IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision Application No. S-47 of 2013
IInd Civil Appeal No. S-02 of 2018

Date	Order with signature of Judge

For hearing of main case
For hearing of CMA No. 935/2016
For hearing of CMA No. 399/2013

13.12.2021

Mr. Kamran Mubeen Khan, Advocate for the applicant/appellant.
Mr. Bakshan Khan Mahar, Advocate for respondents No. 1 to 3.
Mr. Mehboob Ali Wassan, Assistant Advocate General.

O R D E R

KHADIM HUSSAIN TUNIO, J- By this single order, I intend to dispose of the captioned Civil Revision Application and IInd Civil Appeal as the same are concerned with the same suit land. The applicant Sabir Ali, in Civil Revision Application No. S-47 of 2013, has impugned the judgment dated 13.09.2013 whereby the learned Additional District Judge Moro has dismissed Civil Appeal No. 138 of 2005 filed by the applicant/appellant Sabir Ali and upheld the judgment and decree dated 29.10.2005 passed by the Senior Civil Judge Naushahro Feroze in FC Suit No. 76 of 2000 filed by the respondents Malook son of Lal Bux, Haji son of Ghulam Hussain and Shamsuddin son of Ghulam Hussain. Whereas, in IInd Civil Appeal No. S-02 of 2018, the appellant has impugned the judgment passed by learned Ist Additional District Judge Naushahro Feroze dated 13.01.2018 whereby he has upheld the final decree dated 03.02.2014 passed by the learned Senior Civil Judge Naushahro Feroze.

2. Briefly stated facts of the present *lis* are that the predecessor-in-interest of the respondents Andal had purchased a 50 paisa share (0-34) in Survey No. 19/1 in Deh Bhiro on 19.01.1937 through sale deed and after his death in 1940, he was succeeded by his sons Ghulam Hussain and Lal Bux and the respondents Haji and Shamsuddin being sons of Ghulam Hussain succeeded him whereas respondent Malook being the son of Lal Bux succeeded him. At that time, the three respondents were minors and possession could not be transferred to them, hence their farmers cultivated the land for them and paid the due harvest *(battai)* shares to the

respondents/plaintiffs, however they were instigated in 1990 to not pay the same by Sabir Ali who then claimed to have purchased the suit land and started taking the zamindari share and when the respondents approached the revenue authorities where they found out that the Mukhtiarkar Naushahro Feroze had kept an entry of only 00-17 ghuntas instead of 00-34 ghuntas while changing the record of rights after being approached by Lal Bux after the initial purchase of the property. Thereafter, the respondents/plaintiffs filed suit for declaration, change in record of rights, joint possession, mesne profits and permanent injunction. The applicant/appellant filed his written statement, vehemently denying plaint. After hearing the parties, the suit was decreed by the learned Senior Civil Judge Naushahro Feroze.

3. Learned counsel for the applicant/appellant has argued that the suit of the respondents was hopelessly time-barred; that the suit is barred under S. 172 of the Sindh Land Revenue Act and S. 11 of the Sindh Revenue Jurisdiction Act as the respondents failed to avail remedy before the revenue officers; that the respondents could not seek possession of their alleged shares without first seeking partition of the land under S. 135 of the Sindh Land Revenue Act; that the Mukhtiarkar (Revenue) bhiria has supported the case of the applicant; that the suit of the respondents is also hit by S. 39 of the Specific Relief Act for not seeking cancellation of registered sale deed dated 15.11.1978; that the appellate Court dismissed the application filed by the applicant for presentation of additional evidence i.e. photocopy of record of rights and entry from Deh Form VII, but the same was dismissed while observing that judicial notice of the original documents already on file will be taken at the time of passing of judgment which was not done by the learned appellate Court; that the judgment and decree passed by the learned trial Court and upheld by the learned Appellate Court is illegal and liable to be set aside. In support of his contentions, learned counsel has placed reliance on the case reported as ***Zaibun Nisa v. Karachi Development Authority*** (***PLD 1998 Sindh 348).***

4. Learned counsel for the respondents No. 1 to 3 has contended that the respondents have produced certified true copies of the sale deed in favour of Andal as well as the record of rights; that the revenue authorities

had asked the respondents to approach the civil courts to seek remedy as such the suit is not barred under S. 172 of the Sindh Land Revenue Act and S. 11 of the Sindh Revenue Jurisdiction Act; that as far as 0-25 paisa share in the suit land by the defendant's father is concerned, no sale deed has been brought on the record to establish the same; that there are various contradictions in the evidence of defendant and his witness Asghar with regard to the date when the sale transaction took place; that the appellate Court has assigned sound reasoning for dismissing the civil appeal; that the learned trial Court has also discussed all the issues thread-bare and assigned convincing reasons for findings recorded thereon; that no material illegality, irregularity and misreading or non-reading of evidence while passing the impugned judgment and decree; that the final decree was properly drawn by the learned trial Court while basing the findings regarding mesne profits while basing the same on the report of Mukhtiarkar Bhiria; that the findings of the two Courts below are concurrent as such do not call for any interference by this Court. In support of his contentions, he has cited the case law reported as ***Shahbaz Gul v. Muhammad Younas Khan (2020 SCMR 867)*** and ***Wajdad v. Provincial Government (2020 SCMR 2046)***.

5. Learned Assistant Advocate General on the other hand, while supporting the impugned judgment, has contended that the impugned judgment and decree is good in law and facts and concurrent findings of two Courts below do not require any interference of this Court.

