IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision Application No.S-70/2012

1. For hearing of main case
2. For hearing of CMA No.1325/2018
3. For hearing of CMA No.443/2012

Mr. Tariq G. Hanif Mangi, Advocate for applicant
Mr. Jam Jamshed Akhtar, Advocate for respondent No.1

Date of hearing : 01.11.2021
Date of decision : 01.11.2021

JUDGMENT

KHADIM HUSSAIN TUNIO, J.- Through instant Civil Revision Application, the applicant has impugned the order and decree dated; 10.05.2012, passed by the learned District Judge, Ghotki, whereby a Civil Appeal No.74 of 2011 Re- Abdul Khalique Vs. Khan Muhammad and another was dismissed with no order as to costs and upheld the judgment and decree dated; 11.10.2011, passed by the learned Senior Civil Judge, Mirpur Mathelo whereby FC Suit No. 32 of 2006 was decreed.

2. Precisely, the facts of instant Civil Revision Application are that the respondent No.1/plaintiff filed a suit seeking relief of possession through pre-emption and permanent injunction, alleging therein that he is the owner of Survey Nos. 341 (5-30) acres, 482 (01-16) acres and 483 (02-05) acres situated in Deh Dhangro, Taluka Mirpur Mathelo, District Ghotki to the extent of 0.34 paisa while respondent No. 2 was the co-owner in the said land to the extent of 0.32½ paisa, which he had sold out to the applicant through a registered sale deed dated 17.03.2004 in the sum of Rs.200,000/-, he on coming to know about the sale through Muhammad Ameen immediately declared his intention to acquire the said land by making Talab-e-Mowasibat being Shafi-e-Sharik, Shafi-e-Khalit and Shafi-e-Jar and thereafter approached the applicant in presence of his witnesses Muhammad Ameen and Inayatullah and informed him about his Talab-e-Mowasibat already made and requested him to transfer the suit land in his favour by

recognizing his superior right of pre-emption over it by receiving the sale consideration amount hence, made Talab-e-Ishhad, who requested for time and then kept him on false hopes and promises, he thereafter, filed the suit for possession through pre-emption.

3. After service of summon, the appellant filed joint written statement stating therein that the suit land is privately partitioned, therefore, the respondent No.1 is having no right of pre-emption over it. Same according to him was purchased in the sum of Rs.600,000/- but due to ill advise, it was written in the registered sale deed to have been purchased for Rs.200,000/-, that too on refusal of respondent No. 1.

4. From the pleadings of the parties, the learned trial Court framed the following issues;

1. Whether the plaintiff is owner to the extent 0-34 paisa shares in Survey Nos. 341 (05-30) acres, 482 (01-16) acres and 483 (02-05) acres in Deh Dhangro, Taluka Mirpur Mathelo?
2. Whether the respondent No.2 prior to sale, was not co-sharer in the aforesaid land to the extent of 0-32 ¼ paisa share therein as the same was already partitioned?
3. Whether the plaintiff is Shafi-e-Shareek, Shafi-e-Khalit and Shafi-e-Jar in respect of the suit land and entitled to right of pre-emption over 0-32 ¼ paisa share in the suit land as sold by the defendant No.2 to the defendant No.1.
4. Whether the plaintiff had properly made the requisite Talabs of Talab-e-Mowasibat and Talab-e-Ishhad?
5. To what relief, if any, is the plaintiff entitled to?
6. What should the decree be?

5. To prove its case, the respondent No.1 examined himself and produced copy of registered Sale Deed and true copies of Form-VII B. He also examined DW Muhammad Ameen and DW Inayatullah and then closed the side.

6. On the other hand, applicant has examined himself and produced Roobkaris issued by the Assistant Executive Engineer Sub-Division Irrigation at Mirpur Mathelo and Assistant Executive Engineer Yaro Lund at Sub-Division of Mirpur Mathelo to show that the lands of respondent No. 1 and suit land are situated at a different water course. He also examined DWs Ali Nawaz, Nawab and Ghulam Mustafa and thereafter his side was closed.

