IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. 64 of 1992

Applicants:	**Province of Sindh & Others, Through Mr. Ahmed Ali Shahani, Assistant Advocate General along with Mumaz Ali Gumro, Assistant Executive Engineer, Mechanical Sub-Division, Kashmore**
Respondents:	**Rahim Bux Khan & Others, Through Mr. Mushtaq Ahmed Shahani, Advocate.**
Dates of hearing:	**27.09.2021, 08.11.2021 & 29.11.2021.**
Date of Order:	**14.01.2022**

J U D G M E N T

Muhammad Junaid Ghaffar J. - Through this Civil Revision Application, the Applicants have impugned Judgment dated 30.09.1991 passed by the IInd Additional District Judge, Jacobabad in Civil Appeal No.07 of 1989 whereby, while dismissing the Appeal, Judgment dated 06.02.1989 of Senior Civil Judge, Kandhkot in F. C. Suit No. 128 of 1984 has been maintained through which the Suit of the Respondents was decreed.

2. Heard learned AAG and Respondent's Counsel and perused the record.

3. Before coming to the merits of the case, the first and foremost issue which has been raised on behalf of the Respondents is that this Civil Revision Application is hopelessly time barred. It appears that though office had not raised any objection to this effect; but apparently this Civil Revision Application has been filed belatedly on 14.05.1992, whereas, the Judgment and Decree is dated 30.09.1991 and 08.10.1991 respectively. This Revision is approximately time barred by 123 days after exclusion of the time consumed in obtaining the certified copy of the Judgment and Decree and the limitation period of 90 days. On one of the dates of hearing, learned AAG was confronted; and his response was that though

there is delay in filing of this Revision; however, it is the case of the Applicants that since the order impugned is a void order, no limitation runs. This appears to be a very lame and evasive excuse, and is not an appropriate approach in every run of the mill case, specially by Government departments. They are not to be treated any different as against a private litigant. However, ordinarily, in matters wherein, any case is time barred the Courts have always followed a strict view, whereas, delay of each day has to be explained for seeking condonation of limitation; but at the same time, when it is a case wherein Civil Revisional jurisdiction under section 115 C.P.C. is being exercised by the High Court, this aspect has to be looked into with a somewhat different view. The same is premised on the fact that the Courts exercising Revisional Jurisdiction has a vast discretion as compared to any other proceedings coming up before the said Court. The consistent view is that the Court is never robbed of its suo motu jurisdiction only for the reason that a Revision Application requesting invoking of such jurisdiction is filed beyond the period prescribed thereunder. It has been further settled that revisional jurisdiction is corrective and supervisory in nature; hence, no harm would be caused if the Court seized of a revision petition exercises its suo motu jurisdiction to correct the errors of jurisdiction committed by the courts below. Such fact and the powers of the Courts can be ascertained from the plain language used in Section 115 of CPC and the intention of the legislature, whereas, exercise of this jurisdiction if allowed to go into the spiral of technicalities and restrictions of limitation, the very purpose behind conferring such jurisdiction would be defeated. The Hon'ble Supreme Court through a five-member bench in the case reported as ***Hafeez Ahmed and others Vs. Civil Judge, Lahore and others*** **(PLD 2012 SC 400)**, has settled this aspect of the matter and has put the controversy at rest in the following terms: -

> 15. In all the judgments cited and discussed above it has been held that revision petition filed under section 115 of the Code is liable to be dismissed if filed beyond ninety days and that section 5 and section 12(2) of the Limitation Act are not applicable but it does not appear to be correct in view of the discussion made above, except to the extent of Section 5 of the Limitation Act. It is however, significant to note that in none of these judgments, the part of the provision relating to the exercise of suo motu jurisdiction by the revisional court has either been argued or adverted to except in the judgment rendered in the case of **Province of Punjab through Collector and others v. Muhammad Farooq and others** (supra). In the aforesaid judgment, no doubt, this Court held that section 12(2) of the Limitation Act is not applicable yet it did not approve of dismissal of a revision petition on the score of

