

**IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR**

Civil Revision No. S – 187 of 2011

(Muhammad Qasim vs. Muhammad Yousif & others)

Date of hearing : 29-10-2021

Date of decision : 29-10-2021

Mr. Abdul Wahab Shaikh associate of Mr. Achar Khan Gabol Advocate for the Applicant

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicant has impugned judgment dated 17-10-2011 passed in Civil Appeal No.80/2007 by the District Judge, Naushahro Feroze through which the judgment dated 26-10-2007 passed in Civil Suit No.02/2007 by the 1st. Civil Judge, Bhiria dismissing the Suit of the Applicant, has been maintained.

2. Learned Counsel for the Applicant submits that both the courts below have erred in law and facts and it is a case of misreading and non-reading of the evidence, therefore, this Civil Revision Application merits consideration. According to him, the Suit property i.e. Otaq was left by the deceased father of the Applicant and Respondents for the purpose of a common use and, therefore, a Suit for declaration ought to have been decreed.

3. Insofar as the Respondents are concerned on 23-08-2021, Respondent No.1 Muhammad Yousif holding CNIC # 45301-9144673-1 was in attendance and had sought time to engage Counsel but thereafter nobody has turned-up, whereas, the matter pertains to year 2011, therefore, it is being decided on the basis of available record and with the assistance of Applicant's Counsel.

4. I have heard the Applicant's Counsel and perused the record.

5. The Applicant filed a Suit seeking declaration and permanent injunction or possession in respect of one Otaq admeasuring 1350 sq. fts, on the ground that the same was left by his deceased father after distributing all other properties amongst Applicant and Respondents, whereas, Otaq was subsequently converted into residence of Defendant No.9, hence a declaration be given to that effect. At the very outset, it may be observed that the Suit of the Applicant was not maintainable, inasmuch as the Applicant had no legal title or right to seek a declaration under Section 42 of the Specific Relief Act, 1877. This objection was sustained by the trial Court as well as appellate Court and notwithstanding this

objection even the evidence was permitted to be led by the Applicant and even in the evidence, the Applicant failed to substantiate any right, title or claim. Not only this, even on merits he could not prove his assertions so made in the plaint as time and again while being cross-examined, he admitted certain facts which were against the assertions in the plaint.

6. I have gone through the entire record including the evidence as well as judgments passed by the trial Court and that of the appellate Court and do not see any reasons to interfere with these concurrent findings of the two Courts below, which appear to be correct in law and facts, therefore, this Civil Revision Application does not merit any consideration, hence was dismissed by means of a short order in the earlier part of the day and these are the reasons thereof.

Judge

ARBROHI