7. After hearing the parties and scanning the evidence, the suit of the respondent No. 1/plaintiff was decreed in his favour, vide judgment and decree dated 11.10.2011, which was impugned by the appellant by filing Civil Appeal No. 74 of 2011 Re- Abdul Khalique *vs.* Khan Muhammad and another. The appellate Court viz. District Judge, Ghotki after hearing both the parties dismissed the said civil appeal, hence the applicant being aggrieved from the said appeal preferred the instant civil revision application.

8. Learned counsel for the applicant has contended that the impugned judgment is a conflicting one and as such requires interventions of this Court in its revisional jurisdiction; that the impugned judgments passed by the two Courts below are without application of judicious mind and based on surmises and conjectures; that the two Courts below have erred by not going through the evidence adduced by either party as such the same are liable to be set-aside by this Court; that the learned two Courts below have acted illegally with material irregularities and have proceeded on erroneous assumption of facts; that the learned two Courts below have only focused on evidence of the applicants/defendants side while decreeing the suit in favour of the respondents/plaintiff; that the learned trial Court while formulating the points for determination has not framed the important point for determination i.e. *"Whether the suit of the plaintiff is maintainable"* and the findings of the learned Court on the said issue have not been relied upon by the appellate Court despite the fact that it was hardly argued along with other points decided by the learned trial Court; that the respondent/plaintiff is not a joint owner in the property under sale deed purchased by the applicant, therefore, the respondent No. 1/plaintiff cannot for claim himself to be a pre-emptor being Shafi-e-Sharik, Shafi-e-Khalit and Shafi-e-Jar; that the learned trial Court has not framed proper points for determination as provided by the provision of Order XXXXI Rule 31 CPC; that the respondent/plaintiff has failed to deposit the sale consideration amount within stipulated period of 30 days as directed by the learned Senior Civil Judge.

9. Conversely, the learned counsel for the respondent No. 1 has argued that the judgment passed by the learned two Courts below are in accordance with law; that oral as well as documentary evidence has been considered by the learned two Courts below while passing the impugned judgment and decree; that the respondent/plaintiff has proved his case by adducing sufficient evidence; that the respondent/plaintiff is a co-sharer of the suit land with respondent No. 2; that the respondent/plaintiff has not made Talabs in accordance with law; that there are concurrent findings and there is no conflicting findings of the judgment passed by the learned two Courts blow; that the impugned judgments have been implicated in their letter and spirit; that the execution application has been allowed by the learned executing Court and registered Sale Deed has also been executed in favour of the respondent No. 1/plaintiff in findings and directions of the executing Court; that the respondent/plaintiff has deposited the sale consideration amount of Rs.200,000/- with the trial Court in compliance of order dated 11.10.2011 with the permission of the learned Senior Civil Judge in compliance of order passed on an application dated 25.10.2011 passed on the application of respondent No.1/plaintiff which has not been challenged by the applicant/defendant before any appellate or revisional Court and said order has attained finality and the applicant/defendant has not taken such plea before the appellate Court in his civil appeal as well as before this Court in memo of instant civil revision application. He lastly contended that present civil revision application may be dismissed and impugned judgments and decree may be upheld.

10. I have heard learned counsel for the respective parties, given due consideration to their arguments and also perused the relevant record.

11. As far as the merits of the case are concerned, from the perusal of record, it is undisputed that the appellant and respondent/plaintiff were co-sharers of land bearing survey No. 341 (5-30) acres, 482 (01-16) acres and 483 (02-05) acres of Deh Dhangro, Taluka

