

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 07 of 2008**

Haji Khan and others.....Applicants

Versus

Abdul Rasheed and others.....Respondents

Date of Hearing: **21-02-2022**

Date of Judgment: **21-02-2022**

Mr. Mushtaque Ahmed Shahani, Advocate for the Applicants.

Mr. Ahmed Ali Shahani, Assistant A.G-Sindh.

*Nemo* present on behalf of the private Respondents.

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicants have impugned Judgment dated 12.12.2007, passed by 4<sup>th</sup> Additional District Judge, Mirpur Mathelo in Civil Appeal No.04 of 2005 (**Haji Khan and others v. Abdul Rasheed and others**), whereby, while dismissing the Civil Appeal, the Judgment dated 27.11.2004, passed by Senior Civil Judge, Mirpur Mathelo in F.C.Suit No.40 of 2001 (**Haji Khan and others v. Abdul Rasheed and others**), has been maintained, through which the Suit of the Applicants was dismissed.

**2.** Heard learned Counsel for the Applicants as well as learned AAG and perused the record. Insofar as the Respondents are concerned, nobody has turned up to assist the Court despite being served; therefore, this Revision is being decided with the assistance of the Applicants Counsel and on the basis of available record.

**3.** It appears that the Applicants had filed a Civil Suit for declaration and permanent injunction, wherein it was prayed that the Applicants are owners of suit land being legal heirs of late Muhammad Ishaque son of Miral Khan to whom suit property was gifted by Mst. Mehnaz. It is the case of the Applicants that Mst. Mehnaz was owner of the suit property to the extent of 50% share; whereas, out of love and affection, she had gifted the same to her nephew Muhammad Ishaque, who died issueless, whereas, Applicants being his legal heirs are owners of the property; hence, the Suit for declaration.

**4.** The precise case of the Applicants was premised on the fact that Mst. Mehnaz had come before the Mukhtiarkar and recorded her statement; whereas, possession was also being held by the Applicants. The Trial Court after recording evidence was pleased to dismiss the Suit of the Applicants, whereas, the said findings have been maintained through impugned judgment of the Appellate Court. The relevant findings of the Trial Court on the main issue i.e. issue No.1 which was regarding validity of the gift is as under:

**“Issue No.1**

The burden to prove this issue lies upon the plaintiffs. The plaintiff No.1 has examined himself at Ex.32 and has produced form No.VII-B with entry No.137 which shows that the suit land stands in the name of defendants No.1 to 8 and plaintiff's counsel has not been able to give solid reasons as to why such entry is illegal. The plaintiff has also produced true copy of record of rights with entry No.446 which is not in support of the plaintiffs as in column No.9 & 10 of the same of form No.VII-B at Ex:34, the Mukhtiarkar has mentioned that the suit land stands in the name of Mst. Sharman and Mst. Mehnaz. No doubt the statement of Mst. Mehnaz was mentioned in such form No.VII-B by the Tapedar, but the Mukhtiarkar did not agree to the Tapedar and mentioned in writing that such statement of Mst. Mehnaz cannot be implemented without permission of Deputy Commissioner Sukkur and such statement cannot be implemented in the record of rights. Such entry mentioned by the Mukhtiarkar has not been challenged by the plaintiffs. Moreover, the true copy of statement of Mst. Mehnaz at Ex.36 wherein she allegedly gave her share of the land (suit land) to Muhammad Ishaque is lacking the survey numbers and the area of her share. The Mukhtiarkar (defendant No.9) has adopted the same written statement filed by defendants No.1 to 8, wherein they have stated that the defendants No.1 to 8 are actual and real owners of suit property vide entry No.137 of the year 1997-98.

When the alleged statement of Mst. Mehnaz (mother of defendants No.1 to 8) wherein she gave her share to late Muhammad Ishaque is not implemented as per entry No.446 at Ex.34 produced by the plaintiff, therefore, it cannot be said that the suit land was gifted away by Mst. Mehnaz to late Muhammad Ishaque son of Miral Khan. The defendant No.1 Abdul Rasheed at Ex.43 has deposed that Mst. Mehnaz was his mother and after her expiry the suit land was mutated in the record of rights in the name of her legal heirs. The plaintiff did not challenge such mutation before any forum, but has filed instant suit. He has also produced the attested copy of record of rights entry No.137 at Ex.44 which has already discussed above, hence issue No.1 is decided in negative”.

**5.** Perusal of the aforesaid findings of the Trial Court clearly reflects that the Applicants had miserably failed to establish their case; whereas, even reliance on the statement so recorded by Mst. Mehnaz was also not proved inasmuch as no final order was passed on such statement as it remained under objection. It is also a matter of admitted fact that the Suit

was filed after approximately 55-years of expiry of Muhammad Ishaque; whereas, Mst. Mehnaz was also expired some 10/15 years back, when the Suit was filed. The Applicants have miserably failed to establish and justify, that if any statement had been recorded, then as to why donor as well as donee, failed to get the property properly transferred in their life time. Notwithstanding this, even otherwise, the Applicants miserably failed to establish their case as averred in the plaint by leading any confidence inspiring evidence. Nothing has been shown to this Court so as to make out a case of any misreading or non-reading of such evidence. Moreover, this has also gone unexplained as to why in presence of immediate legal heirs the property to the extent of 50% was gifted by Mst. Mehnaz in favour of her nephew, who was issueless. All these important points have gone unexplained and therefore Trial Court as well as learned Appellate Court were fully justified in dismissing the claim of the Applicants.

**6.** No case for interference is made out. Therefore, by means of a short order, this Civil Revision was dismissed in the earlier part of the day and these are the reasons thereof.

**JUDGE**

Ahmad