> limitation. It, instead, appreciated the decision on merits in the exercise of suo motu jurisdiction of such Court, if, the conditions sine qua non for such exercise are satisfied.
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> 16. ……
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> 17. Now question arises whether suo motu jurisdiction under section 115 of the Code could be exercised by the High Court or the District Court in a case where a revision petition has been filed after the period of limitation prescribed therefore. The answer to this question depends on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Such Court may exercise suo motu jurisdiction if the conditions for its exercise are satisfied it is never robbed of its suo motu jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefore. Such petition could be treated as information even if it suffers from procedural lapses or loopholes. Revisional jurisdiction is pre-eminently corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a revision petition, exercises its suo motu jurisdiction to correct the errors of the jurisdiction committed by a subordinate Court. This is what can be gathered from the language used in Section 115 of the Code and this is what was intended by the legislature, legislating it. If this jurisdiction is allowed to go into the spiral of technicalities and fetters of limitation, the purpose behind conferring it on the Court shall not only be defeated but the words providing therefore, would be reduced to dead letters. It is too known to be reiterated that the proper place of procedure is to provide stepping stones and not stumbling blocks in the way of administration of justice. Since the proceedings before a revisional Court is a proceeding between the Court and Court, for ensuring strict adherence to law and safe administration of justice, exercise of suo motu jurisdiction may not be conveniently avoided or overlooked altogether. The Court exercising such jurisdiction would fail in its duty if it finds an illegality or material irregularity in the judgment of a subordinate Court and yet dismissed it on technical grounds…..”

4. Very recently, once again the Hon’ble Supreme Court in the case of ***Chief Executive, PESCO Department, Government of Khyber Pakhtunkhwa, Peshawar and others Vs. Afnan Khan and another*** **Civil Appeal No.443 /2O21** has again reiterated the same principle by following the case of *Hafeez Ahmed* (Supra). In this present matter for the reasons to follow in respect of the merits of the case, it apparently reflects that the two courts below have failed to exercise proper jurisdiction; not only this, have also committed gross illegalities in exercising such jurisdiction by decreeing the Suit of the private Respondents; hence, this is a fit case to exercise suo motu jurisdiction under Section 115 CPC and therefore, the delay if any, in filing of this Revision Application is hereby condoned.

5. As to merits of the case, it appears that the Respondents filed a Suit for Declaration that they are sole absolute and exclusive owners of the Suit

land[1] as stated in Para 4 of the plaint. The said Suit was decreed by the learned Trial Court which has also been maintained by the learned Appellate Court. The precise reason which has prevailed upon the two courts below appears to be that Respondents have certain mutation entries in their names recorded by the concerned Mukhtiarkars which have never been challenged; hence, they are entitled for such a declaration. In addition to this, the two courts below have also come to the conclusion that the Applicants relied upon certain photocopy documents which are inadmissible in law; hence, they have no case and their plea so taken in the written statement as well as in the Appeal have been discarded.

6. However, with profound respect, the two courts below have seriously fallen in error in arriving at such conclusion. As to reliance on certain photocopies of documents, it may be observed that this finding of the two Courts below is not based on proper appreciation of law. Only one photocopy was produced i.e. Notification dated 14.11.1960 (Exh-115), which admittedly was a public document within the meaning of Article 85(1) & (4) of the Qanoon-e-Shahadat Order, 1984, and was admissible in evidence in terms of Article 76(f) ibid; hence, even if the same was not produced in original, they can be relied upon as secondary evidence. It is not in dispute that such documents were produced in evidence by the Applicant and were exhibited; though with certain objections. In fact, the law is settled to an extent that that a public document could not be ignored merely because it was not confronted and was not produced in Court and its intrinsic value shall be examined on its contents[2]. As to remaining documents including which were auction notices / letters in respect of Suit property they were produced in original and have been examined and seen from the R&P of the case available before the Court. To that extent, the finding of the two Courts below is not only against the law; but is also contrary to the facts.

7. As to the claim of Respondents it may be observed that mere mutation entries in the record of rights are not title documents to seek a declaration under Section 42 of the Specific Relief Act, 1877. Admittedly, these entries originate on the basis of some *foti khata badal*. The Respondent's case is that the Suit land is part of some 68-21 Acres

[1] 15 Acres, from Piece No. 1-A (1-Alf) Block No. 33 Deh Domewali Tapo Mithri Taluka Kashmore District Jacobabad known as Nursery

[2] Karachi Metropolitan Corporation v Raheel Ghayas (PLD 2002 SC 446)

