Judgmen0t Sheet

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD

Civil Revision Application No. 131 of 1986

Applicants	:	Khanzada Siddi Yakoot (deceased) through his Legal Heirs and others through Mr. Arbab Ali Hakro, Advocate
Respondents 1, 2, 3: 5, 7 & 9		through Mr. Muhammad Yousif Leghari, Advocate
Respondent No.12	:	through Mrs. Razia Ali Zaman, Advocate
Respondents 22 to 25	:	Mr. Allah Bachayo Soomro, Addl.A.G.
Date of hearing	:	28.08.2020
Date of decision	:	11.09.2020

JUDGMENT

ADNAN-UL-KARIM MEMON, J: - Through this Civil Revision Application, Applicants have impugned the Judgment and Decree dated 26.5.1986 passed by learned District Judge, Badin in Civil Appeal No.10 of 1985 whereby, the Judgment and Decree dated 13.5.1985 passed by learned Senior Civil Judge, Badin was set-aside and Suit No. 99 of 1980 filed by the private respondents was decreed.

2. The case of Applicant No.1 is that, in 1957 his claim for 6,305 acres of land was verified in lieu of agricultural land inherited by him from his father in India. Consequently, in 1958, Applicant No. 1 was allotted 973.39 acres of land in the then Taluka Tando Bago, now District Badin and was given possession of the same. Resultantly, entry of the above said allotment was also made in Revenue Record. In the year 1961, Martial law Regulation 89/91 was promulgated and Applicant No.1 was issued revised Entitlement Certificate under which he could retain only 144.26 acres of land. However, Applicant No. 1 has asserted in pleadings that he became entitled to purchase the remaining surrendered 829.14 acres of aforesaid land under M.L.R. 89/91 and purchased the same with possession till it was sold to Applicant No. 2 to 12. Meanwhile, Deputy Commissioner, Hyderabad granted a Sanction Order dated 29.09.1962 through which Applicant No.1 was allowed to purchase the surrendered land on payment of purchase price in installments. Consequently, Applicant No.1 entered into an Agreement of sale with Applicant No.2 namely Mehfooz Rehman

and others for purchase of aforesaid surrendered land measuring 829.14 acres on 29.09.1962 and handed over the possession. The Applicant Nos.2 to 12 besides payment of sale consideration to Applicant No.1, also paid an amount of Rs.1,91,689/- in installments to the Government. The Applicant No.1, after promulgation of Land Reforms Regulation, 1972, as an abundant caution, filed declaration in which he included the aforesaid surrendered land purchased by Applicant Nos. 2 to 12. The said declaration was later-on scrutinized by Deputy Commissioner concerned, who vide order dated 2.9.1972, granted declaration that the rights of the purchaser stood protected in view of paragraph 7(1)(b) of the Regulation, 1972. Meanwhile, an Appeal was filed by one Allahdino Jamali before the Land Commissioner raising therein objections to the aforesaid transactions in respect of the subject land. The said Appeal was dismiss vide order dated 29.05.1973 with observation that 'since the land was managed by Applicant No.2 and others who were enjoying possession and were also paying installments and land revenue, as such the right vested in them as purchaser and deserved to be protected'. The aforesaid Order of Land Commissioner was impugned before the Additional Commissioner, Sindh in Revision Application which was converted into Suo-Moto proceedings and order dated 28.8.1974 was passed, wherein, it was held that, "since the disputed land was not fully paid up, no proprietary right is conferred on the Applicant No.1." Both the parties filed Revision Application against the aforesaid order before Member, Federal Land Commission, which were dismissed vide common Order dated 15.10.1974. The said Order was assailed before this Court in C.P No. D-1384 of 1974 and in C.P No. D- 84 of 1975. This Court vide Order dated 23.10.1979 remanded the matter to Additional Chief Land Commissioner for deciding the matter afresh in the light of Circular of Federal Land Commission bearing No. F-14(12)/FLC/73 dated 20.8.1973, which explicitly provides that "*in cases of sale or sale agreement, where the prior permission of the Collector was not obtained, all such transactions are to be reopened and thoroughly scrutinized by the Land Commissioner and if they are found to be genuine, they may be confirmed in spite of the fact, that the permission of the Collector was not obtained. However, gifts made by the grantees of land under MLR-89/91 should be treated as void and all such lands should be resumed immediately and a compliance report sent to the Federal Land Commission ; that Sindh Land Commission has been pleased to decide that the above order of the Federal Land Commission should be complied with.'* The Additional Chief Land Commissioner vide Order dated 6.5.1980 decided the questions regarding alienations made

