be cancelled and delivered up.
- c) Permanent Injunction may be issued against the defendants No.4 to 6 from claiming any title, ownership and alienating the same on the basis of any entry in City Survey Record and registered sale deed dated 17.8.1982 and also restraining them from raising any type of construction, through themselves, their servants, attorneys, agents and assigns on the suit property i.e C.S No.90/A and 53/A, Sujawal.
- d) To **put the plaintiffs in vacant possession of their occupied portion of properties i.e C.S No.90/A and 53/A Sujawal, District Thatta.**
- e) Any other relief which this Hon'ble Court deem just and necessary be granted to the plaintiffs.
- f) Costs of the suit be awarded to plaintiffs.

While reading the two prayer clauses from the two suits filed by the same applicants, it is clear that the plaintiffs/applicants were out of

possession of the suit property and they wanted possession of Evacuee property bearing No.146/1/A, Sujawal, which according to them corresponds to City Survey No.90/A and 53/A, Sujawal.

3. In Revision Application No.74/2005 the Senior Civil Judge, Sujawal by order dated **04.12.2001** first dismissed Civil Suit No.02/2001 (Old No.08/1973) for non-prosecution and later on by order dated **07.02.2002** dismissed an application under **Order IX Rule 9 CPC** filed by the applicants for recalling order of dismissal of suit. The Ist Additional District Judge, Thatta by Judgment dated **23.07.2004** dismissed Civil Misc. Appeal No.05/2002 preferred by the applicants against the said order and findings of the trial Court were maintained.

4. In Revision Application No.75/2005 the Senior Civil Judge, Sujawal by judgment dated **11.12.2002** on merit dismissed Civil Suit No.164/1996 (Old No.31/1995) filed by the applicants and an Appeal No.11/2003 filed by the applicants against dismissal of their suit, the II-Additional District Judge, Thatta by Judgment dated **21.09.2004** maintained the said judgment of the trial Court and dismissed the appeal.

5. In view of the above stated facts in above two Revision Applications No.74 and 75 of 2005, the grievance of the applicants is same and one of the two suits has been dismissed in default and other on merit, therefore, the question of dismissal of suit for non-prosecution has lost its significance in as much as one of the two suits has been decided on merit against the applicants. Therefore, I would discuss facts from the pleadings culminating in Civil Revision No.75 of 2005 arising from decision in suit No.164/1996 on merit.

6. Brief facts from Revision Application No.75/2005 are that the applicants/ Plaintiffs had filed civil suit No.164/196 (Old No.31/1995) for Declaration, Possession, Cancellation of Sale Deed and Permanent Injunction against the Respondents/Defendants stating therein that the applicants/ plaintiffs are legal heirs of late Abdul Ghafoor and Mst. Sajida Begum and the suit property was Evacuee Property and it was transferred by the Deputy Settlement Commissioner, Thatta in favour of late Abdul Ghafoor/ father of applicants/Plaintiffs. The applicants alleged that the suit property is corresponding to C.S.No.53/A and 90/A having an area of 2632/sq. feet and their father Abdul Ghafoor had filed **suit No.8/1973** for possession before the Court of Civil Judge, Sujawal against one Syed Nawaz Ali Shah and others, the said suit was decreed on **27.5.1980** against which Civil **Appeal No.19/1980** was filed which was dismissed on **23.11.1980** by the District Judge, Thatta, however, **Revision No.59/1984** against the decree is pending in the High Court. It was further alleged that the suit property bearing C.S No.90/A, Sujawal was never property of Abdul Hameed S/O Ismail/Respondent No.4/Defendant No.4, who by way of fraud in collusion with the staff of City Survey Officer, Sujawal got the said property transferred in his name, otherwise it was Evacuee Property and transferred in the name of late Abdul Ghafoor/father of applicants/Plaintiffs by the Deputy Settlement Commissioner, Thatta. Respondent No.4/Defendant No.4 sold the property bearing C.S No.90/A, Sujawal to one Ali Muhammad/ Respondent No.5/ Defendant No.5 through registered sale deed No.198 dated **17.8.1982**, who got his name mutated in the City Survey record, therefore, the said entry is illegal, malafide, void. Applicant No.1/

Plaintiff No.1 asked Respondent No.5/Defendant No.5 to restrain himself from such act but he refused to do so. Respondent No.5/Defendant No.5 had taken possession of a portion of suit property i.e Survey No.90/A, Sujawal from L.Rs of Muhammad Soomar against whom late Abdul Ghafoor/father of applicants/ Plaintiffs had obtained decree of possession. Respondent No.6/Defendant No.6 got possession of portion of the suit property i.e C.S No.53/A, Sujawal from L.Rs of Muhammad Soomar and has started raising construction unauthorisely, therefore, the applicants/plaintiffs filed Civil Suit No.164/1996 (Old No.31/1995).

