

**THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Civil Revision No. 51 of 2012

Applicants : Wilayat Ali Khaskheli and others
through Mr. Makhdoom Syed Tahir
Abbas Advocate.

Respondents 1-6 : Gul Hassan Khaskheli and others
through Mr. Mazhar Ali Bhutto,
Advocate.

Respondents 7-10 : Deputy District Officer, Revenue
[now Assistant Commissioner] Mehar and
others through M/s Abid Hussain
Qadri and Abdul Rasheed Soomro,
State Counsel.

Dates of hearing : 08-02-2019, 25-02-2019 & 11-03-2019

ORDER

Adnan Iqbal Chaudhry J.- F.C. Suit No. 32/2010 filed by the Respondents 1 to 6 (plaintiffs) for possession and other relief in respect of immovable property was decreed by the Senior Civil Judge, Mehar vide judgment and decree dated 28-05-2011 and 04-06-2011 respectively. Thereafter, Civil Appeal No.40/2011 filed by the Applicants (defendants 1 to 8) was also dismissed by the 1st Additional District Judge, Dadu vide judgment dated 24-05-2012; hence this Civil Revision.

2. The suit had been filed by the Respondents 1 to 6 (plaintiffs) as legal heirs of one Haji Khan, by caste Khaskheli, against the Applicants (defendants 1 to 8), who were legal heirs of one Hussain Ali. It was the case of the plaintiffs that the subject land measuring 7-9 acres in deh Wah-Gahi, Taluka Mehar, District Dadu, was the property for their father/husband, Haji Khan, which land was entered in the Revenue record in his name; that due to enmity, Haji Khan was murdered in his village on 23-04-1989 and an FIR bearing

Crime No.64 of 1989 was lodged in that regard; that after the murder of Haji Khan, the plaintiffs shifted to Kotri and for the purposes of cultivating the subject land, they gave possession of the same to a caste-fellow, Hussain Ali (father defendants 1 to 8); that Hussain Ali, with the collusion of Revenue officials caused to be made a fake entry dated 17-12-1994 in the Revenue record to show that the subject land had been sold by Haji Khan to Hussain Ali via a statement of oral sale made before the Revenue authorities; that whenever the plaintiffs approached Hussain Ali for possession and mesne profits of the subject land, he kept them on false hopes and ultimately the plaintiffs filed F.C. Suit No. 126/2008; that pending that suit, Hussain Ali passed away and the defendants 1 to 8 as legal heirs of Hussain Ali filed a written statement to contend that the subject land had been sold by Hussain Ali during his lifetime to his sons Khalid Hussain and Shahid Hussain (the defendants 3 and 6) vide registered sale deeds; therefore, in order to seek cancellation of the said sale deeds as well, the plaintiffs withdrew F.C. Suit No.126/2008 with the permission of the Court to file a fresh suit; hence F.C. Suit No. 32/2010 by the plaintiffs for a declaration of their title to the subject land, for its possession, for cancellation of Hussain Ali's entry in the Revenue record, for cancellation of the sale deeds executed by Hussain Ali in favor of the defendants 3 and 6 and for mesne profits.

3. The case of the defendants 1 to 8 (Applicants) was that Haji Khan had sold the subject land and delivered it possession to their father, Hussain Ali during his (Haji Khan's) lifetime in the year 1994 and that the FIR produced by the plaintiffs with regards to the murder of Haji Khan had been back-dated by the Police in collusion with the plaintiffs; that the statement of oral sale of the subject land made by Haji Khan in favor of Hussain Ali was recorded before the concerned Mukhtiarkar and such sale was for a consideration of Rs.40,000/-; and that subsequently Hussain Ali had sold the subject land to his sons Khalid Hussain and Shahid Hussain (defendants 3 and 6).

4. After hearing the learned counsel and perusing the record, the findings of the Courts below and the submissions of learned counsel are discussed and addressed together as follows.

5. The central question before the Courts below was whether Haji Khan had died in the year 1989, for if the answer to that question was in the affirmative then the case of the defendants 1 to 8 (Applicants) that Haji Khan had sold the subject land to their father, Hussain Ali, in the year 1994 was false and the plaintiffs (Respondents) were entitled to the relief sought. That issue was framed by the trial court as under:

“Whether late Haji Khan, the father of the Plaintiff Nos. 1 and 3 to 6 and husband of Plaintiff No.2 had murdered on 23-04-1989 at his village by his enemies, such FIR was registered at P.S. Mehar under Section 302 P.P.C. vide Crime No.64 of 1989”.