by Applicant No.1 in favour of Applicant Nos. 2 to 12 and confirmed the Agreement of Sale dated 29.9.1962 executed between them. Meanwhile, another dispute arose between Applicant Nos. 2 to 12 and people claiming themselves as Haris (private respondents in the present proceedings). After the order passed by Additional Chief Land Commissioner, dated 28.8.1974, 39 aggrieved persons in Deh Sangi and 12 persons in Deh Kapoori requested the competent authority of Government that the land resumed from the khata of Applicant No.1 be granted to them under Land Reforms Laws. This matter culminated with the order of Deputy Land Commissioner, Badin dated 26.12.1979, confirmed in appeal by the Land Commissioner, Hyderabad Division vide order dated 13.4.1980, whereby the land was not permitted to be disposed of to the private respondents/ Haris/ tenants under Land Reforms Laws; that by these orders at no stage they were accepted as Haris / tenants but the matter was left to be decided by the Tenancy Tribunal, which was required to determine as to who were Haris / tenants in the land in question and what was the extent of their right in the land? Finally, the Applicants succeeded up to the level of Revenue and Rehabilitation Authorities as discussed supra.

I have noticed that in the year 1980, Respondent Nos.1 to 21 filed Civil Suit No. 99 of 1980 in the Court of Senior Civil Judge, Badin against the Applicants and others wherein they sought declaration to the effect that the orders passed by land reforms authorities were illegal, void and without lawful authority and against the provision of Martial Law Regulation 115. Besides, the declaration that the Agreement of Sale dated 29.9.1962 was a fictitious document creating no right, title or interest in favor of Applicants. The learned trial Court in order to adjudicate the matter between the parties framed the following issues:

i. Whether this court has jurisdiction to try this suit?

ii. Whether the suit is not maintainable? Whether the suit is barred under the provisions of Land Reforms and the Sindh Tenancy Act? Whether the agreement dated 29.9.1962, executed by the defendant No.5 in favour of defendant No. 6 to 16 is fictitious, illegal and void?

iii. Whether the said agreement dated 29.9.1962, is creating any right or title on defendants 6 to 16 over the suit land?

iv. Whether the plaintiffs are moroosi Haris of the suit land. If yes, to what effect?

v. Whether the orders passed by the Deputy Land Commissioner, Land Commissioner, Hyderabad, Additional Chief Land Commissioner in respect of suit land are illegal, *mala fide* and against the provisions of MLR 115?

vi. Whether the plaintiffs or any of them are in possession of suit land. If yes in what capacity and with what right?

vii. What should the decree be?

3. The learned trial Court after examination the parties and evidence decided the aforesaid issues in favour of Applicants vide Judgment and Decree dated 13.4.1982. Private Respondents being aggrieved by and dissatisfied with the aforesaid judgment and decree filed an Appeal before learned District Judge, Badin which was partly allowed vide judgment and decree dated 19.10.1983 and the matter was remanded to learned Senior Civil Judge Badin for decision afresh. Consequently, learned Senior Civil Judge, Badin examined Muhammad Yousif at Ex. 207. The Applicant's attorney Chaudhry Muhammad Rafiq was also examined, who produced General Power of Attorney vide Ex.75, Agreement to Sell Ex.76, Share List Ex.77, Electoral List Ex.78, order of the Additional Chief Land Commissioner Ex.79, the order of Land Commissioner, Hyderabad Division Ex.80, Letter dated 26.12.1989 at Ex.81, the order of the Land Commissioner, Hyderabad Ex.82, Abstract of Khasra Ex.83, 84, 85, 86, 87, 88, 89, 90 to Ex.95, Abstract of Record Ex.96 and Village Form VII Ex.97, Dhall receipts Ex.98 to Ex.111, detail of produce of Ex.112, village Form VII Ex.113. Resultantly, after hearing the parties, learned Trial Court dismissed the aforesaid suit vide judgment dated 13.5.1985. Private Respondents being aggrieved by and dissatisfied with the aforesaid judgment and decree filed Appeal No.10 of 1985 before learned District Judge, Badin. The learned Appellate Court framed the following points of determination:

i. Whether this court has no jurisdiction to try this suit?

