

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No. S – 04 of 2004

(Syed Khadim Hussain Shah vs. Muhammad Ismail & others)

Date of hearing: 06-12-2021

Date of Order: 06-12-2021

Mr. Kalandar Bakhsh Phulpoto, Advocate for the Applicants
Mr. Abdul Qadir Shaikh, Advocate for 1(a) to (e) and 2
Syed Jaffer Ali Shah, Advocate for Respondents 4(c), (d) & (e) and
10(a)

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned judgment dated 04.11.2003 passed by the learned District Judge, Sukkur, in Civil Appeal No.48 of 1986, whereby, while allowing the Appeal, judgment of the Senior Civil Judge, Rohri, dated 27.09.1986, through which the Suit of the Applicants was decreed, has been set-aside.

2. Heard all learned Counsel and perused the record. It appears that the Applicant had filed a second class Suit bearing No.05 of 1977 which was decreed vide judgment dated 27.9.1986, against which an Appeal also failed; whereafter, matter came up before this Court in Civil Revision No.37 of 1988 and by consent, an order was passed on 26.5.2003, relevant part thereof reads as under;-

“With the consent of learned advocates for parties, the revision is allowed and the matter is remanded to the court of learned District Judge Sukkur with the direction to allow the parties to lead evidence on the following issue;-

“What was the area held by the land owner / vendor on 21-01-1953, when the sale deed was executed as if it was less than minimum area as defined in Section 2(e) of the Sindh Rural Credit & Land Transfer Act 1947, what is the effect?”

3. On remand, the learned District Judge has passed the impugned judgment, wherein the relevant finding is as under; -

“26. Perusal of the sale deed in favour of the respondents/plaintiffs produced before the trial Court at Exh:103 transpires that no such certificate issued by the Revenue Authorities is appended with this registered sale deed that the same is not hit under the provisions of Section 3 & 7 read with S.2(e) of the Sindh Rural Credit and Land Transfer Act, 1947. A Certificate was to be obtained from the Revenue Officer that after alienation of this piece of land consisting of S.No.210, the seller have not got the land below minimum area nor any certificate from Collector is produced that this sale deed as provided U/s 4, sanctioning the permanent alienation of S.No.210. There is no evidence produced by the respondent/plaintiff that the Sellers were holding land more than 300 acres at the time of alienation of S.No.210 area about 06-12 acres in deh Hamanloi, Taluka Rohri, District Sukkur as such in absence of such evidence, the sale deed executed in favour of the respondents/plaintiffs is hit under the Sindh Act No.XLIX of 1947, the Sindh Rural Credit and Land Transfer Act, 1947, which makes registered sale deed as a void document. There is no such sanction from the Collector for alienation of S.No.210 in favour of Nadir Ali Shah and it is held in the case of Mst. Hawa reported in PLD 1969 Karachi Page 324 “sanction of Collector pre-requisite for alienation of land-Transaction without such sanction void and hence unenforceable Courts cannot enforce a contract which is against imperative provisions of law”.

27. It is also held that onus of proof regarding genuineness of deed lies on party taking advantage of transaction.

Under the provisions of Sindh Rural Credit and Land Transfer Act, 1947, no sale in respect of land could be executed without the prior permission of the Collector in respect of the land less then minimum area of 300 acres and the contract if any without permission of the Collector or not falling within the ambit of Section 3 & 7, the Courts cannot enforce such contact which is against the Statue.

28. In the present case neither the respondent/plaintiff have mentioned in their plaint nor have produced any evidence that at the time of alienation of land through registered sale deed in the year 1953, the seller were possession more that minimum area of 300 acres of land nor any certificate is appended with the registered sale deed nor any sanction of the Collector is produced as such the registered sale deed dated 21-01-1953 is against the Statue and void document.”

4. Applicants Counsel has been confronted as to the factual determination in respect of the land as per the earlier order in the Civil

Revision and the holding of minimum area thereof, and he has not been able to satisfactorily respond; as apparently finding on the issue framed by this Court is against the Applicants; he however, has taken another plea (which was not part of the consent order in the earlier Revision) that the claim of the Respondents was time barred and in support, relied upon the case of ***Muhammad Ibrahim and others v. Mir Muhammad and 08 others (1995 MLD 1962)***. With respect, such argument appears to be misconceived as the matter was remanded by this Court with consent of the parties and was to be decided only on one issue as above, which finding of fact has come against the Applicants, whereas, even otherwise, it is the Applicants who had come before the Court by way of a Civil Suit, and therefore, the issue of limitation would not arise; hence no case is made out, therefore, by means of a short order passed in the earlier part of the day, this Civil Revision Application was dismissed and these are the reasons thereof.

Judge

ARBROHI