

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

R.A No.122 of 2011

Moula Bux and others Applicants
V/S
Province of Sindh and others
Respondents

Mr. Hakim Ali Siddiqui advocate for the applicants.
Mr. Imdad Ali R. Unar, advocate for respondents 6 & 7.
Mr. Allah Bachayo Soomro, Additional General Sindh.

Date of hearing **07. 09.2020**
Date of decision **25. 09.2020**

ORDER

ADNAN-UL-KARIM MEMON, J. - Through instant Revision Application, the applicants have challenged the Judgment and Decree dated 18.02.2011 & 28.02.2011 respectively passed by VII Additional District Judge Hyderabad, whereby the learned Judge while dismissing Civil Appeal No.40/2010 of applicants has confirmed the Judgment and Decree dated 18-1-2010 & 22.1.2010 respectively passed by the Trial Court.

2. Brief facts of the case are that applicants' father (late) Ali Muhammad filed F.C Suit No.09/2001 for declaration and permanent injunction against private respondents with the assertion that agricultural land bearing Survey No. 88/A,B (8-27 acres), 89/A,B (5-21 acres) and 95/3 (1-35 acres) total area 16-3 acres situated in Deh Vidh Taluka Hyderabad belonged to one Gahimal. Deceased Gahimal also owned agricultural land in survey Nos. 89/A, 89/B and part of Survey No.10 (2-02 acres) total 5-18 acres and survey Nos. 505, 506 and other survey numbers admeasuring 28-26 acres in Deh Rukhanpur and survey Nos. 264, 267 and other survey numbers admeasuring 10-27 acres in Deh Sanhwar. After his death, the aforesaid property was devolved upon his legal heir i.e. wife Shrimati Riji Bai. The said properties of deceased Gahimal were subsequently declared as non-evacuee by Additional Settlement Commissioner Central Settlement Cell Karachi vide order dated 22.10.1978. The predecessor in interest of applicants (Ali Muhammad) purchased survey No.88/A, B, 376, and 457 admeasuring 12-20 acres of Deh Vidh from Shrimati

Riji Bai through registered sale deed dated 17.01.1966, and the possession was delivered to him. He also purchased survey No.89/A (1-17 acres), 89/13 (0-4 acres), 95/3 (1-35 acres), and survey No.101 (2-02 acres) total 5-18 acres from Mst. Farhat, on 18.10.1967 through registered sale deed and now possession is with the applicants being surviving legal heirs of deceased Ali Muhammad. The predecessor in interest of applicants (Ali Muhammad) also asserted in the plaint that one Rehmat Ali falsely alleged that he was allotted survey No.28/A, B, 89/A, B, and 95/3 admeasuring 16-3 acres in satisfaction of his claim on 24.06.1960. The allotment of said land was illegal and fraudulent as the land was non-evacuee and settlement authorities were not competent to allot the said land to Rehmat Ali. After about 31 years, on the application of one Umeed Ali Attorney of one Allah Bux approached the Additional Deputy Commissioner-I Hyderabad, who canceled the mutation entry in the name of predecessor in interest of applicants (Ali Muhammad) and ordered to mutate the same in favour of Allah Rakha, hence the predecessor in interest of applicants (Ali Muhammad) filed an appeal, which was dismissed on 29.03.1996 thereafter he preferred Revision Application before Board of Revenue Sindh, which was also dismissed. It is the case of applicants that Khatooni dated 24.06.1960 issued in favour of Rehmat Ali is also illegal as he did not exist and that the lands of deceased Gahimal were declared as non-evacuee lands; that the amendment of Khatooni in the name of Allah Rakha as well as power of attorney in favour of respondents was/is also illegal.