ii. Whether the suit is not maintainable?

iii. Whether the suit is barred under the provisions of Land Reforms and the Sindh Tenancy Act?

iv. Whether the agreement dated 29.9.1962, executed by the defendant No.5 in favour of defendants No. 6 to is fictitious illegal and void?

v. Whether the said agreement dated 29.9.1962, is creating any right or title on defendants 6 to 16 over the suit land?

vi. Whether the plaintiffs are moroosi Haris of the suit land. If yes to what effect?

vii. Whether the orders passed by the Deputy Land Commissioner, Land Commissioner, Hyderabad, Additional Chief Land Commissioner in respect of suit land are illegal, *mala fide* and against the provisions of MLR 115?

viii. Whether the plaintiffs or any of them are in possession of suit land. If yes in what capacity and with what right?

ix. What should the decree be?

4. The learned Appellate Court after hearing the parties set aside the judgment and decree passed by learned Trial Court and decreed Suit No. 99 of 1980 vide judgment and decree dated 26.5.1986. Against the aforesaid judgment and decree, the applicants filed instant Revision Application before this Court in the year 1986.

5. Mr. Arbab Ali Hakro, learned counsel for the Applicants has mainly argued that the land was originally allotted to Applicant No.1 on 19.4.1958 and the holding did not fall within the ambit of para-10 of the Regulations, because, the subject land was acquired before 1.1.1959. He next pointed out that the surrender and purchase of the land under provisions of MLR 89 / 91 of 1961 was not a fresh acquisition of right, but it was continuation of the right acquired in 1958. Learned counsel further asserted that it was just a formality that previously the land was granted free of cost and under MLR 89 / 91 the claimant / allottee had to pay price for the excess area. He next contended that the Sale Agreement was a genuine document and was attested by the then Additional District Magistrate, Hyderabad. The purchasers were in physical possession of the subject land since 1962; that they had paid a sum of Rs.1,84,122/- towards installments of the land. He further argued that the hierarchy of land commission had already declared the aforesaid Sale Agreement as genuine and there was no reason to suspect its bonafide or doubt its genuineness; that permission of the collector was not a mandatory requirement but, directory at the relevant point and time. Further, MLR 115 override all other provisions of law and the owner defined in MLR 115 includes a person in possession of the land; that such alienations were accepted and recognized by MLR regulations; that the judgment and decree of the Appellate Court is in utter disregard of the mandatory provision of Order XLI Rule 31 and Order XX Rule 5 of Civil Procedure Code; that it was necessary for the Appellate Court to record its findings on each issue by discussing relevant evidence adduced by the parties; that while deciding a particular issue, the Court is required to take into consideration and discuss the relevant piece of evidence having direct nexus with that specific point and record reasons justifying its findings thereon; that the above criteria of the judgment required by Order XX Rule 4 and 5 CPC must be adhered to, so that the rights of the parties in relation to controversy are conclusively determined; therefore, the judgment and decree of the Appellate Court is nullity in the

eyes of law, contrary to the law and facts and based upon misreading / non-reading of evidence. He pointed out that the findings of the learned Appellate Court at typed page 9 to 14 are erroneous without any evidence available on record, thus liable to be discarded. Hence, the instant Revision Application may be allowed and the Judgment and Decree of the Appellate Court may be set-aside; that tenancy of private Respondents is already declared nullity by the hierarchy of Revenue and Rehabilitation Authorities; that private respondents did not seek any relief for themselves in the suit proceedings, therefore, their Appeal was not maintainable before the Appellate Court; that the decision of Appellate Court reversing the findings of fact and law was / is perverse and illegal on the aforesaid plea. Learned Counsel concluded by submitting that since the Applicants have been successful under the hierarchy of Revenue and Rehabilitation Authorities / Land Commission, therefore their decision on the subject land is final and cannot be called in question under paragraph 19 and 26 of the Land Reforms Regulation, 1972 which, explicitly provide that the decision of the Government shall not be called in question before any court, including the Honorable Supreme Court and this Court, on any ground whatsoever, as such, the decision of learned Appellate Court is nullity in the eyes of law, thus, liable to be reversed.