5. I have heard the learned counsel for the parties and perused the record available before me.

6. From the perusal of record, it pertains that the original sale deed with respect to 00-34 ghuntas in Survey No. 19/1 in Deh Bhiro dated back to the year 1937 and as a result thereof, the same had gone unchallenged for a period of over 50 years and when the respondents approached the revenue authorities for the correcting of entry, however were turned away and directed to approach the Civil Courts, therefore the bar of jurisdiction under S. 172 of the Land Revenue Act and S. 11 of the Sindh Revenue Jurisdiction is of no consequence to the case of the respondents. Another major contention raised by the counsel for the applicant/appellant was

that while dismissing the application under order XLI Rule 27 CPC, the Court observed that the production of photostat copies of documents was unnecessary when the same were available on the record and could be taken judicial notice of. The order went unchallenged by the appellant/applicant, but at this stage his counsel has argued that the same led to injustice. A perusal of the written statement filed by the appellant/applicant on 21.06.2000 nowhere finds a mention of any registered sale deed with regard to the property allegedly owned by the appellant/applicant. As against that, however, the respondents produced the certified true copy of registered sale deed dated 19.01.1937 with respect to the suit property. At paragraph 4 of the written statement, the applicant/appellant states that the possession of the suit land had always remained with him, however has failed to produce any relevant documents. In his examination-in-chief dated 14.02.2005, the applicant/appellant Sabir Ali deposed that *"In the year 1972 my father purchased the remaining area of 17 ghuntas from plaintiff No: 1 Malook and Ghulam Hussain, the father of plaintiffs No:2&3 through registered sale deed."* Even a *prima facie* perusal of the above statement shows that firstly the appellant/applicant has contradicted himself by stating that his father purchased 00-17 ghuntas from Malook and Ghulam Hussain in the year 1972, whereas the sale deed he sought to present before the Appellate Court dated to the year 1978. He also failed to disclose the exact sale deed's date in his examination in chief. The learned Appellate Court, in Issue No. 4 and 5 of its judgment, has already considered the sale deed regarding 00-17 ghuntas of the suit land. The learned Appellate Court also considered the receipts produced by the appellant/applicant and observed that the same do not include any survey numbers to ascertain that the appellant/applicant had possession of the suit land at any given point and has also considered the Parchi Taqseem Khatooni through which the appellant/applicant's father and observed that the same was contradictory when it came to the total measurement as well. At no point before the filing of application u/o XLI Rule 27 did the appellant/applicant ever mention the registered sale date along with his claims of ownership, it was only until that application that the same surfaced on the record. The scope of revision, in case of concurrent

findings, is very narrow and the courts may only interfere with the findings if there is any misreading or non-reading of evidence, which caused a mishap or miscarriage of justice. At this juncture, it would be appropriate to reproduce the case law titled as ***Muhammad Din v. Muhammad Abdullah (PLD 1994 SC 291)***, wherein it was held 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."***

7. The Hon'ble Apex Court has held in the case law reported as ***Shajar Islam v. Muhammad Siddique and 2 others (PLD 2007 SC 45)*** has observed that:

> ***"The learned counsel for the respondent has not been able to point out any legal or factual infirmity in the concurrent finding on the above question of fact to justify the interference of the High Court in the writ jurisdiction and this is settled law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial***

question of facts based on evidence even if such finding is erroneous. 77w scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence for if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal."

In sequel to above discussion, we are of the considered view that the interference of the High Court in the concurrent finding of the two Courts regarding the existence of relationship of land and tenant between the parties was beyond the scope of its jurisdiction under Article 199 of the Constitution and consequently, we convert this petition into an appeal, set aside the judgment of the High Court and allow the appeal with no order as to costs,"

8. The two Courts below considered all the relevant documents that established the possession of the respondents over the suit land, from the registered sale deed dating back to the year 1937 to the depositions of haris with respect to cultivation of the same land. With regard to the contention of the counsel regarding the drawing of final decree after admitting reports of the Mukhtiarkar, the applicant/appellant claimed to not have knowledge of the same which contention is baseless. At the time of passing of the preliminary decree, the trial Court had already observed that reports would be called from the Mukhtiarkar and then final decree would be drawn accordingly. The Mukhtiarkar, in his reports, valued the net produce at Rs.727,000/- for which the final decree was drawn, which is found reasonable by this Court. Even otherwise, the Hon'ble Apex Court in multitudinous cases has observed that the High Court in second appeal has no jurisdiction to go into the question relating to weight attached to a particular item of evidence, in this case being the reports furnished by the mukhtiarkar. In the case of ***Naseer Ahmed Siddiqui through legal heirs v. Aftab Alam and another (PLD 2011 SC 323)***, the Hon'ble Apex Court has been pleased to observe that:

"Where trial Court has, exercised its discretion in one way and that discretion has been Judicially exercised on sound principles and the decree is affirmed by the

appellate Court, the High Court in second appeal will not interfere with that discretion, unless same is contrary to law or usage having the force of law."

Similar view has been taken by the august Supreme Court in the recent case of ***Sheikh Akhtar Aziz v. Mst. Shabnam Begum and others (2019 SCMR 524)***.

9. In the light of the above discussion and circumstances, the learned trial Court rightly decreed the suit filed by the respondents and drew final decree in that regard and the learned two Appellate Courts rightly dismissed the appeals filed by the appellant/applicant while assigning sound reasons and the same call for no interference by this Court. Therefore, present civil revision applicant and 2nd Appeal are dismissed.

J U D G E