

HIGH COURT OF SINDH, BENCH AT SUKKUR

Revision Application No. S - 93 of 2009

Applicant : Kehar son of Sanwal through Mr. Tariq G. Hanif Mangi Advocate.

Respondent 1 : Changoo Mal son of Juman Dass [Deceased] through his legal heirs Sharimati Shillan Bai and 05 others through Mr. Lachhmandas G. Rajput Advocate.

Respondents 2-3 : Additional Commissioner Sukkur and Secretary Revenue Department Hyderabad through Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

Dates of hearing : 01-09-2020 & 24-09-2020

Date of decision : 05-12-2020

ORDER

Adnan Iqbal Chaudhry J. - Suit No. 185/1980 (new Suit No. 303/1995) filed by the Applicant/Plaintiff was dismissed by the Senior Civil Judge Ubauro by judgment and decree dated 29-04-2000 and 04-05-2000 respectively. Civil Appeal No. 53/2000 was also dismissed by the Ist Additional District Judge Ghotki by judgment and decree dated 10-06-2009; hence this revision application.

2. Events leading to the suit were as follows. The Colonization Officer, Guddu Barrage area, had granted 3 acres 19 ghuntas in Survey No. 268, Deh Kambhara, Taluka Ubauro, District Sukkur (suit land) to the Plaintiff for agricultural. Mukhi Jumandas assailed said grant before the Additional Commissioner Sukkur on the ground that the suit land was his *qabooli* land, which he had transferred to his son, Chunghomal, the Defendant No.1. By order dated 11-05-1976 passed in Case No. S-2-282-RAC/75, the Additional Commissioner Sukkur,

after noting that the suit land had been excluded from the schedule by a previous order dated 30-06-1975, held on the basis of the revenue record that the suit land was indeed *qabooli* land and not State land.

3. The aforesaid order dated 11-05-1976 passed by the Additional Commissioner Sukkur was challenged by the Plaintiff by Suit No. 112/1976. That suit was dismissed in default on 19-03-1980. Thereafter, the Plaintiff filed a fresh suit (the subject suit), per the Plaintiff, under Order IX Rule 4 CPC, *inter alia* for the following relief:

- “(a) declare that the order passed by the learned Additional Commissioner Sukkur, the Defendant No.2, dated 11-05-1976 is improper, illegal and without jurisdiction as the Plaintiff is grantee of the suit land;*
- (b) to declare that the mutation after the grant in favor of the Plaintiff, in the name of the Defendant No.1 is improper, malafide and based on fraud as such void abinitio;*
- (c) grant permanent injunction restraining the Defendant from interfering with the ownership right of the Plaintiff and also to interfere with his possession;”*

As mentioned above, the suit was dismissed both by the trial court and the appellate court.

4. Heard the learned counsel and perused the record.

5. The case of the Applicant/Plaintiff was that the suit land was evacuee property, thus State land, and was granted as such to the Plaintiff by the Colonization Officer under sub-section (3) of section 10 of the Colonization & Disposal of Government Lands (Sindh) Act, 1912 pursuant to Statement of Conditions dated 20-11-1972 issued by the Provincial Government under sub-section (2) of section 10 the said Act, which had been framed for the grant of State land to *haris* (peasants) *inter alia* falling within the Guddu Barrage Command area. The thrust of the arguments of learned counsel for the Applicant was that the Additional Commissioner Sukkur had no jurisdiction to annul the grant of land made to the Plaintiff by the Colonization

Officer. In addition, learned counsel submitted that both the courts below failed to appreciate that the Defendant No.1 had not produced any document to show that the suit land was *qabooli* land.

6. Learned counsel for the Respondent/Defendant No.1 submitted that the suit land was not evacuee property but was *qabooli* land of the Defendant No.1 transferred to him by his father Mukhi Jumandas; that the Plaintiff and his father were in fact *haris* on the suit land working for Mukhi Jumandas on *batai* (share from crops); that the Plaintiff had unlawfully, and in collusion with revenue officers, managed to insert the survey number of the suit land in the schedule of State land, which act was subsequently remedied by orders dated 30-06-1975 and 11-05-1976 passed by the Additional Commissioner Sukkur.

