

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

R.A. No. 41 of 2019

Date of hearing: 28.10.2019  
Date of decision: 08.11.2019  
Applicants: Usman and others through Mr. G.M. Leghari,  
Advocate.  
Respondent: Shoaib through Mr. Shahzaib Abbasi,  
Advocate

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:** - The Applicants are asking for setting aside the Judgments and Decrees dated 22.02.2018 & 01.03.2018 passed by learned 1<sup>st</sup> Senior Civil Judge Badin in F.C. Suit No. 12 of 2016 (Re-Shoaib v. Usman & others) as well as Judgment and Decree dated 15.02.2019 passed by learned 1<sup>st</sup> Additional District Judge, Badin in Civil Appeal No.28 of 2018 (Re- Usman and others v. Shoaib).

2. Brief facts of the case as per pleadings of the parties are that respondent / plaintiff filed Suit No.12 of 2016 against the Applicants / defendants for declaration and permanent Injunction in the Court of 1<sup>st</sup> Civil Judge Badin on the premise that he is resident of village Gul Muhammad Leghari from his forefathers; that he and his family members used the public path/street, which is the only path to reach the main street. The applicants / defendants are also using the same street; however, they have created the obstacles for respondent to use the aforesaid path. Respondent being aggrieved by and dissatisfied with the acts of applicants filed criminal complaint Under section 133 Cr.P.C, however the same was dismissed on 04.05.2016, but he continued to pursue his civil proceedings. Due to divergent pleas of the parties in the pleadings, learned Trial Court in order to adjudicate the matter between the parties framed following issues:-

- i. Whether the act of defendants restraining the plaintiff from using and not permitting the installments of the gate are illegal, without lawful authority and against the natural Justice?

- ii. Whether the plaintiff is entitled for the decree of permanent injunction?
- iii. Whether the disputed gate was in existence before the filing of suit?

3. The learned trial court after careful examination of the parties and evidence decided the aforesaid issues in favour of Respondent vide impugned Judgment and decree as discussed supra. The Applicants being aggrieved by and dissatisfied with the aforesaid Judgment and Decree preferred statutory Appeal which too was dismissed vide Judgment and Decree dated 15.02.2019. The Applicants have now filed the instant Revision Application before this Court on 07.3.2019.

4. Mr. G.M. Leghari learned Counsel for the Applicants has mainly contended that the impugned Judgments passed by learned Courts below are full of errors, based upon misreading and non-reading of evidence; that the findings of learned Courts below are arbitrary and perverse; that the averments of Applicants made in the affidavits in evidence / examination-in-chief were not considered in the impugned Judgments; therefore, both the Judgments are nullity in the eyes of law; that both the learned Courts below have failed to appreciate the material aspects of the matter; that learned trial Court as well as Appellate Court have failed to appreciate that the subject Path/street had never been in usage of respondent as he has the passage on the other side but he malafidely constructed the Iron Gate facing the subject street used by the Applicants; that only the houses of applicants are situated and this is the only path/street which leads to the main road; therefore, the impugned Judgments are illegal and against the law, thus are liable to be set aside; that both the learned Courts below have failed to appreciate the law involved in the matter; that learned Appellate Court failed to consider the grounds of Appeal agitated by the Applicants; that both the learned Courts below have failed to appreciate that the very suit of the private Respondent No.1 was not maintainable before the learned trial Court; therefore, both the Judgments cannot be sustained on this score alone, and are thus liable to be set aside; that the Respondent has failed to prove his case through cogent evidence that he is entitled for using the street and installing the gate facing the main street being used by the applicants since long; learned trial court had no jurisdiction to entertain the lis between the parties. He lastly prayed for setting aside both the Judgments rendered by the learned Courts below.

5. Conversely, Mr. Shahzaib Abbasi, learned Counsel for the Respondent has supported the impugned Judgments passed by learned Courts below and inter alia contended that the captioned Revision Application is liable to be dismissed; that there are concurrent findings recorded by the competent forum under the law and the grounds raised in the instant Revision Application are untenable; that both the aforesaid Judgments are passed within the parameters of law; that the instant Revision Application is frivolous, misleading as there are concurrent findings of Courts below; that learned trial Court after recording evidence has passed just, proper and fair Judgments in the case holding entitlement of the Respondent to use the public path/street; that learned Appellate Court after hearing learned Counsel for the parties passed the Judgment in favour of Respondent, however the Applicants have now approached this Court. He lastly prayed for dismissal of the instant Revision Application.

