

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 16 of 2002

Muhammad Ismail Lakho (deceased) through his legal heirs v.

Government of Sindh and others

Date of hearing: **13-12-2021**

Date of decision: **13-12-2021**

Mr. Abdul Qadir Shaikh assisted by Mr. Abdul Basit Shaikh, Advocate for the Applicants.

Mr. Mushtaque Ahmed Shahani, Advocate for legal heirs of Respondent No.3.

.....

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned judgment dated 04-10-2001 passed by the District Judge, Naushahro Feroze in Civil Appeal No.102 of 2000, whereby the judgment dated 02-10-2000 passed by the Senior Civil Judge, Kandiaro in F.C. Suit No.16 of 1996 has been maintained, through which the Suit of the Applicants was dismissed.

2. Learned Counsel for the Applicants submits that both the Courts below have erred in law in dismissing the Suit of the Applicants, as the impugned judgments were passed without considering the admitted facts; that refusal of registration of the sale deed by the Sub-Registrar on the directions of Assistant Commissioner was an illegal act and is without lawful authority; that the controversy as raised by private Respondents already stands decided in an earlier round of litigation by the Civil Court in respect of the same land; that the said judgment of the Appellate Court had attained finality, which is against the Respondents; that the Revenue authorities cannot interfere in such matters; that the land in question is not within 20 chains, whereas, even otherwise the restriction was imposed much later in time and the property was allotted earlier, hence, the same restriction would not apply, and therefore, both the judgments are liable to be set aside. In support, he has relied upon Carrier Telephone Industries Ltd., Islamabad v. Messrs Sohail Brothers and another (PLD 1978 Lahore 1116), United Sugar Mills Ltd., Karachi v. District Magistrate, Sukkur and another (PLD 1979 Karachi 410), Amjad H. Malik v. Mst. Razia Begum and others (1989

SCMR 1414), The Murree Brewery Co. Ltd. v. Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others (PLD 1972 Supreme Court 279), New Khan Transport Co. Ltd. v. Province of Punjab through Secretary Transport, Lahore and 4 others (2001 CLC 65) and Jamia Masjid Habibia through Namazis/Mohallah Residents and others v. Dhoraji Cooperative Housing Society through General Secretary and 5 others (PLD 2015 Sindh 39).

3. On the other hand, Respondents' Counsel has opposed this Revision Application on the ground that there are concurrent findings of the two Courts below; that the sale deed was never registered; hence, no cause of action accrued for filing of the Suit nor a declaration could have been sought under Section 42 of the Specific Relief Act; that the land in question is meant for *asaish* and cannot be allotted; that the earlier proceedings and the judgment and decree of the Trial Court, affirmed in Appeal, has no nexus with the present Suit land, and therefore, no ground is made out.

4. I have heard both the learned Counsel and perused the record.

5. It appears that it is the case of the Applicant / Plaintiffs as pleaded in the Suit for declaration and injunction that the Suit land including Survey Nos.548 & 116 and some other land was originally owned by Moula Bux, who was allotted the same by the Barrage Department in the year 1951 & 1952, and was mutated in the record of rights in his name. It has been further pleaded that in 1957, the land was sold out to one Sher Muhammad by way of a registered sale deed and the record was again mutated in his name, and subsequently, Sher Muhammad sold out various portions of the land including Survey No.116 to Haji Abdul and Ayaz Hussain Lakho, which was impugned and challenged by the present and same Respondent No.3 by moving an application before the Revenue Department on the ground that the land falls within 20 chains of Village Mubeen Lakho. It has been further stated that such action was impugned by way of two separate Civil Suits bearing Nos.356 & 357 of 1982, which were decreed by the Trial Court vide judgment dated 28-07-1993 and affirmed in Civil Appeals No.62 & 63 of 1993 by the Appellate Court vide judgment dated 14-09-1995. It appears that in the said judgments, the precise issue was identical that whether the Suit land was meant for *asaish* purposes for the village of Respondent No.3 and whether the Suit land was granted by the Barrage Department to the predecessor-in-interest of the then Plaintiffs and whether the order passed

by the Revenue Department, whereby it was declared to be within 20 chains, was illegal and without jurisdiction. All such findings of facts were recorded against the present Respondent No.3, who was also Defendant No.3 in these Suits.