3. On the other hand, respondents 6 & 7 filed a joint written statement denying the claim of Ali Muhammad (predecessor in interest of appellants). They denied that survey No.88/A, B (8-27 acres), 89/A,B (5-21 acres) and 95/3 (1-35 acres) total admeasuring 16-03 acres, situated in Deh Vide Taluka Hyderabad did not belong to Gahimal but after creation of Pakistan the said lands came in evacuee pool and was allotted to Allah Rakha against his verified claim through Khatooni dated 24.06.1960. They also contended that Shirmati Riji Bai did not exist as widow of Gahimal and that possession of suit land never remained with her nor it was delivered to the applicants and the suit land owned by respondents 6 & 7. They also contended that applicants in collusion with lower revenue staff manipulated false entries, which were rightly canceled by the competent revenue authority and that civil court has no jurisdiction to reopen the case of settlement / evacuee property after 30.06.1975 and that Khatooni in the name of Rehmat Ali is legal and valid and that special power of attorney in favour of respondent No.7 is also valid and legal.

4. On the pleadings of the parties, learned Trial Court framed the following issues :-

- i) Whether the agricultural land belonging to deceased Gehimal original owner of the described land in deh Vidh, Rukhanpur and deh Sanhwar mentioned in the plaint were declared as non-evacuee by Additional Settlement Commissioner Central Settlement Cell Karachi by his order dated 22.10.1978?
- ii) Whether the land S.No.88/A,B, 89/A and 95/3 area 16.3 acres deh Vidh Taluka Hyderabad do not belong to Gehimal, the same was after the creation of Pakistan went in evacuee Poll and same were allotted to Allah Rakha against his verified claim?
- iii) Whether the plaintiff purchased agricultural land S.Nos.88/A,B, 376, 457 admeasuring 12.20 acres situated in deh Vidh Taluka Hyderabad from Shirimat Rijhi through registered sale deed No.43 dated 17.01.1966, the record of rights mutated in favour of Plaintiff?
- iv) Whether the plaintiff also purchased land S.No.89/A (1.17 acres), 89/13 (0.4 acres), 95/3 (1.35) acres, and S.No.101 (2.2 acres) total area 5.18 acres from the land owned by late Gehimal?
- v) Whether the land 88/A, B, 89/A, B, and 95/3 deh Vidh area 16.3 acres was illegally allotted by Settlement authorities to one Rehmat Ali S/o Syed Imdad Ali Bukhari though the same land was non-evacuee land?
- vi) Whether after about 31 years back one Umed Ali attorney of Allah Rakha S/o Ahmed claimed to be the legal heir of Rehmat Ali S/o Imdad Ali on 23.05.1991 applied the Additional Deputy Commissioner-I Hyderabad that name of Allah Rakha has not been mutated in the record of rights as such Mukhtiarkar Taluka Hyderabad directed to make mutation of S.Nos mentioned on issue No.4?
- vii) Whether the plaintiff playing fraud manipulated the false forged, bogus register sale deed, there was no existence of Rijibai?
- viii) Who is in possession of suit land?
- ix) Whether there was an entry in the record of right on the name of the plaintiff, and the same was canceled by the authorized officer?
- x) Whether this Court has got no jurisdiction to re-open the case of Settlement / Evacuee property after 30.06.1975?
- xi) Whether the order of defendant No.2 to 4 is illegal malafide and without Jurisdiction?
- xii) Whether the suit is not maintainable in law?
- xiii) Whether the suit is time-barred.
- xiv) Whether the plaintiff is entitled to the relief as prayed?
- xv) What should the decree be?

5. After recording evidence and hearing the counsel for the parties, learned Trial Court dismissed the suit vide Judgment dated 18.01.2010. Against the said Judgment, the applicants preferred Civil Appeal No.40 of 2010 before

Additional District Judge Hyderabad. On the pleadings of the parties, learned Appellate court framed following point of determination

whether the judgment dated 18.1.2010 and decree dated 22.1.2010 passed by the trial court requires any interference of this court and whether the trial court while passing the same has committed any error, illegality, or irregularity?

