

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

R.A. No. 35 of 2004

Shamdas and others v. Muhammad Hassan and others

Applicants : Shamdas through Mr. Parkash Kumar,
Advocate.

Respondents: Mr. Wali Muhammad Jamari, Asstt: A.G.

Date of hearing: 29.10.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- The applicants through this Revision Application have called in question the judgment and decree dated 05.12.2003 passed by learned IInd Additional District Judge, Badin whereby the learned Judge, allowed the appeal and set aside the Judgment and Decree dated 4.5.2002 passed by learned Senior Civil Judge, Golarchi at Badin in F.C. Suit No. 243 of 1992 New No. 225 of 1998.

2. Brief facts of the case are that applicants filed suit for Declaration and Permanent Injunction, initially against defendants 1 to 3 / respondents 4 to 6 subsequently defendants 4 to 6 / applicants and defendants 7 to 10 were joined as a party. The plaintiff's case in the amended plaint was that agricultural land bearing survey Nos. 41, 144, 175, 176, 182, 185, 380, 666, 667, 668, 676, 677, and 715 admeasuring 66-22 acres in Deh Moro Taluka Tando Bago District Badin, which was the suit land, was owned by the elders of the plaintiffs who died about 60 years back. The plaintiffs were the owners and in possession of the suit land. That due to scarcity of water the suit land remained uncultivated excepting for some time it was cultivated on rainwater in Rabi season. That plaintiff No.1 found in the office of Barrage Mukhtiarkar that the suit land was put in the schedule for permanent disposal to Haris in Katchery to be held on 19.10.1992. Plaintiffs approached defendant No. 3 for exclusion of the suit land but defendant No. 3 disposed of suit survey Nos. 666, 667, and 668 to defendant Nos. 4 to 10 who were joined as defendants as per the order of the court. Per applicants, the grant of the suit land to defendants 4 to 10 was illegal, malafide, and void because the suit land was/is Qabooli land

of the plaintiff since 1910-11; that the suit land was/is no more the government land as the same was already transferred in the name of elders of the plaintiffs as their Qabooli land; that defendant No.3 has no power to dispose of the Qabooli land of the plaintiffs treating it as Na-Qabooli land. Applicants have averred that by disposal of the suit land, the plaintiffs will be deprived of their own Qabooli land; that defendant No.3 cannot dispose of the suit land when it is shown to them as it is Qabooli land of the plaintiffs; that defendants 4 to 10 are not eligible to get the land granted; that defendant No. 3 is not competent to grant land to defendants 4 to 10 and others when the status quo was already maintained by this Court; that the grant of suit land even in fact the area to such a large a number of persons was/is also illegal, malafide and void and same is liable to be set-aside; since the defendant No. 3 has insisted to dispose of remaining area qabooli land of plaintiffs to various persons and defendants 4 to 10 have also threatened to eject the plaintiff from suit land illegally and forcibly hence the cause of action accrued to them, the plaintiffs filed suit initially against defendants 1 to 3 / respondents 4 to 6 but subsequently joined defendants 4 to 10 as party.

3. That defendants 4 to 8 & 10 in their written statement contended that the suit land including suit survey Nos. 666, 667, and 668 were not the property of the elders of plaintiffs but it was government land. The defendants 4 to 10 were sitting tenants and grantees of suit survey numbers. The suit survey numbers were granted to some other persons (in the year 1961-62) and the grant was canceled on the application of defendants 4 to 10. Later on, it was put in schedule and rightly granted to defendants 4 to 10. Plaintiff No.1 himself applied for a grant of said land but his request was rejected. Plaintiffs had never claimed ownership rights and the same were granted to the defendants. The suit was malafide; besides the above defendants also raised legal pleas.

4. Upon pleadings of the parties learned Trial Court framed the following issues :

- i. Whether suit land S.No. 666, 667, 668 deh Moro Taluka Tando Bago is Kabooli land of plaintiff and not government land?
- ii. What is the status of other lands as mentioned in para No.2 of the plaint, except S.No.666, 667, and 668?

- iii. Whether order dated 10.10.1992 passed by defendant No.3 granting S.No.666, 667, and 668 to defendant Nos. 4 to 10 is illegal and malafide and liable to be set aside?
- iv. Who is in possession of S.No.666, 667, and 668 and what is the effect of such possession?
- v. Whether the suit is undervalued, if so, what will be the court fee according to proper valuation?
- vi. Whether the suit is not maintainable being barred by law?
- vii. Whether this court has no jurisdiction?
- viii. Relief

5. Learned Trial Court after hearing the parties dismissed the suit vide order dated 4.5.2002. The applicant being aggrieved by and dissatisfied with the above order filed an appeal which was also allowed by learned IInd Additional District Judge, Badin vide judgment dated 5.12.2003. Against the said conflicting findings the applicant has approached this Court through this Revision Application.

