

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 109 of 2006

Shabbir Ahmed Memon & others v. Parvez Ahmed Memon & others

Date of hearing: **20-12-2021**

Date of decision: **20-12-2021**

Applicant No.1 Shabbir Ahmed Memon, present in person.
Respondent No.1 Parvez Ahmed Memon, present in person.
Mr. Noor Hassan Malik, Assistant Advocate General Sindh.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision Application, the Applicants have impugned judgment and decree dated 24-06-2006 and 30-06-2006, respectively, passed by the District Judge, Khairpur in Civil Appeal No.59 of 2005, whereby order and decree dated 22-06-2005 and 29-06-2005, respectively, passed by the 2nd Senior Civil Judge, Khaipur in F.C. Suit No.240 of 2004, through which the Plaintiff in Suit of the Applicant was rejected in terms of Order VII Rule 11 CPC, has been maintained.

2. Heard the Respondent No.1, who is appearing in person, and perused the written arguments of the Applicants' Counsel.

3. It appears that the precise case, as setup by the Applicants / Plaintiffs in their Plaintiff, was that Ghulam Hyder, (**father**) the predecessor-in-title of the Plaintiffs had acquired ownership of the Suit land on the basis of prescriptive adverse possession, which stands perfected in December 1982, whereby, the original transferee's / his successors-in-interest claim and title on the Suit property had extinguished. The Suit was contested by the private Respondent, and an application was filed under Order VII Rule 11 CPC, which was allowed and the Plaintiff was rejected; whereas, through impugned judgment of the Appellate Court, the said order was also maintained.

4. From perusal of the record as well as the reasoning assigned in the impugned orders of the Courts below, it appears that admittedly it is the Applicants own case as reflected from the pleadings that the title by way of adverse possession was purportedly perfected in 1982 when the

predecessor-in-interest of the Plaintiffs i.e. their father was alive who expired. Admittedly, the father never initiated any proceedings and it is only after his expiry (in 1986) and passage of almost 18 years, that the present Applicants filed the present Suit as legal heirs of Ghulam Hyder, who according to them, had perfected his rights in the Suit property on the basis of adverse possession. In that case, the Suit by itself was hit by limitation and was time barred on the basis of the Applicants own pleadings. Though there is no specific finding on this point in the orders passed by the two Courts below; as plaint has been rejected on another legal ground, which would be dealt with subsequently; but insofar as limitation is concerned, the Suit was also hit by such limitation and was time barred. There is nothing in the Plaint to justify as to the delay; whereas, the cause of action paragraph only states that the same accrued in 2004. It has neither been pleaded nor stated in any manner as to why their late father never sought a declaration on the basis of adverse possession, which according to the Applicants own case had been purportedly perfected in 1982, whereas, he was still alive till 1986. In view of such facts it was incumbent upon the Applicants to satisfy this delay and then state in the Plaint as to what prompted them to assert the right of adverse possession after expiry of their father, and that too belatedly after 18 years. There is nothing on record to justify such delay, as apparently, the Applicants / Plaintiffs never disclosed any such fact and only came to the Court by stating that the cause of action accrued in 2004.

5. As to the claim of adverse possession and the plea so raised in the year 2004, the Respondent No.1, appearing in person, has relied upon judgment of the Hon'ble Supreme Court reported as Maqbool Ahmed v Government of Pakistan (1991 SCMR 2063) also referred to by the two Courts below and has argued that right of adverse possession, if any, extinguished on the date of pronouncement of this judgment, with effect from 31.8.1991, whereby Section 28 of the Limitation Act, 1908, has been held to be against the injunctions of Islam. To overcome this argument, the Applicants' Counsel in his written submissions has stated that since the right was perfected in 1982, much prior to the pronouncement of this judgment; hence, the case of the Applicants would be governed under the provisions of law which then prevailed. If that be so, and even if this argument is accepted, the same also does not appear to be justifiable inasmuch as it is not the case of the Applicants that any proceedings initiated by them were pending before pronouncement of judgment in the case as above. Admittedly, the Suit was filed in 2004 when the judgment was already in

field, whereas, admittedly no proceedings were pending for which it can be argued that they would be governed by any law already in field. Notwithstanding this argument, the Shariat Appellate Bench of the Hon'ble Supreme Court had specifically held that the decision shall take effect from 31.8.1991 and on such date section 28 shall also cease to have effect.

6. As noted hereinabove, the Suit by itself was time barred as the cause of action accrued in the year 1982, if any, whereas, the deceased Ghulam Hyder never initiated any proceedings; hence, even if the argument of the Applicants' Counsel regarding subsisting rights in adverse possession is accepted, the Suit by itself was time barred.

7. In view of hereinabove facts and circumstances of this case, since the two Courts below have arrived at a fair and just conclusion, which is in accordance with law; therefore, this Revision Application does not merit any consideration, hence, was **dismissed** with pending application by means of a short order in the earlier part of the day and these are the reasons thereof.

Abdul Basit

J U D G E