7. After service of notice, private Respondents/defendants No.5 & 6 filed their written statement wherein they denied the allegations leveled against them in the plaint. They denied that the suit property was transferred in the name of late Abdul Ghafoor, which is corresponding to C.S No.53/A and 90/A having an area of 2632 sq. feet, in fact the C.S No.90/A is formed from Chalta No.39, Sheet No.6 and such Rubkari dated **24.5.1967** was issued by enquiry officer. The enquiry officer reported to the Deputy Commissioner, Thatta that there is no survey number of Settlement Department from which it may be ascertained that where the Custodian No.146/1/A falls. They further contended that late Abdul Ghafoor had filed appeal before Deputy Commissioner, which was dismissed on **30.11.1967**. Chalta No.39 correspondence of C.S No.90 was owned and possessed by Abdul Hameed/Respondent No.4/Defendant No.4 vide entry dated **23.2.1967**. The Settlement Commissioner submitted the report to Additional Commissioner Settlement that he has come to the conclusion that the suit property belongs to Pesumal s/o Lila Ram auctioned in favour of Abdul Ghafoor is not a plot pointed out by

him, which was actually the property of Pinnamal. They contended that Respondent No.5/Defendant No.5 purchased the suit property through registered sale deed dated **16.8.1982**, therefore, City Survey record was duly mutated in his name is legal and in accordance with law. Respondent No.5/Defendant No.5 is in possession of the suit property since 1982 and is occupying the same as owner.

8. The Sub-Registrar, Sujawal/ Respondent No.3/Defendant No.3 also filed his written statement and denied the allegations leveled against him by the applicants in the plaint. He contended that the sale deed was executed by Abdul Hameed/Respondent No.4/Defendant No.4 through his attorney Muhammad Islamil in favour of Ali Muhammad/ Respondent No.5/ Defendant No.5 for consideration of Rs.2000/- in respect of Sikni Plot bearing C.S No.90, measuring area 50-2 sq yards, situated in Ward-A, Junejo Muhallah, Sujawal. The said sale deed was completed in accordance with the provisions of registration law on **10.8.1982**. The remaining Respondents/ Defendants have failed to file their written statement, therefore, they were declared *exparte* by orders dated **21.4.1998** and **23.5.2000** respectively.

9. The trial Court from pleadings of the parties has framed the following issues:-

1. *Whether sale deed executed by the defendant No.4 in favour of defendant No.5 is illegal and void?*
2. *Whether deceased Abdul Ghafoor was the owner of property No.146/1/A, Sujawal Corresponding to C.S No.53/A and 90/A?*
3. *Whether the entry dated 9.9.1982 of property C.S No.90 Ward "A" Sujawal in the record of rights is fraudulent, void, illegal and nullity in the eyes of law?*

4. *What are the effects of Judgment dated 29.10.1969 of the Settlement Commissioner Karachi passed by him in Revision No.SCH-6/69?*
5. *Whether the suit is under valued and in sufficiently stamped?*
6. *Whether the court has got no jurisdiction to try this suit?*
7. *Whether the suit is barred by time?*
8. *Whether the suit is not maintainable?*
9. *Whether the plaintiff is entitled for the relief claimed?*
10. *What should the decree be?*

10. The trial Court recorded evidence and after hearing learned counsel for the parties, dismissed the suit filed by the applicants/ Plaintiffs by judgment dated **11.12.2002**. In an appeal filed by the applicants/ Plaintiffs against the said judgment, the appellate Court by judgment dated **21.09.2004** maintained the said findings of the trial Court and dismissed Civil Appeal No.11/2003 filed by the applicants/plaintiffs. Against the said concurrent findings of the two Courts below the applicants preferred Revision Application No.75/2005.