6. Mr. Muhammad Yousif Leghari, learned counsel representing the private Respondents refuted the claim of Applicants and mainly attacked on the sale agreement dated 29.9.1962 and supported the findings of learned Appellate Court on the premise that the Applicant No.1 was a government servant who had to surrender land in excess of 100 acres vide para 10 of the Regulations. He next pointed out that Deputy Commissioner was not competent to accept any alienation. The alienation in respect of surrendered land was void for the reason that permission of Deputy Collector was not obtained under para 10 of the scheme framed under MLR 89 / 91; that the sale(s) were fictitious as is evident from the Judgment of the learned Appellate Court at typed page No.9 to 14 as well as the matters about shifting of installments, cancellation of grant for non-payment of installments of the purchase price and the appeals etc. of Muhammad Rafiq (Attorney of Applicants) speaks volume; that the Applicants had not fully paid up the grant of land in question; that the lands allotted in an installment of claim were to be treated as self-acquired property vide Notification dated 2.10.1973 of the Sindh Land Commission; that the Applicant No.1 had surrendered the sale and purchased in the year 1962. The purchase was a fresh acquisition of right after 1.1.1959

and the holding of the Applicants was hit by the provisions of para 10 of the regulations; that under regulation115 a tenant shall not be ejected from his tenancy, unless it is established in Revenue Court. He prayed for dismissal of instant Revision Application.

7. Mrs. Razia Ali Zaman, learned counsel representing the Respondent No.12 has adopted the arguments of Mr. Muhammad Yousif Leghari, learned counsel for private Respondents and referred to her written synopsis and argued that declaration of M.L.R 115 being repugnant to injunctions of Islam on the basis of which the ceiling to hold land so fixed was declared illegal and unlawful; that by virtue of judgment of Federal Shariat Court the Applicants were not entitled to hold the entire land. She next argued that there is no doubt that it was so declared as repugnant to the injunction of Islam however, the judgment itself provides its effect as prospective and not retrospective; that the review of the said judgment was also dismissed by Hon'ble Supreme Court reported as Government of Pakistan v. Qazalbash Waqf (1993 SCMR 1697); that the judgment of Federal Shariat Court and Shariat Appellate Bench of Hon'ble Supreme Court was then taken into consideration by Hon'ble Supreme Court; that this Court is not a Court of appeal to consider the case of applicants on the pleas taken by them in the present proceedings. However, this Court can only exercise jurisdiction, inter alia, if any jurisdictional error of learned Appellate Court is found or any point of law is involved. Undoubtedly, Revision is a matter between the higher and subordinate Courts and the right to move an application in this respect by the Applicants is merely a privilege; that the provisions of Section 115 Civil Procedure Code have been divided into two parts: First part enumerates the conditions under which the Court can interfere and the second part specifies the type of orders which are susceptible to Revision; that in numerous judgments, the Honorable Supreme Court was pleased to hold that the jurisdiction under Section 115 C.P.C. is discretionary in nature; that findings arrived at by the learned Appellate Court cannot be lightly interfered with unless some question of law or erroneous appreciation of evidence is made out. She lastly prayed for dismissal of the Revision Application.

8. Learned AAG has supported the final order passed by the Additional Chief Land Commissioner, Sindh, Hyderabad, after remand of the case by this Court in C.P. No.184 of 1974.

9. I have heard the learned counsel for the parties and perused the material available on record.

10. The following main points need to be determined by this court:-

i. Whether the case of Applicant No.1 was hit by the provision of para 10 of MLR 115?

ii. Whether the alienations of 144-26 acres which were permanently allotted to him and in respect of 829.13 acres which were surrendered and purchased by him under MLR 89 / 91 of 1961 would be maintainable?

iii Whether the private respondents/tenants/haris had preferential right in the surrendered land under 25(3)(d) MLR 115?

iv. Whether the decision dated 26.5.1986 passed by the learned District Judge, Badin in Civil Appeal No.10 of 1985, whereby the Judgment and Decree dated 13.5.1985 passed by learned Senior Civil Judge, Badin was set-aside and the Suit No. 99 of 1980 filed by private Respondents decreed was/is proper and in accordance with the well-settled principle of law?

