

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No. S – 100 of 2006

(Muhammad Bux Lakho through L.Rs. vs. Muhammad Ishaque & others)

Date of hearing: 21-02-2022

Date of decision: 21-02-2022

Mr. Nishad Ali Shaikh associate of Mr. A. M Mobeen Khkan,
Advocate for the Applicant

Mr. Ashok Kumar K.Jambha, Advocate for Respondents

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicant has impugned judgment dated 14-06-2006 passed by the Additional District Judge (Hudood), Sukkur in Civil Appeal No.11 of 2003, whereby, while dismissing the Appeal, judgment dated 17-12-2002 passed by 1st Senior Civil Judge, Sukkur, through which F.C Suit No.45 of 01996 filed by the Respondents was decreed and that of the Applicant bearing No.14 of 1998, was dismissed, has been maintained.

2. Heard learned Counsel for the Respondent, whereas, Applicant's Counsel has filed Written Arguments.

3. Perusal of the record reflects that F.C Suit No.45 of 1996 was filed by Respondent No.1 and others for declaration and injunction, whereas, the Applicants filed their Suit bearing No.14 of 1998 again for declaration and permanent injunction. The Respondent No.1 in their Suit had pleaded that the Suit property after sale was duly registered through sale deed and the *khata* was also mutated in their names, whereas, possession was also handed over to them. It was further pleaded that due to some mistake part of the property was allotted to one claimant under Permanent Settlement Scheme but subsequently the same was surrendered and thereafter the

same was claimed through an Application before the relevant authority; however, it came into their knowledge that the said piece of land has been allotted to defendant No.5 by the Colonization Officer. The Respondent No.1 made attempts to challenge the said orders under the hierarchy of the department by way of an Appeal and Revision; but failed and finally filed the Suit. Similarly, the Applicants filed their Suit claiming the said land on the basis of said allotment and the learned trial Court after recording evidence came to the conclusion that insofar as the Applicants are concerned, they have failed to make-out any case, whereas, the Respondents' Suit was decreed. The said judgment of the trial Court has been maintained in Appeal against which this single Revision Application has been filed. The relevant finding of the trial Court is in respect of relevant issues i.e. issue No.4 and 5, is as under;-

“Issue No:4

Plaintiffs examined Haji Karim Dino as PW-1 at Ex.66 and produced the order dated 21-12-1994 passed by the Commissioner, Sukkur Division Sukkur the defendant No.3, at Ex.73, and order dated 6-12-1995 passed by the Member Board of Revenue the defendant No.2 at Ex.74 and they have rejected the appeals of the plaintiffs as time barred. After perusal of both the orders, it transpires that the appeals of the plaintiffs were not decided on merits. Even otherwise the merits of the case were not discussed in the order passed by the Commissioner Sukkur Division Sukkur and Member Board of Revenue though the valuable rights is involved, therefore, it is the duty of the Commissioner Sukkur Division Sukkur and Member Board of Revenue to decide the matters on merits rather than on technicalities. Moreover the plaintiffs have purchased the suit land from one Hindu owner namely Badal Mal and they have produced two sale deeds for the year 1944 at Ex.68 and at Ex.69 respectively. The operation of the both sale deeds are still intact and no one has got cancelled the said sale deeds and on the basis of said sale deeds the necessary entry were made in the revenue record in favour of the ancestor of the plaintiffs, therefore, the defendant No.4 is not competent to grant the suit land to the defendant No.5. Under these circumstances the orders passed by the defendants No.2 to 4 are

un-warranted and excess of their jurisdiction. Hence my finding on this issue is accordingly in affirmative.

Issue No.5

Burden to prove this issue lies upon the plaintiffs. Plaintiffs examined one Haji Karim Dino as PW-1 at Ex.66. He has deposed in his examination-in-chief that;-

“I am one of the plaintiff in the present suit as well as attorney of the other plaintiffs. The disputed survey No.80/6, total area of 1 Acres 30 Ghuntas. My grand-father Chuttal S/o Khuda Bux was purchased 25 paisa share in the suit land, Sulleman 25 paisa, through registered sale deed No.230 dated 31-01-1944, remaining 50 paisa purchased Sahib and others, 12 paisa through Janu S/o Suhrab Jumo has purchased 13 paisa through registered sale deed dated 31-1-1944. Our ancestor purchased the suit land from one Hindu Mal Hodo Mal alias Badal Mal residence of Abad Lakha. Possession was also handed over to our ancestor, such entry was made in favour of ancestor. We acquired knowledge in the year 1974, that out of the suit land 35 ghuntas was given to claimant Hakeem Habibullah. We made application to the DC and Assistant Settlement Land Sukkur against wrong declaration of property as evacuee property and verification he passed order in our favour and restored the property and declared Muslim property such order was communicated to C.O Guddu Barage. Instead of that CO granted 50 paisa share of survey No.80/6 to Mohammad Bux. Against the grant we made application before the Commissioner Sukkur who passed order against as time barred. Then we preferred appeal before Member Board of Revenue but who passed order against us as time barred. Thereafter we have filed the present suit and pray for to decree as prayed. The possession of the survey number involved in the suit, with our possession. Prior to that the possession was with ancestors we are enjoying the suit land Boda Mal was exclusive owners of the survey number and closed the side.