originally owned by one Mr. Pandhi S/o Piyare Khoso which then devolved upon his legal heirs [Rahim Bux (Son) & Mst. Rahiman (daughter)] whose names were recorded and mutated through entry No. 325 dated 15.08.1983. It is their further case that thereafter, [Mst. Rahiman (daughter)], one the legal heirs, sold her share to Aughman (Son of Rahim Bux), whereas, Rahim Bux also sold part of his share to other persons and all such oral sales were recorded by the concerned Mukhtiarkar and finally the property at the time of filing of Suit was purportedly owned by Respondents / Plaintiffs in the Suit. These plaintiffs also include the legal heirs of Pandhi as well as subsequent buyers. However, it is a matter of record that in the entire proceedings including the evidence it has neither been pleaded nor proved that as to how Mr. Pandhi was the owner of the Suit land. There appears to be no such allotment or any other document which could prove his ownership which then devolved upon his legal heirs by way of Foti Khata Badal. If the original ownership of Mr. Pandhi is never proved, then the subsequent mutation entries including the Foti Khata Badal and recording of oral sale in favour of other Respondents is of no value. As per settled law the original ownership of the person from whom the title is being derived has to be proved and only then the subsequent ownership or for that matter the mutation entries can be looked into. It is well settled that mutation entry is not a document of title, which by itself does not confer any right, title or interest, and the burden of proof lies upon the person, in whose favor it was mutated to establish the validity and genuineness of transfer in his/her favor; it is also well settled law that if the foundation is illegal and defective then entire structure built on such foundation, having no value in the eyes of law, would fall on the ground[3]. It is settled principle of law that mutation confers no title, whereas, once a mutation is challenged, the party that relies on such mutation(s) is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation in dispute[4].

8. It is also a matter of record rather admitted in Para 4 of the plaint that the Suit land is a "**Nursery land**" and therefore, in law it could not have been permanently allotted to any private person. The Respondents witness [PW-1-Exh-104] while being cross examined has admitted that "*it is a fact that suit land is however called nursery land*". The land appears to

[3] Nasir Rahim v Province of Sindh (2021 CLC 579)
[4] Muhammad Akram v Altaf Ahmed (PLD 2003 SC 688) & Ahmed v Nazir Ahmed (2019 CLC 1841)

be owned by the Irrigation Department and as per record, it used to be auctioned every three years and when the impugned Notice dated 29.12.1984 was issued by the Irrigation Department for auction / lease of the Suit land for the next term, the Respondent's came up by way of a Civil Suit seeking declaration in respect of ownership of the Suit land which has been accepted by the two Courts below. This finding of the two Courts below on the basis of mere mutation entries without probing or looking into Pandhis ownership and his title to the Suit property which belongs to the Irrigation Department pursuant to Notification dated 14.11.1960. does not appear to be correct in law. The ownership, if at all, could have only been claimed by the Respondents by way of allotment of the Suit land through the Irrigation Department and not otherwise. This admittedly is not the case here. Nothing has been placed on record so as to establish the ownership of deceased Pandhi on the basis of which the Respondents ownership including the legal heirs of Mr. Pandhi can be proved.

9. It may also be observed that the two Courts below also failed to look into the fact that the Suit land was owned by the Irrigation Department, Government of Sindh, pursuant to Notification dated 14.11.1960; having been in possession for more than 25 years and leasing the same for the past many years through open auction starting from 1971 to 1984, whereas, even the fraudulent entries in the name of private respondents was requested to be cancelled by the concerned Mukhtiarkar vide his letter dated 15.10.1983; that there is no record of existence of Block No.33-1/A in the revenue record; that all entries of the respondents are an outcome of fraudulent means. All these facts so raised in the written statement have been discarded without any further probe. The real facts so brought on record by the Applicants have not been properly ascertained as apparently in this case the entire edifice of the respondent's case is on mutation entries coming into existence pursuant to a *foti khata badal* in respect of some Government owned land. How the land which admittedly was a nursery land could have been allotted and owned permanently by the Respondents is unclear; and has gone unexplained.

10. Lastly, as to the observation of the Courts below that the Applicant failed to produce the lessee namely Noor Muhammad Khoso, who

according to the Applicant was in possession and had in fact connived with the Respondents in taking over the possession, it would suffice to hold that this was not at all required. The Applicants produced original Agreement dated 13.3.1982 entered into with him by the Irrigation Department (Exh-129) which has gone unchallenged and was enough proof to establish that the land was owned by the Irrigation Department reserved for nursery purposes and was being leased through auction since long and at the time of issuance of impugned notice it was leased to Noor Muhammad.

11. In view of the above facts and circumstances of this case, it appears that the two courts below have seriously fallen in error and have failed to exercise proper jurisdiction and notwithstanding the concurrent findings of the two courts below, this Court must exercise the jurisdiction so vested in terms of Section 115 CPC, and therefore, while exercising such jurisdiction this Revision Application is hereby allowed and the Judgments of the trial Court and the Appellate Court dated 06.02.1989 and 30.09.1991 respectively are hereby set aside. The Revision Application stands allowed in the above terms.

Dated: 14.01.2022

J U D G E

Arshad/