11. To understand and evaluate the case, it is important to go through Section 10 of the MLR, 115, reproduced as under:

> "10. Acquisition of Land by Government servants.– (1) No person who is or has been in the [Civil Service] of Pakistan and has at any time between January 1, 1959, and two years of his ceasing to be in [Civil Service], acquired any land or any right or interest therein, by any means whatever, either in his own name or in the name of any of his heirs or any other person, shall own or possess any land exceeding 100 acres:
>
> Provided that, subject to the other provisions of this Regulation, any such person may, in addition to 100 acres of land, own or possess any land which has devolved on him by inheritance or any other land, not exceeding the area of the land so inherited, which has been acquired by him, in lieu of the land so inherited, whether by exchange or sale, either in his own name or in the name of any other person.
>
> Explanation**.–** For the purposes of this sub-paragraph and clause (d) of sub-paragraph (1) of paragraph 12, "civil service of Pakistan" means any civil service, post or office in connection with the affairs of the Federation or a Province, and includes a service as a Judge of the Supreme Court or a High Court Comptroller and Auditor-General, Chief Election Commissioner and Chairman or Member of the Federal or a Provincial Public Service Commission, but does not include service, as President, Governor, Minister of State, or as a Speaker, Deputy Speaker or other Member of the National or a Provincial Assembly.]
>
> (2) Where any person to whom the provisions of sub-paragraph (1) apply] has, within the period specified therein, transferred in favour of any of his heirs or has acquired in the name of any of them any land, and such land continues to be owned or possessed by his heirs, he shall for the purposes of that sub–paragraph be deemed to be the owner of such land.
>
> (3) Nothing in this paragraph shall apply to a person who is serving or has retired as member of [the Military, Naval, or Air Forces] of Pakistan."

12. In reply to the first point framed above I have noticed that learned Trial Court has dilated upon this issue in its true perspective and held that the land was originally allotted to Applicant No.1 on 19.4.1958 and the

holding did not fall within the mischief of para-10 of the Regulations, 1972 as it was acquired before 1.1.1959; that the surrender and purchase of the land under provisions of MLR 89 / 91 of 1961 was not a fresh acquisition of right, but it was continuation of the right acquired in 1958. I have noticed the factual position of the case on the aforesaid point which prima-facie supports the case of Applicants.

13. On the second and third point, it is admitted position that there is no definition of the tenant given in para 25 of MLR 115. The definition of tenant as contemplated in section 4(26) of the Land Revenue Act, 1967 is as under: -

> (26) `tenant' means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent to that other person, and includes the predecessors and successors-in-interest of such person, but does not include:
>
> (a) mortgagee of the rights of land ownership or.
>
> (b) a person to whom a holding has been transferred, or an estate or holding has been let in from, under the provisions of this Act, for the recovery of an arrears of Land Revenue or of a sum recoverable as such an arrear.
>
> (c) a person who takes from Government a land of unoccupied land for the purpose of sub-lettings it. Similarly, I tenancy means a parcel of land held by a tenant under one set of condition and this has been defined under section 4(27) of Land Revenue Act."

14. From the foregoing narration of facts, the circumstances of the case, the evidence on the record, this Court has to consider that whether the private respondents were in occupation of the subject land as tenant and so possessed better right qua the applicants. No doubt first right in respect of the land comprising tenancy of a tenant was conferred under sub-para (3)(d) of para 25 of the MLR 115, but the above stated clause prescribes three attributes of tenant; firstly, that he shall hold land; that he shall hold it under another person / landlord, and thirdly, that he is liable to pay rent for the use and occupation of it to such a person. All these three attributes concur to create legal relationship of landlord and tenant. Looking from this angle, it can safely be said that the private respondents in order to succeed were required to establish by unimpeachable evidence that they were in possession of the suit land at the time of aforesaid transaction and used to pay rent. Record reflects that the tenancy of private Respondents is already declared nullity by the hierarchy of Revenue and Rehabilitation Authorities. In this view of the matter, the private respondents could not be considered as tenant within the above

definition of the tenant for the simple reason that they have no right title in their favour of the subject land. I am fortified with the decision of Honorable Supreme Court in the case of Sher Muhammad v. Ghulam and others 1989 SCMR 543. Besides that private respondents did not seek relief for protecting their interest in the suit proceedings, therefore their suit was though rightly dismissed on merits, moreover it should have been dismissed being barred under paragraph 19 and 26 of the Land Reforms Regulation, 1972 which, explicitly provide that the decision of Government shall not be called in question before any court, including the Honorable Supreme Court and this Court, on any ground whatsoever, as such, the decision of learned Appellate Court is erroneous and nullity in the eyes of law, thus, their Appeal was not maintainable before the Appellate Court; that the decision of Appellate Court reversing the findings of fact and law is perverse and illegal on the aforesaid plea. Beside the decision of the Hon'ble Supreme Court in the case of Qazalbash Waqf v. Chief Land Commissioner reported in PLD 1990 SC 99 is clear in its terms and needs no further discussion. An excerpt of the decision of Hon'ble Supreme Court is reproduced as under:

