

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

IInd Appeal No. 68 of 2012

1. For orders on C.M.A- 1760 of 2018
2. For hearing of main case.

Appellant : Through Mr. Abdul Hameed Bajwa,
Advocate

Date of hearing & order : 11.01.2021

ORDER

NAZAR AKBAR, J. Through this IInd Appeal, appellant Ch. Azeem Ahmed has assailed the legality and propriety of the judgment dated 27.10.2017, passed by learned Additional District Judge, Tando Allahyar in Civil Appeal No.18 of 2017, whereby the appellate Court has maintained the judgment dated 05.01.2017, passed by learned Ist. Senior Civil Judge, Tando Allahyar, which has dismissed the suit filed by the appellant against the respondents being F.C Suit No. 39 of 2011.

2. As per averments of the plaint, Chaudhry Naseem Ahmed was the father / predecessor-in-interest of the appellant as well as respondents No.1 to 3 and others namely Tariq, Khawar, Shakir, Mst. Atiya, Mst. Fozia, Mst. Shehnaz, Mst. Sadia and Mst. Naseem Akhtar and brother of respondents No.5 and 6; that respondents No.5 and 6 are also brothers of Chaudhry Naseem Ahmed, who also owned agricultural land in same Deh ie. Sanjar Chang. That for the land shown in plaint as part-A and part-B (subject land), there was some settlement between appellant, his family members i.e. respondents No.1 to 3 and others and a general power of attorney was executed by respondent No.5 for sale of his property in favour of respondent No.3 (Sabir Nasim) and similarly respondent No.6 executed registered power of attorney in favour of respondent No.4 (Tariq Mehmood). Thereafter, respondent No.3 sold out the suit property of respondent No.5 to respondents No.1 and 2 through registered sale deed

under revenue entry No.454 dated 17.04.2001. The appellant and remaining family members claiming respondents No.1 to 3, to be only Benamidar of suit land requested them for transfer of the suit property, but they flatly refused, hence the mother of appellant and respondents No.1 to 3 namely Mst. Naseem Akhtar files a suit bearing F.C. Suit No.08/2009, before the same Court. The suit was withdrawn on compromise; however, the terms of said compromise were not fulfilled by respondents, therefore, appellant filed present suit.

3. I have heard learned counsel for appellant at some length.

4. Admittedly, the subject land is joint property of appellant as well as respondents No.1 to 3 and their other brothers and sister namely Tariq, Khawar, Shakir, Mst. Atiya, Mst. Fozia, Mst. Shehnaz, Mst. Sadia and Mst. Naseem Akhtar; however, appellant has not made them party before the trial Court nor he obtained any power of attorney from them to prefer the present proceedings; therefore, the trial Court has rightly dismissed the suit of the appellant on the ground of non-joinder of necessary party. The contention of learned counsel for appellant that the trial Court while deciding the suit of appellant has not discussed each and every issue and hence the impugned judgment is not in accordance with Order XX Rule 5 C.P.C. is misconceived. I have gone through the judgment passed by the trial court and found that it has discussed all issues hence the suit has been decided on merits. Even otherwise passing of the judgment while not discussing each and every issue is of no consequence unless failure to decide any particular issue prejudice to the case of appellant.

5. Perusal of the record reveals that this IInd appeal has been preferred against the concurrent findings of the Courts below. A review of the same suggests that all aspects of the controversies as well as the evidence produced by both the parties have been examined. It is an established position that second appeal does not lie on the ground of error or question of fact as it could only lie on the ground of law or error in procedure, which might have affected decision of the case upon merits. The decisions delivered by the Courts below clearly are not shown to be either based on irrelevant or inadmissible evidence or that the evidence in any way was misread by the Courts. Reversal of concurrent findings of fact as a result

of re-appraisal of evidence on record under Section 100 of C.P.C. as sought by the appellant is not permissible unless the same is found to be perverse or contrary to the evidence on record, reliance can be placed on the case of **Syed Rafiul Qadre Naqvi Vs. Syeda Safia Sultana and others** (2009 SCMR 254). Also to keep in mind is the dictum laid down by the Apex Court in the case of **Amjad Sharif Qazi and others Vs. Saleemullah Fareedi** reported as PLD 2006 SC 777 where the Apex Court laid down that concurrent findings of facts could not be reversed on surmises and conjectures or merely because another view was also possible. The Apex Court held that the High Court could not interfere in concurrent findings of the facts recorded by two Courts below while exercising jurisdiction under Section 100 C.P.C, no matter how erroneous those findings might be, unless such findings had been arrived at the Courts below either by misreading of evidence on record or by ignoring the material piece of evidence on record or through perverse appreciation of evidence. None of which conditions prevail in the case at hand. On a query, learned counsel for the appellant has failed to point out any illegality or material irregularity in the impugned judgment.

6. In the given circumstances as well as in the light of the above cited judgments of the Apex Court, the instant second appeal being devoid of merits is hereby dismissed.

JUDGE

S