11. I have heard learned counsel for the applicants and perused the record. Learned counsel was also directed to file written arguments. It is pertinent to mention here that learned counsel for the applicants has filed written synopsis of arguments only in Revision Application No.74/2005 and he has not filed written arguments in Revision Application No.75/2005. However, to appreciate possible contentions of learned counsel for the applicants on merit of the case I have gone through the grounds taken by him in Revision Application No.75/2005 and noticed that learned counsel

has not contended any misreading and non-reading of evidence by the two Courts below in dismissing their suit No.164/1996 on merit. The perusal of the judgments impugned in Revision Application No.75/2005 shows that the applicants have miserably failed to prove their case through evidence and both the Courts below have held that no documentary evidence has been produced by the applicants in support of their claim. I have noted that applicants have filed copy of decree in **suit No.8/1973 as Ex.114/D**. But unfortunately the connected/tagged Revision No.74/2005 has arisen from the dismissal of **suit No.8/1973** as it was given new number **02/2001** and their Misc: Appeal No.5/2002 against the dismissal of the said suit has also been dismissed. The trial Court on issues No.2 and 4 held that the plaintiffs/applicants have neither produced latest position that how the deceased Abdul Ghafoor was owner of the property No.146/1/A and that how the Custodian 146/1/A was made out from City Survey No.53/A and 90/A. The burden was on the applicants. The first appellate Court on the same issues made even more detailed discussion from the evidence and framed the following three points in appeal for determination:-

1. Whether the property custodian No.146/1/A, corresponds to C.S No.90/A and 53/A, Sujawal Town as alleged by the plaintiffs in the capacity as their owners?
2. Whether the registered sale deed on 17.8.1982 executed by the defendant/ respondent No.4 in favour of respondent No.5 is void and illegal and has got no substance in the eyes of law?
3. Whether the appellants are entitled for the possession of the suit property from the respondents?

After discussing the evidence the first appellate Court concluded that Custodian No.146/1/A claimed by the plaintiffs/appellants to be

their property does not correspond to City Survey No.90/A and 53/A and that the plaintiffs/ applicants have not proved to be owner of City Survey No.90/A and 53/A, and, therefore, they are not entitled to the possession of the suit property.

12. As I noted, learned counsel for the applicants has not filed any written arguments nor in grounds of Revision he has referred to any evidence contrary to the evidence discussed by the two Courts below to highlight any misreading and non-reading of evidence to justify interference in concurrent findings by this Court in revisional jurisdiction.

13. In view of the above discussion when in suit No.164/1996 the applicants could not be found entitled for the possession of the suit property as their prayer clause 'A' and 'D' along with other prayers stand declined on merit, their similar prayer in suit No.02/2001 (old No.8/1973) reproduced in para-2 above for handing over possession of the suit property to them has become infructuous as they have already lost their claim of declaration of ownership of the suit property by way of inheritance (Prayer 'A') in suit No.164/1996. Besides the above, another hurdle in prosecution of Revision No.74/2005 is a judgment in suit No.01/2001 (old No.79/1996 & 167/1993) in favour of Respondents. Respondents No.3 to 10 in Revision No.74/2005 are sons and daughters of Syed Nawaz Ali Shah who was Defendant No.3 in suit No.02/2001 (**old No.8/1973**) and their suit No.01/2001 (old suit No.79/1996 and 167/1993) was decreed in their favour whereby Respondents were declared owners of City Survey No.52 and 53/A, Sujawal being legal heirs of Syed Nawaz Ali Shah. The decree in the said suit attained finality when

applicants' appeal No.46/2002 was dismissed and Revision Application No.56/2005 has been dismissed by me on **03.3.2020**.

14. It is just by co-incident that I have heard arguments of Civil Revision Application No.56/2005 on **11.02.2020** and announced the judgment in open Court on **03.3.2020** and by chance the present Revision Applications No.74 and 75 of 2005 were fixed for hearing on the same date i.e **03.3.2020** and, therefore, while examining the record of these Revision Applications I have noticed that the applicants/Respondents in Revision No.74/2005 are the same applicants/Respondents in Revision Application No.56/2005 which was dismissed by me on **03.3.2020**.

15. In view of the above discussion, both the Revision Applications are dismissed with no order as to costs.

JUDGE

Karachi, Dated:18.05.2020

Ayaz Gul