

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 64 of 2006

(Sultan & another V/S Muhammad Siddique & others)

Date of Hearing: **28-02-2022**

Date of Judgment: **28-02-2022**

Haji Shamsuddin Rajper, Advocate for the Applicants.

Mr. Muhammad Junaid Akram Malik, Advocate for the legal heirs of Respondent No.1.

Mr. Sajjad Muhammad Zangejo, Advocate for Respondents No.6 to 11.

Mr. Zulfiqar Ali Naich, Assistant A.G-Sindh.

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned Judgment dated 07.03.2006, passed by Additional District Judge, Naushehro Feroze in Civil Appeal No.09 of 2005 (**Sultan and another v. Muhammad Siddique and others**), whereby, while dismissing the Civil Appeal, Judgment dated 22.12.2004, passed by Senior Civil Judge, Naushehro Feroze in F.C Suit No.119 of 1996 (**Muhammad Siddique v. Sultan and others**), through which the Suit of the Respondent No.1 was partly decreed, has been maintained.

2. Heard learned Counsel for the Applicants as well as Respondents including interveners, who were joined later as Respondents No.6 to 11.

3. From perusal of the Judgment of the Trial Court, it appears that three (3) Issues bearing Issues No.1 and Additional Issues No.3 & 4; though settled in respect of the very maintainability of the Civil Suit including limitation and whether the same being time barred or not, have not been decided on the ground that they were not being pressed. The said issues are as follows:

Issue No.1. Whether suit is not maintainable?

Additional Issue No.3. Whether suit is barred by section 11 of Sindh Land Revenue jurisdiction Act? Also suit is barred by section 172 of Land Revenue Act?

Additional Issue No.4. Whether suit is bad for non-joinder of necessary party i.e. legal heirs of original owners?

4. It is a matter of record that Respondent No.1 had filed a Civil Suit for declaration in respect of sale deed pertaining to the year 1957; whereas, in the cause of action paragraph, no specific dates were mentioned, therefore, issue of limitation could not have been decided as not pressed. Similarly, Respondent No.1 had also impugned some proceedings of the Assistant Commissioner, Naushehro Feroze through letter dated 18.06.1996 and again an issue was settled in respect of the very maintainability of the Suit, as apparently without exhausting further remedy as available under the Revenue Laws, the Suit was filed. Again the Trial Court has decided these issues as not pressed. All these findings have been maintained by the Appellate Court. However, this Court is of the considered view that this is not a proper course which is to be adopted by the Courts below; especially in respect of legal issues, which the Court is required to decide in any case. Neither can they be decided by observing as *not pressed*; nor even consent of the parties can override a decision on merits of such issues. Hence, in view of such position the findings of the two Courts below on these legal issues cannot be sustained.

5. Though the matter pertains to year 1996, when the Suit was filed, and ordinarily the *lis* ought to have been decided expediently on merits, including the legal issues; however, since there is no finding of the two Courts below on these issues, either way(s), and any final adverse decision by this Court at this moment of time, may leave the parties, (at least the Respondent) without any remedy of 1st Appeal; hence, this Court is left with no choice but to set aside the impugned Judgments of the two Courts below and remand the matter to the Trial Court to decide all the issues afresh including these legal Issues.

6. Accordingly, Judgment of the Trial Court dated 22.12.2004 and that of the Appellate Court dated 07.03.2006 are hereby set-aside. This Civil Revision is allowed and the matter is remanded to the trial Court, as above. It further appears that the interveners have been joined in this matter as Respondents No.6 to 11 vide order dated 18.09.2020; whereas, they have also filed an Application under Section 12(2) CPC, therefore, they are ordered joined as Defendants in the Suit. The Respondent No.1

shall file amended title and plaint; whereas, the said defendants shall also be allowed to file their written statements. As a consequence, thereof, the issues, if any, may be added to the already settled Issues. Since the matter pertains to year 1996, when the Suit was filed, therefore, Trial Court shall decide the matter preferably within a period of 90-days from today. Office to communicate copy of this Judgment to the Trial Court for compliance.

J U D G E

Ahmad