7. Both the courts below have held that the Plaintiff had not been able to prove that the suit land was evacuee property / State land. To argue that the suit land was in fact evacuee property, learned counsel for the Applicant relied on the judgment dated 30-10-1965 passed in F.C. Suit No. 54/1964 whereby said suit filed by Mukhi Jumandas was dismissed. But from that judgment it appears that the *qabooli* land of Mukhi Jumandas, which had been previously declared as evacuee property, had been restored to him by order dated 28-03-1964, and that Suit No. 54/1964 was filed by Mukhi Jumandas to challenge orders whereby he was denied grant of further land in a different deh on the basis of *muhag* and *khasmokal* rights claimed by him inasmuch as, being owner of substantial *qabooli* land he did not qualify for grant of additional State land under the erstwhile scheme for the Guddu Barrage area. Thus, if anything, the judgment in Suit No. 54/1964 supported the case of the Defendant No.1.

8. Be that as it may, the prayer clause of the subject suit (Suit No. 185/1980) manifests that the challenge to the Additional Commissioner's order dated 11-05-1976 was predicated on the ground of jurisdiction. The issues settled by the trial court were also

whether the said order was without jurisdiction or *malafide*. The grant of the suit land to the Plaintiff, per the Plaintiff himself, was made under sub-section (3) of section 10 of the Colonization & Disposal of Government Lands (Sindh) Act, 1912, whereunder the grant made by the Colonization Officer is “subject to the control of the Board of Revenue”, and by virtue of section 7 of the same Act, the provisions of the Sindh Land Revenue Act, 1967 are applicable. By way of section 3(i) of the Colonization & Disposal of Government Lands (Sindh) Act, 1912, the ‘Colonization Officer’ is the ‘Collector’ within the meaning of the Sindh Land Revenue Act, 1967. Therefore, the grant made by the Colonization Officer / Collector was appealable before the Additional Commissioner under section 161(1)(c) read with section 9 of the Sindh Land Revenue Act, 1967. Though under section 161(1)(c) of the Sindh Land Revenue Act, 1967 an appeal from the order of the Collector lies to the Commissioner, under section 9 of the same Act the Additional Commissioner may exercise powers and discharge duties conferred or imposed on a Commissioner under the said Act subject to the general supervision and control of the Commissioner. The order dated 11-05-1976 passed by the Additional Commissioner Sukkur recites that the matter had been referred to him for decision by the Commissioner. Therefore, it was futile to argue that the Additional Commissioner Sukkur did not have jurisdiction to pass the order dated 11-05-1976.

9. Having seen that the order dated 11-05-1976 passed by the Additional Commissioner Sukkur under section 161 of the Sindh Land Revenue Act, 1967 did not suffer from a jurisdictional defect, the remedy of the Plaintiff against such order was before the Board of Revenue by way of a revision under section 164 of the Sindh Land Revenue Act, 1967. In view of section 36 of the Colonization & Disposal of Government Lands (Sindh) Act, 1912, and section 172 of the Sindh Land Revenue Act, 1967 read with section 11 of the Sindh Revenue Jurisdiction Act, 1876, the Plaintiff’s suit before the civil court was not maintainable before exhausting the remedy available in

the revenue hierarchy. Both the courts below have rightly held so. In that regard reliance can be placed on *Administrator, Thal Development v. Ali Muhammad* (2012 SCMR 730), and *Muhammad Ali v. Province of Punjab* (2005 SCMR 1302). Learned counsel for the Applicant/Plaintiff was not able to demonstrate that the order dated 11-05-1976 passed by the Additional Commissioner Sukkur was with *malafides* so as to create an exception for invoking the general jurisdiction of the civil court. In this view of the matter, I do not advert to the other grounds cited by the courts below for dismissing the suit. For the foregoing reasons, this revision application is dismissed.

JUDGE