

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Application No.S-41 of 2015

Applicant: Abdul Shakoor & others through Mr. Abdul Rehman A. Bhutto, advocate.

State: Through Mr. Abid Hussain Qadri, state counsel.

Date of hearing: 30.11.2018

Date of decision: 30.11.2018

J U D G M E N T

KHADIM HUSSAIN TUNIO, J. – Present Revision Application has been filed by the applicants against the impugned judgment dated 12.09.2013 and decree dated 16.09.2013 passed by learned Senior Civil Judge Jacobabad in F.C Suit No. 14/2012 and the judgment and decree dated 26.06.2015 in Civil Appeal No. 05/2013 passed by learned District Judge Jacobabad.

2. To be precise, private respondents were granted 40 survey numbers which were allegedly already possessed by the applicants, who approached multiple authorities for the redressal of their rights. The learned Additional Commissioner Larkana, after inquiring, cancelled the grant of said survey numbers to the respondents, who being aggrieved with the order of learned Additional Commissioner Larkana filed C.P D-011 of 1996 with the High Court Sukkur Bench, and the learned Divisional Bench of the Court referred the case to the E.D.O Revenue Jacobabad after conducting enquiry and hearing both parties. Learned E.D.O (R) rejected the representation filed before learned Additional Commissioner Larkana. The plaintiffs were aggrieved with the

order of E.D.O (R) preferred a revision *i.e.* Case No. SROR 13 of 2004 before the Court of Board of Revenue Sindh at Hyderabad. Thereafter, learned Member Board of Revenue, after hearing the parties, upheld the order of E.D.O Revenue and reminded the plaintiffs that they could seek remedy before the High Court. Thereafter, Review Petition *i.e.* S-Review 29/2006 was filed by the applicants, but the same was dismissed due to non-prosecution. Thereafter, the applicants filed F.C Suit No. 14 of 2012 which again was dismissed and decree was prepared accordingly. Ultimately, the applicants filed Civil Appeal No. 05 of 2013 before the court of District Judge Jacobabad, who upheld the judgment and decree of the learned court below while holding that the applicants had no case at all. Therefore, the applicants filed the present Revision Application against the concurrent findings of the two courts below.

3. Learned counsel for the applicants has argued that the appeal is well within time; that the findings of the two courts below are a result of non-reading of evidence; that the learned two courts below did not consider the evidence produced before them; that the grant of land to the respondents is a clear violation of Peasants Land Grant Policy Rules 1964 as the Colonization Officer failed to consider whether the respondents were of the locality or not; that the order passed by the learned Additional Commissioner Larkana was maintainable under the law and same did not suffer from any infirmity or illegality; that it was ascertained that the grantees were not of the locality, therefore

the grant itself became void; that the courts of E.D.O (R) and Board of Revenue seriously erred in not considering the undisturbed cultivating possession of the plaintiffs and it was also erred that despite the orders illegally passed in favour of respondents, they had not come forward to get the possession of the land in dispute, he therefore prays that the impugned orders be set aside.

4. Learned state counsel has argued that the concurrent findings of the two courts below do not suffer from any illegality or infirmity therefore the same may not be disturbed by this court. He therefore prays for the dismissal of present Revision Application.

5. I have heard the learned counsel for either of the parties and have perused the relevant record with their assistance.

6. From the perusal of record, the timeline of events pertains as follows; survey numbers were granted to the respondents in the year 1977, appeals before the Additional Commissioner Sukkur were dismissed being time-barred and on merits in the year 1981, First Class Suit filed by the applicants was dismissed by learned Senior Civil Judge Jacobabad in the year 1986, applicants challenged the same in the year 1988 and the same was dismissed by the learned District Judge Jacobabad in the same year, learned Additional Commissioner passed order, cancelling the grant of said land to the respondents, in the year 1996 (20.03.1996 to be exact).

7. After bare reading of the above timeline it pertains that the learned Additional Commissioner Larkana passed the order in *ex parte* while completely ignoring the fact that the matter had already been decided by the Board of Revenue and he had no right to overturn the same, let alone the decision of District Judge Jacobabad who had already passed a judgment in the matter. In this respect, learned E.D.O rightfully held that the Additional Commissioner had no power to decide the matter when a higher forum had already decided the same. The whole issue would have never rose up to the District Judge Jacobabad in the year 2013 in terms of a Civil Appeal if the learned Additional Commissioner had considered the earlier orders of the District Judge Jacobabad in the year 1988.

8. Now moving onto the concurrent findings of the two courts below, learned Senior Civil Judge, while following the order of learned E.D.O Revenue, dismissed the suit with similar findings and the order of the Senior Civil Judge was upheld by the learned Appellate Court. At this junction, I would like to hold that since this is a civil revision, this Court while sitting in revisional jurisdiction is not supposed to interfere in the concurrent findings of the two courts below unless it is established that the judgments of the two courts below were without jurisdiction or the two courts below acted illegally or with material irregularity resulting into miscarriage of justice. In case of **Mst. Kulsoom Bibi and another v. Muhammad Arif and others (2005 SCMR 135)**, it was held that revisional jurisdiction cannot be equated with that

of appeal or equal to appeal and the High Court before exercising revisional jurisdiction has first to satisfy itself whether the subordinate courts while passing the impugned judgments had the jurisdiction vested in them, or whether it was a fit case where the revisional jurisdiction ought to be exercised and whether the impugned judgments of the courts below suffer from illegality or material irregularity resulting into miscarriage of justice. It has also been held in the case of **Shah Wali v. Muhammad Iqbal (PLD 2005 Lahore 214)** that the concurrent findings of fact returned in consonance with the record are immune from interference in revisional jurisdiction of High Court as mandated by Hon'ble Supreme Court of Pakistan in a chain of consistent judgments. In this respect reliance can also be placed on cases of **Mst. Shumal Begum v. Mst. Gulzar Begum and 3 others (1994 SCMR 818)**, **Secretary to Government of the Punjab, Education Department, Lahore and another v. Saeed Ahmad Khan (PLD 1994 SC 291)**, **Sirbaland v. Allah Loke and others (1996 SCMR 575)**, **Abdul Hakeem v. Habibullah and 11 others (1997 SCMR 1139)**, **Mst. Ameer Begum v. Muhammad Naeem Khan and another (PLD 2000 SC 839)** and **Mst. Kaniz Fatima through legal heirs v. Muhammad Saleem and 27 others (2001 SCMR 1493)**.

9. In the light of above mentioned dictum, learned counsel for the applicants has failed to point out any misreading or non-reading of evidence, nor has any infirmity been pointed out by the learned counsel for the applicants. Therefore, present Revision

Application being meritless was dismissed with no order as to costs vide short order dated 30.11.2018.

These are the reasons for the same.

J U D G E