6. Learned counsel for the applicant has argued that the judgment and decree passed by the learned appellate court are against the facts, law, and equity; that defendants 7 to 10 were grantees of the suit land, were party to the suit, and the suit was dismissed by the learned trial court. The plaintiffs have not preferred an appeal against the said defendants. The decree against the said defendants had become final. The learned appellate court had no jurisdiction to allow the appeal against the applicants. The judgment is bad in law and liable to be reversed; that burden of issue No.1 was upon the plaintiffs. The plaintiffs failed to produce any evidence of ownership of their alleged ancestors. The decision of the learned appellate court on issue No.1 is against the pleadings and evidence on record and liable to be set aside; that it was not disputed that the suit survey No.4 granted to one Akhtar in 1961-62. The said grant was canceled by Revenue Officer on the application of defendants in 1981; the land was put in schedule and was granted in opens Katcheri to defendants 4 to 10. It was also admitted by plaintiff No.1 that he applied for a grant of said land. Learned appellate court committed illegality in totally ignoring these admitted facts while deciding issue No.1; that the extract of V.F. VII (Ex.137A) produced by the Tapedar besides being unauthenticated, unreliable manipulated did not prove in any manner the contentions raised in

the plaint. The learned appellate court has illegally decided issue No.1 based on said irrelevant and inadmissible entry from V.F-VII which was neither pleaded nor proved; that learned appellate court failed to note that plaintiff No.1 was working in revenue Department had admitted that there was no entry in V.F. VII in favor of his father; that it was established from the evidence on record that the suit land was government land and the plaintiffs alleged ancestors had no right, title or interest in the same. Excepting the allotment order for one year lease and old entry of 1911 the plaintiffs had failed to produce any evidence showing the ownership; that the plaintiffs have neither pleaded nor proved in any manner their relationship with the persons in whose name the allotment orders were issued about one century back. The learned trial court rightly discarded the said evidence. The learned appellate court has illegally decreed the suit on the said basis; that facts of filing of appeal and decision of Additional Commissioner against the order of grant dated 10.10.1992 were not pleaded by the plaintiff. The copy of the order of Additional Commissioner produced in evidence did not in any manner prove issue No.3. The decision of the learned appellate court on issue No.3 based on the order of Additional Commissioner is not in support of pleadings of the plaintiffs and liable to be set aside; that the plaintiffs themselves have pleaded that the land had remained uncultivated, and the same had never remained in their khata or the khata of their father. That the land revenue receipts to 6 produced by the plaintiffs did not pertain to the land in dispute; that the learned appellate court committed illegality in deciding issue No. 4 based on said receipts; that the suit was undervalued. That it was the duty of the learned lower courts to require the plaintiffs to value the suit property and pay the court fees. Learned lower courts have failed to exercise jurisdiction vested in them and not properly decided the issue No. 5; that the plaint was not maintainable. The decision of the learned appellate court on issue No. 6 is against the pleadings and evidence on record and liable to be reversed; that the matter for the land grant was within the exclusive jurisdiction of revenue authorities, the learned that lower courts have/had no jurisdiction to try the suit. The decision of learned lower courts on issue No. 7 is against the provisions of the land revenue Act and is liable to be set aside. He prayed that the judgment of lower courts is based upon conjectures, surmises, misreading, and non-reading of pleadings and

the evidence on record and is liable to be reversed. He lastly prayed for allowing the instant revision application.

7. Today, learned AAG has placed on record partial compliance report and seek further time to submit complete report with regard to verification of Ex.75/1 & 2 as to whether the same is permission or grant. Per learned A.A.G. the permission (Ijzatnama) could not be treated as a land grant order; however, he further submitted that recently Senior Member Board of Revenue has taken over the charge if this is the position of the case let this matter be taken up in the first week of November 2021 after due notice to the private respondents and intimation to their counsel.

8. Partly heard the learned counsel for the applicants and for arguments of learned A.A.G. the matter is adjourned to Adjourned to 6.11.2021.

Let a copy of this order be communicated to Senior Member Board of Revenue for compliance.

JUDGE

JUDGE