6. To prove the date of death of Haji Khan, the plaintiffs produced a copy of the death certificate of Haji Khan issued by the Nazim, Union Council Baledai, Taluka Mehar as Exhibit 25-G, which mentioned his date of death as 24-04-1989. The plaintiffs produced as Exhibit 22-H copy of the FIR in Crime No.64 of 1989 lodged at P.S. Mehar to report the murder of Haji Khan, and they summoned the book of FIRs maintained under section 154 Cr.P.C. at P.S. Mehar which was produced by WHC Muhammad Acher along with the original FIR in Crime No.64 of 1989 as Exhibit 25-A which mentioned that Haji Khan was murdered on 23-04-1989.

7. The trial court held that the date of death of Haji Khan had been proved as 23-04-1989 by the FIR in Crime No.64 of 1989 which was lodged at P.S. Mehar to report his murder, the original record of which was produced by WHC Muhammad Acher from P.S. Mehar, and thus he was never alive in 1994 to sell the subject land to the Hussain Ali, the father of the defendants 1 to 8 (Applicants). Therefore, the trial court decreed the suit in favor of the plaintiffs (Respondents 1 to 6).

8. In their appeal, the defendants 1 to 8 (Applicants) set-up a new case i.e., that the oral sale of the subject land by Haji Khan had in fact been made on 28-02-1989, before he had passed away, and he had acknowledged such sale by executing an affidavit dated 15-03-1989. On that basis the defendants 1 to 8 (Applicants) prayed to the appellate court for permission to produce the said affidavit as additional evidence, which application was allowed vide order dated 02-11-2011, but though the defendants 1 to 8 produced a copy of a document said to have been executed by Haji Khan and attested by witnesses, the original thereof was not produced as having been misplaced, nor were the alleged witnesses to such document ever examined. The appellate court dismissed the appeal by holding that the evidence brought by the FIR as to the date of death of Haji Khan remained un rebutted and that the defendants 1 to 8 had contradicted their own case because in the written statement as well as in their evidence in the suit, it was their case that the subject land had been sold by an oral sale on 17-12-1994 and not by an affidavit dated 15-03-1989 as alleged in the appeal.

9. Mr. Tahir Abbas Shah, learned counsel for the defendants 1 to 8 (Applicants) submitted that both the Courts below had failed to notice that there was a contradiction between the date of death of Haji Khan mentioned in his death certificate and the one mentioned in the FIR in that, the former mentioned the date of death as 24-04-1989 whereas the latter mentioned it as 23-04-1989. However, firstly, the evidence relied upon by both the Courts below for the date of death of Haji Khan was not his death certificate but the FIR which had been proved by the record from the concerned Police Station. Secondly, I do not see how the difference in the said dates helps the Applicants when the case originally set-up by them was that Haji Khan had never died in the year 1989 and was alive in 1994 to sell the subject land to Hussain Ali.

10. Mr. Tahir Abbas Shah, learned counsel for the Applicants (defendants 1 to 8) had then pointed to the fact that one Gulzar Ali, who was one of the accused nominated in the FIR for the murder of Haji Khan, had appeared as the plaintiffs' witness to depose that Haji Khan was in possession of the subject land at the time he was murdered. Learned counsel argued that the fact that the said Gulzar Ali had appeared as the plaintiffs' witness, was reason enough to view the plaintiffs' evidence with suspicion, and that the actual fact was that the plaintiffs had made a deal with Gulzar Ali to sell him the subject land and thus the suit had been filed at his behest. On the other hand, Mr. Mazhar Ali Bhutto, learned counsel for the Respondents 1 to 6 (plaintiffs) submitted that since the plaintiffs and Gulzar Ali belonged to the same village, the plaintiffs had compromised the criminal case with him, and that Gulzar Ali had appeared as witness to corroborate the date of death of Haji Khan. I agree with Mr. Bhutto that any history between the Respondents 1 to 6 (plaintiffs) and Gulzar Ali becomes completely irrelevant when the defense set-up by the Applicants was belied.

11. The fact of the matter remains that when the Applicants were not able to dislodge the evidence that Haji Khan was never alive in 1994 so as to have sold the subject land to the Applicants' father, the other arguments become irrelevant. That the Applicants had tried to set-up a new case, rather a contradictory case in appeal, had further exposed the falsity of their claim. Therefore, the concurrent findings of fact arrived at by the Courts below do not call for any interference and this Civil Revision is dismissed.

JUDGE

Dated: 03-09-2019