6. The official respondents in their deposition, supported the case of respondent on the premise that the subject path is a public street, which is located in Village Gul Muhammad Leghari and both the parties are residing in the aforesaid sanctioned village situated; that the subject public street is passing between the houses of both the parties and leading from main public pucca street which leads Main Badin Tando Bago Road and it is going across and ending the houses of applicants, and other Leghari community is using this street, the respondent wants to install a gate on the southern side of his Otaq (drawing Room) and, the applicants are not willing to allow him to install the said gate, however there is also another iron main gate on the western side which is closed.

7. I have heard the parties at considerable length and also reviewed the record available before me.

8. Though at the very outset, I have not observed any jurisdictional defect, which could enable the Applicants to exhaust the jurisdiction of this Court under Section 115 CPC, however on the legal question i.e. right of usage of subject passage/path/street, parties have been heard.

9. The issue for determination in this Revision Application is whether a right of way over the subject path/street is to be classified as a 'public street' and can be used by both the parties?

10. A public street as defined under 3 (1) (IXII) of the Act-2013, means a street maintained by Government or by a Council or a local authority. Whereas a private street' on the other hand is 'any street which is not a public street.

11. Record reflects that the Respondent filed Suit for declaration with regard to use of Public Street. It has come on record that the subject street is sanctioned one and is constructed by brick pavement by the Municipal Committee, local Government of Sindh and everyone has right to use it. The basic amenities i.e. electricity, gas and water supply are passing through the subject street. The deposition of Sub Engineer Municipal Committee Badin shows that the disputed street is sanctioned one. Applicants have conceded that the subject street was paved with bricks by the Municipal Committee and one electricity pole is installed there. As per record the Gas meter is also installed there. Water supply line is also passing through the subject street. Mukhtiarkar concerned visited the site and submitted his report before the learned trial court. Prima-facie the subject street is not a private property of the Applicants. Record does not reflect under what circumstances the privacy of the applicants is/was breached by erection of Iron Gate at the private residence of Respondent. Keeping in view the aforesaid factual position of the case, after recording the evidence and hearing the parties gave decision against the Applicants. The learned Appellate Court concurred with the decision of learned trial Court on the same premise.

12. 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. The provisions of Section 115, C.P.C., have been divided into two parts: First part enumerates the conditions, under which, the Court can interfere and the second part specify the type of orders which are susceptible to Revision. In numerous judgments, the Honorable Apex Court was pleased to hold that the jurisdiction under Section 115 C.P.C. is discretionary in nature.

13. I have scanned the evidence available on record and found that concurrent findings arrived at by the Courts below cannot be lightly interfered with unless some question of law or erroneous appreciation of evidence is made out as I see no ground to differ with the concurrent findings of the courts below and hold that the path in dispute is for the public-use. It is being used for passing and re-passing by the public at large and as such is a "street" in terms of Section 3 (IXII) of the Act-2013.

14. I am of the view that learned trial Court has dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidence of the parties. The Appellate Court has also considered every aspect of the case and thereafter passed an explanatory Judgment, therefore no ground existed for re-evaluation of evidence, thus, I maintain the Judgments and Decrees dated 22.02.2018 & 01.03.2018 passed by the learned 1<sup>st</sup> Senior Civil Judge Badin, in F.C Suit No. 12 of 2016 (Re-Shoaib v. Usman & others) as well as Judgment and Decree dated 15.02.2019 passed by the learned 1<sup>st</sup> Additional District Judge, Badin, in Civil Appeal No.28 of 2018 (Re- Usman and others v. Shoaib).

15. In the light of above facts and circumstances of the case, I am of the view that this Court in its Revisional Jurisdiction cannot interfere in the concurrent findings recorded by two competent forums below and I also do not see any illegality, infirmity or material irregularity in their Judgments warranting interference of this Court. Hence, the instant Revision Application is found to be meritless and is accordingly dismissed along with listed application(s).

**JUDGE**

*\*Fahad Memon\**