Learned Appellate Court after hearing the parties dismissed the appeal with the following observation: -

“Thus, in view of my above discussion, I am of the considered view that appellants/plaintiffs failed to point out any illegality or irregularity committed by the trial court while passing judgment dated 18.1.2010 and decree dated 22.1.2010 in the suit, therefore, findings of the same require no interference of this court. Resultantly, the Judgment dated 18-1-2010 and decree dated 22.1.2010 passed by the trial court is maintained, appeal in hand is dismissed with no order as to costs. Let such decree be prepared accordingly.”

6. I have heard learned counsel for the parties, perused the record and the case-law cited at bar.

7. I have noticed that the entire case of applicants rests upon the issue that the subject property did not belong to evacuee management. Learned counsel for the applicants heavily relied upon the order dated 22.10.1978 passed by Additional Settlement Commissioner, Central Settlement Cell, Karachi Camp at Hyderabad. However, the aforesaid factum has been discarded by the hierarchy of revenue forum as well as two Courts below.

8. The main controversy between the parties is that respondent No.7 being attorney of claimant Allah Rakha filed an application before Additional Deputy Commissioner-I, Hyderabad stating that claimant Allah Rakha was allotted the aforesaid survey numbers and succeeded in obtaining an order dated 30.01.1984 from the Additional Deputy Commissioner-I, Hyderabad for cancellation of revenue entries in the record of rights in favour of applicants on the premise that all such entries overlapped the allotment of Allah Rakha in the revenue record. Such order was assailed by deceased Ali Muhammad by filing an Appeal No.241/1994 before Additional Commissioner-1 Hyderabad Division, Hyderabad. However, the said appeal was dismissed vide order dated 19.03.1996. The revision was preferred before Member (Judicial) Board of Revenue, Sindh Hyderabad, which too was rejected on the point of concurrent findings. The applicants being aggrieved by and dissatisfied with the aforesaid orders of official respondents filed Suit No.9/2001 for declaration and permanent injunction before learned IVth Senior Civil Judge, Hyderabad, on the

premise that deceased Ali Muhammad purchased survey Nos. 88/A, B, 376, 457 admeasuring 12-20 acres situated in Deh Vidh Taluka Hyderabad from Shrimati Riji Bai. through registered sale deed dated 17.01.1996 and was put in possession of the aforesaid land, such mutation has been effected in the record of rights vide entry dated 14.03.1966; that deceased Ali Muhammad also purchased survey No.89/A (1-17 acres) 89/30(0-4 acres) survey No.95/3 (01-35 acres) and survey No.101(2-2 acres) total area 5-18 acres from the land owned by late Gehimal vide registered sale deed dated 18.10.1967 and he was put in possession of the subject land, such mutation was effected in the record of rights vide entry No.277 dated 10.05.1965. The aforesaid Suit was contested between the parties by filing written statement. The learned trial Court after framing the issues and hearing the parties dismissed the Suit of the applicant's vide judgment dated 18.01.2010 on the premise that the applicants' predecessor in interest was not entitled to the relief claimed in the subject Suit. The Civil Appeal No.40/2010 was preferred against the said Judgment and Decree, however, the same was also dismissed vide Judgment and Decree dated 18.02.2011 and 28.02.2011 respectively.

9. From the above discussed legal position, it is quite obvious that the concurrent finding recorded by the Courts below cannot be interfered with by this Court while exercising jurisdiction under Section 115, C.P.C, and essentially, there are findings, on the issue of entitlement of subject land, by the hierarchy of Board of Revenue, against the applicants and there are other findings of facts and law by the two Courts below i.e. Senior Civil Judge, Hyderabad and Additional District Judge, Hyderabad. Learned counsel for applicants failed to point out any illegality, perversity in the impugned findings of revenue forum as well as two Courts below.

10. In my view, the findings recorded by the trial Court, which were affirmed by the Appellate Court are neither perverse nor result of any misreading of evidence nor any material piece of evidence was ignored by the said Courts. The oral as well as documentary evidence was fully discussed by both the Courts below in their judgments.

11. In view of the above, no case for interference is made out; resultantly this Revision Application is dismissed along with pending application(s), if any, with no order as to costs.

JUDGE