> "It is unanimously held that the Federal Shariat Court and the Shariat Appellate Bench of the Supreme court have the jurisdiction and the power under Chapter 3-A of Part VII of the Constitution, to examine the Land Reforms Regulation, 1972 (hereinafter referred to as the Regulation) and the Land Reforms Act, 1977 (hereinafter referred to as the 20 Act) and to decide whether or not provisions thereof are repugnant to injunctions of Islam.
>
> 2. In accordance with the opinion of the majority of the Judges separately recorded, it is held that the following provisions of the Regulation, the Act and the Punjab Tenancy Act, 1887 to the extent indicated against each, are repugnant to Injunctions of Islam: -
>
> (i) Para. 2, clause (7) of the Regulation in so far as it includes Islamic Waqf for the purposes of other paras of the Regulation which are being held wholly or partly repugnant to Injunctions of Islam.
>
> (ii)The whole of paragraphs 7, 8, 9, 10, 13 and 14 and consequentially Paragraph 18 of the Land Reforms Regulation.
>
> (iii) Paragraphs 15, 16, 19 and 20 of the Land Reforms Regulation, 1972 in so far as they ignore the rights and obligations, the terms and conditions of the grant, license or lease, as the case may be, in resuming the stud and livestock farms, Shikargahs and Orchards and dealing further with them under paragraphs 19 and 20 thereof. (iv) Paragraph 17 of the Land Reforms Regulation in so far as it relates to Wakf and all other institutions which can validly fall within the definition of Islamic Wakf, and consequential to that extent paragraph 21 also.
>
> (v) Paragraph 25(l) of the Land Reforms Regulation in so far as it does not give sanctity to the grounds of ejectment available in a valid contract between the landlord and the tenant, entered into in accordance with the Injunctions of Islam.

(vi) Paragraph 25(3)(d) of the Land Reforms Regulation having already been declared to be repugnant to the Injunctions of Islam in Said Kamal Shah's case PLD 1986 SC 360.

(vii) The whole of sections 3, 4, 5, 6, 7(5), 8, 9, 10 of the Land Reforms Act, 1977 and consequentially the whole of sections 11 to 17 of the Act.

(viii) The whole of section 60-A of the Punjab Tenancy Act, 1887 in so far as it makes non-occupancy tenancy heritable irrespective of the terms of the contract.

3. The question of repugnancy or otherwise of paragraphs 22, 23, 24 of the Land Reforms Regulation was left undermined in these proceedings as the Court feels that proper and full assistance having not been received and another decision of the Federal Shariat Court has come into the field during the interregnum.

4. In accordance with the opinion of the majority of the Judges it is held that the Provisions of paragraph 25(3), Clauses (a), (b) & (c) of the Regulation are not repugnant to the Injunctions of Islam.

5. Shariat Appeals No.1 of 1981, 3, 8, 9, 10 of 1981 and 1 of 1987 are allowed and Shariat Appeal No.4 of 1981 with the reservation contained in para 3 above and Shariat Appeal No.21 of 1984 are party allowed. All the parties shall bear their own costs but the appellant in Shariat Appeal No.1 of 1981 being a Wakf shall be entitled to claim the costs from the respondent/the Federal Government.

6. This decision shall take effect on 23rd March, 1990 whereupon the provisions declared repugnant to the Injunctions of Islam will cease to have effect.

7. ….."

15. While dealing the same issue in the case of Muhammad Ishaq v. Muhammad Shafiq reported in 2007 SCMR 1773, the Hon'ble Supreme Court reappraised the conclusion as under:

"4. The second aspect is with regard to the repugnancy of para.24 M.L.R. 115 to the Injunctions of Islam. This matter was discussed by learned High Court but we believe that such repugnancy, being retrospective or prospective, is not very relevant in the present case. Para.24 of M.L.R. 115 was declared repugnant to the Injunctions of Islam by Federal Shariat Court in Sajwara's case PLD 1989 FSC.80 but that repugnancy was declared to have effect from 1st January, 1990. It obviously cannot reopen the past and closed transactions and cannot have retrospective effect. At the time of present transaction dated 22-2-1978, the repugnancy did not exist. The only thing material was that no transaction could be declared void under para.24 M.L.R. 115 by the Revenue Authorities, the exclusive jurisdiction being vested in the Land Commission."