On the other hand the defendants examined one Mohammad Bux as DW-1 at Ex.77. He has deposed in his examination-in-chief that:-

I was allotted the land survey No.80/6 out of 35 ghuntas. Originally suit land was in the name of Sadero Mal. My khata was mutated in my favour in the year 1993. Plaintiff prepared

appeal before Commissioner which was dismissed as time barred. Plaintiff also preferred appeal before Board of Revenue which was also dismissed as time barred. The possession of the suit land is with me. I am paying land revenue. Plaintiff wants to construct the wall over my suit land, therefore, I filed the suit and pray for to decree the suit.

After perusal of the plaint it appears that the plaintiffs produced the sale deeds at Ex.68 and at Ex.69 which is executed by Badal Mal and ancestor of the plaintiffs both the sale deeds are in operative as no one has got cancelled the same and on the basis of said sale deeds the khata was mutated in favour of ancestor of the plaintiffs and all the documents produced by the defendants are more than 30 years old and documents produced by the plaintiffs who are proper person, therefore, the documents produced by the plaintiffs are genuine. The land has continuously remained in possession of the plaintiffs who are enjoying produce on payment of land revenue to Government. Defendants have not produced any single document which shows that 50 paisa share of the property was originally owned by one Hindu owner namely Sadoro Mal who was the brother of Badal Mal as contended by the defendants. Defendants have not come with clean hands. Defendants have not produced any single document which shows that Badal Mal was also a brother of Sadoro Mal who was share-holder of Badal Mal. Defendants have produced number shumari which is not title document though the plaintiffs have produced the sale deeds Ex.68 and at Ex.69 and revenue record in their favour, therefore, it cannot be said that the plaintiffs are not real owners of the property in question. Under these circumstances, the plaintiffs have proved the issue in hand in their favour with cogent evidence and documents, hence my finding on this issue is accordingly in affirmative.”

4. Perusal of the aforesaid finding of the trial Court reflects that insofar as the Respondents are concerned, they were claiming the property on the basis of two separate sale deeds which remained intact and were never challenged. They were admittedly registered instruments. Even the Applicants in their Suit had never sought any cancellation of these registered sale deeds. It is also a matter of record that till such time the sale deeds remained in field, the land was never available for allotment to

any other party. It has gone unexplained on behalf of the Applicants that once it had come on record that the sale deeds were existing and had never been cancelled; then how the same land could have been allotted to anyone else. The dismissal of the Appeal and Revision filed by the Respondents before the departmental hierarchy was never on merits; but on the ground that their claim was time barred. It is settled law that the registered instruments can only be cancelled by a Court of law; and in that case, the land would never be available to the Revenue authorities for its allotment to anyone else. We also note that registered document carries presumptions attached to it under sections 35, 47 and 60 of the Registration Act, 1908 and under Article 90 of the Qanoon-e- Shahadat Order, 1984 and the court will presume correctness of the registered document in accordance with the presumptions attached unless the same are disputed or rebutted. For this if any authority is needed, reference may be made to "*Muhammad Siddique (deceased) vs. Mst. Noor bibi (deceased)*" (2020 SCMR 483), "*Abdul Razag vs. Abdul Ghaffaf*" (2020 SCMR 202); "*Anjuman-e-khuddam-ul-Qur'an, Faisalabad vs. Lt. Cot (R) Na jam Hameed*" (PLD 2020 SC 390); "*Muhammad Idrees vs. Muhammad Pervaiz*" (2010 SCMR 5); "*Rasool Bukhsh and another vs. Muhammad Ramzan*" 12007 SCMR 85)¹. Besides this, the Applicants had failed to lead any confidence inspiring evidence, whereas, there are concurrent findings of the two Courts below, which have held that the Applicants have no case, therefore, this Civil Revision Application does not merit any consideration; hence was dismissed by means of a short order in the earlier part of the day and these are the reasons thereof.

Judge

¹ Judgment dated 8.12.2021 in Civil Appeal No.219 of 2015 (Abdul Aziz v Abdul Hammed)

ARBROHI