6. Counsel was confronted in open Court regarding the earlier proceedings, which apparently, had attained finality, and to this, he has argued that firstly, the land was different, and secondly, the appellate Courts judgment was challenged by way of a Civil Revision before this Court, and in support, he has also read out the evidence of Respondent No.3, wherein, he has disclosed such facts. Despite repeated requests of the Court, no details regarding the Civil Revision Application was provided, which leads to a presumption that such fact is incorrect and falsely recorded in the evidence on oath by Respondent No.3. Insofar as the question that the land is different is concerned, in the evidence it has come on record that the land is also the same; whereas, a finding of fact regarding the same being not within 20 chains has already come on record. It has also been observed by the Court in the earlier round that the restriction regarding the land being within 20 chains and being unavailable for allotment to anyone was enforced in 1961; whereas, this land was admittedly granted much prior in time. The witness / Respondent No.3 (Exh-77) has replied that "it is correct that Suit land was emerged from U.A. No.116"; he has further replied that "A suit in respect of S.No.116 filed by Haji Abdul and others was decreed and appeal against that was also dismissed...". It is clear admission that the suit land is the same as was a subject matter of earlier proceedings. This admission is none other than by Respondent No.3 who was also Defendant No.3 in the earlier Suit. All these facts have already been adjudicated upon by the competent Court having jurisdiction, and apparently, is in respect of the same land; therefore, the same Defendant, who has otherwise contested the matter in those proceedings without any legal right in his favour, is also hit by *res judicata*. At least, to his extent, *res judicata* would apply as he is the same party in both the proceedings.

7. As to his evidence, it has come on record that on the one hand, he has deposed that the land in question is Government land, and at the same time, he also claims to be in possession and making applications for allotment of the same. He has also claimed to be a lessee but has failed to prove the same with any documentary evidence. This contradictory stance of Respondent No.3 leads to only one conclusion that his entire evidence

cannot be looked into as the credibility of this witness is in serious doubts who has come before the Court and on oath is making false statements, even regarding admitted record. Such conduct on the part of a witness has to be deprecated and for the present purposes at least it cannot be considered in favour of the Respondents.

8. Lastly, no Government official has come forward to contest the matter and lead evidence, and mere filing of a written statement purportedly supporting the stance of Respondent No.3, does not suffice¹. Respondent No.3 has otherwise obtained a favorable order from these Respondents without first overcoming the hurdle of the earlier judgments and decrees, hence, the stance of official respondents in this manner cannot be relied upon in these proceedings.

9. In view of hereinabove facts and circumstances of this case, it appears that the two Courts below have failed to look into this aspect of the matter, as firstly, the same controversy already stands decided in respect of the same land, and secondly, how could the Assistant Commissioner can write a letter to a Sub-Registrar for not registering the sale deed on the ground that the land has been declared as *asaish*; whereas, there is a contrary finding on this issue against them vide judgment of the Civil Court duly affirmed the by the Appellate Court which has repelled this argument that the land is not for *asaish* purposes. This aspect of the matter has not been touched upon or dealt with by the two Courts below, hence, this Revision Application merits consideration as the impugned judgments are an outcome of misreading and non-reading of the evidence; and therefore, this Revision Application is allowed by setting aside the impugned judgments of the Trial Court and the Appellate Court dated 02-10-2000 and 04-10-2001, respectively, and the Suit of the Applicants stands decreed as prayed.

10. Revision Application is allowed.

J U D G E

Abdul Basit

¹ PLD 2010 SC 604