16. Reliance is further placed on the case of Shah Jehan Khan Abbasi v. Deputy Land Commissioner reported in 2006 SCMR 771. Relevant para 4 is reproduced as under:

"4. …. The crux of the aforesaid rulings is that repugnancy to the Injunctions of Islam, of para.13 of Land Reforms Regulation is prospective with effect from 23-3-1990. Any positive action towards resumption by the Land Reforms Authorities taken and completed prior to

> 23-3-1990 shall not be affected by the declaration given by this Court in Qazalbash Waqf case (supra). The law on the point is even otherwise not disputed. What now we have to decide is simply a question of fact as to whether, in the instant case, the Land Reforms Authorities had or had not completed the resumption proceedings prior to 23-3-1990."

17. On the fourth proposition, I have perused the findings of learned Trial Court, which explicitly show the following factual position of the case:-

> "The upshot of the above findings goes to prove that plaintiffs have failed to prove that the agreement dated 29.9.1962 executed by the defendant No.5 in favour of defendant 6 to 16 is fictitious, illegal and void. The plaintiffs have also failed to prove that the orders passed by Deputy Land Commissioner, Badin, Land Commissioner Hyderabad and Additional Chief Land Commissioner in respect of the suit land are illegal, *mala fide*, without lawful authority and against the provisions of MLR 115. The orders passed by the said the said authorities are legal, lawful and within their authorities. The suit of the plaintiffs is accordingly dismissed with costs"

18. On the other hand, learned Appellate court did not agree with the findings of learned Trial Court and decided the matter in favour of private Respondents with the following reasoning:-

> "The upshot of the findings on issues No. 1 to 8 is that the appellants / plaintiffs have proved their case by proving the sale agreement dated 29.9.1962 as false fictitious and therefore void. The appellants / plaintiffs have also proved that the orders of Revenue and Rehabilitation Authorities in respect of the suit land as illegal, *mala fides*, without lawful authority and against the provisions of MLR 115, and thus have a cause of action and are entitled to relief sought for by them. I, therefore, set aside the impugned judgment and decree passed by the lower court and decrees the suit of the appellants / plaintiffs and allows this appeal accordingly.
>
> The parties, however, are left to bear their own costs in the circumstances of the case.

I9. I have noted that there are conflicting views of both the courts below; therefore, it is necessary to have a look into the matter in its entirety.

20. I have observed that the Sale Agreement as discussed supra has been endorsed by the hierarchy of Revenue and Rehabilitation/Land Commission Authorities. However, the private Respondents assailed the findings of the Land Commission before learned Senior Civil Judge, Badin who dismissed their assertion by recording evidence of the parties. Whereas, learned Appellate Court upset the decision of learned Trial Court on the premise that the Sale Agreement was a manipulated document after the promulgation of MLR 115 only in order to defeat the provisions of MLR 115, extinguish the rights and interest of the Applicants

and decided the aforesaid issues in favor of private Respondents by decreeing their suit without recording additional evidence of the parties. On the aforesaid proposition, reliance is placed in the case of Abaad Ali v Muhammad Din (1981 SCMR 742) and unreported case of Badl (deceased) through his L.Rs and others. Versus Lashkari (deceased) through his L.Rs and others (Civil Petition No. 611-L 2018) decided on 14.02.2020, whereby the Honorable Supreme Court dismissed the case of tenants/haris.

21. In my view, learned Appellate Court while recording findings on facts has misread the evidence while ignoring material piece of evidence as discussed in the preceding paragraph thus, committed material irregularity / illegality, as such, requires interference by this Court in exercise of revisional jurisdiction, which is primarily meant for correcting the error of law committed by sub-ordinate Courts.

22. For the aforesaid facts and reasons, I have come to the conclusion that there is merit in this Revision Application which is allowed. Resultantly, the Judgment and Decree dated 26.5.1986 passed by learned District Judge, Badin in Civil Appeal No.10 of 1985 is set-aside and Judgment and Decree dated 13.5.1985 passed by the Learned Trial Court in Civil Suit No. 99 of 1980 is upheld / maintained.

JUDGE

Karar-Hussain/PS*