Mirpur Mathelo, District Ghotki, however as per the appellant, the same were privately partitioned during between the parties. Although, the sale deed concerning the suit lands shows that no such partition had taken place and that in fact the absolute sale was in respect of all the concerned land owned, pre-emption of which the respondent sought. However, even if such exercise was said to have taken place, this merely takes away the right of pre-emption from the respondent as Shafi-e-Sharik, but the right to pre-empt the land by the respondent as Shafi-e-Khalit and Shafi-e-Jar still remains intact considering that the suit land is settled on the water course No. 11-AR Dahar Wah which again is undisputed and sufficient material in this regard was examined before the trial Court and duly considered. Now, the question left to be determined is whether the respondent had made the *Talbs* (demands) for pre-emption and if sufficient material was brought on the record to prove the same. Before the trial Court, the respondent deposed that he initially came to know of the sale of the suit land through his witness DW Muhammad Ameen on 30.04.2006 at 8 a.m. who then witnessed the talb of the respondent to pre-empt the land. Then, sometime later, DW Inayatullah approached the respondent and DW Muhammad Ameen and informed them of the sale of the suit land to applicant Abdul Khalique to whom the respondent again declared his right to pre-empt the suit land in the same consideration he had purchased it for, in the presence of both witnesses namely Muhammad Ameen and Inayatullah. To this, the applicant sought for time to think and was approached twice more by the respondent when eventually, the third time he refused to sell the same. In this regard, both the witnesses have remained in consonance with the version of the respondent. The names of both these witnesses are also found in the plaint and they have been examined before the trial Court. This aspect of the case was duly attended to by both Courts below correctly. The prime contention of the applicant was that the respondent was never a Shafi-e-Sharik, Shafi-e-Khalit or Shafi-e-Jar to have claimed the right of pre-emption, however the same has already been dealt with. At no point did the applicant ever

openly dispute the Talbs made by the respondent which too leaves the same undisputed.

12. In the presence of concurrent findings by the two courts below, it would be appropriate to refer, at this junction, case law titled as ***Muhammad Din v. Muhammad Abdullah*** **(PLD 1994 SC 291)** that:

> "4. It is well-settled law that a concurrent finding of fact by two Courts below cannot be disturbed by the High Court in second Civil Appeal much less in exercise of the revisional jurisdiction under section 115, C.P.C., unless the two Courts below while recording the finding of fact have either misread the evidence or have ignored any material piece of evidence on record or the finding of fact recorded by the two Courts below is perverse. The jurisdiction of the High Court to interfere with the concurrent finding of fact in revisional jurisdiction under section 115, C.P.C. is still narrower. The High Court in exercise of its jurisdiction under section 115, C.P.C. can only interfere with the orders of the subordinate Courts on the grounds, that the Court below has assumed jurisdiction which did not vest in it, or has failed to exercise the jurisdiction vested in it by law or that the Court below has acted with material irregularity effecting its jurisdiction in the case, (See Umar Dad Khan v. Tilla Muhammad Khan, PLD 1970 SC 288, Muhammad. Bakhsh v. Muhammad Ali, 1984 SCMR 504, Muhammad Zaman v. Zafar Ali Khan PLD 1986 SC 89 and Abdul Hameed v. Ghulam Muhammad 1987 SCMR 1005). Under this jurisdiction the High Court only corrects the jurisdictional errors of subordinate Courts. The fact that the High Court while reappraising the evidence on record reached a conclusion different from those arrived at by the two Courts below, could never be a ground justifying interference with a finding of fact much less a concurrent finding recorded by the two Courts below on the basis of evidence produced before them, in exercise of its revisional jurisdiction under section 115, C.P.C."

13. The same view has time and again been reiterated and in case titled ***Farhat Jabeen v. Muhammad Safdar and others*** (**2011 SCMR 1073**), wherein it has been held that:

> **"***Heard. From the impugned judgment of the learned High Court, it is eminently clear that the evidence of the respondent side was only considered and was made the basis of setting aside the concurrent finding of facts recorded by the two courts of fact; whereas the evidence of the appellant was not adverted to at all, touched upon or taken into account, this is a serious' illegality committed by the High Court because it is settled rule by now that interference in the findings of facts concurrently arrived at by the courts, should not be lightly made, merely for the reason that another conclusion shall be possibly drawn, on the reappraisal of the evidence; rather interference is*

> *restricted to the cases of misreading and non-reading of material evidence which has bearing on the fate of the case.*"

14. Consequently, this Court held that the Courts below were justified in holding that the applicant had failed to prove his case and that this is not the case of misreading and non-reading of the evidence and impugned judgments passed by the Courts below are legal, proper and in accordance with law and do not call for interference through the instant Civil Revision Application. Accordingly, the same was dismissed along with pending applications vide short dated 01.11.2021 and these are the reasons of the same.

J U D G E

Ghulam Muhammad / Stenographer*