

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 11 of 2004

Moulvi Ghulam Hyder Indhar (deceased) through his Legal Heirs v.

Abdul Haleem (deceased) through his legal heir and others

Date of hearing: **07-03-2022**

Date of decision: **07-03-2022**

Mr. Mushtaque Ahmed Shahani, Advocate for the Applicants.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision Application, the Applicants have impugned judgment and decree dated 12-11-2003 and 15-11-2003, respectively, passed by the District Judge, Sukkur in Civil Appeal No.10 of 2003, whereby judgment and decree dated 26-11-2002, passed by the 2nd Senior Civil Judge, Sukkur in F.C. Suit No.151 of 1994 (Old No.49 of 1991), through which the Suit of Respondents No.1 to 3 was decreed, has been maintained.

2. Heard learned Counsel for the Applicants and perused the record.
3. Insofar as the private Respondents are concerned, despite being served, nobody has turned up; whereas, this matter is pending since 2004, hence, the same is being decided on the basis of available record and with the assistance of Applicant's Counsel.
4. It appears that the private Respondents had filed a Suit for declaration, cancellation and injunction seeking the following prayers:
 - a) *To pass judgment and decree declaring that the plaintiffs are owners of S.No.220, 269 in full and S.No.150 to the extent of 75 paisa deh Haleji Taluka Pano Akil District Sukkur being surviving legal heirs of deceased Gaman s/o Pinyo Indhar.*
 - b) *To declare that mutations of S.No.220 and 269 and S.No.150 deh Haleji Taluka Pano Akil District Sukkur made by defendant No.2 in the name of defendant No.3 and Sadoro (died) and Mst. Arbab (died) being legal heirs of deceased Gaman are illegal, malafides, fraudulent and on the basis of false statements.*
 - c) *To cancel the register sale deed executed by deceased Sadoro in favour of defendant No.3 to the extent of his share in S.No.220 and 269 and 150 deh Haleji taluka Pano Akil.*

- d) *To grant permanent injunction restraining the defendants No.3 and 4 not to sale the suit property to any body themselves or through their attorney.*
- e) *To grant any other equitable relief which this Honourable Court deems fit and proper as per circumstances of the case.*
- f) *To decree the suit with costs.*

5. Matter was contested by the present Applicants / Defendants No.3(a) to 3(c), and the learned Trial Court settled the following issues:

- 1. *Whether the plaintiffs are owners of S.No.220, 269 in full and S.No.150 to the extent of 0-75 paisas deh Haleji taluka Pano Akil?*
- 2. *Whether the mutation of S.No.220, 269 and 150 made by the defendant No.2 in favour of defendant No.3, Mst. Arbab (deceased) is illegal, malafide, fraudulent and depends on false statement?*
- 3. *Whether the registered sale deed executed by the deceased Sadoro in favour of defendant No.3 is not binding on plaintiffs and liable to be cancelled?*
- 4. *What should the decree be?*

6. Thereafter, the learned Trial Court decreed the Suit of private Respondents; whereas, the Applicants' Appeal also failed through impugned judgment.

7. It appears that the case as setup on behalf of the Applicants before the Courts below was to the effect that Defendant No.3 i.e. the Applicant was uncle of deceased Ghulam Nabi, whereas, private Respondents / Plaintiffs were sons of Mst. Nawazi, sister of Mst. Wahid Dini, and both of them were co-sharers. It was further contended that the Suit land has been correctly mutated in accordance with Muhammadan Law and pursuant to a *fatwa* of the Madrasa; whereas, deceased Sadoro had executed a sale deed dated 26-04-1977 in favour of the Applicant; hence, there is no question of inheritance involved in the matter. Such contention of the Applicants was repelled by the learned Trial Court in the following terms:

“I have heard learned counsel for the parties. Perused the record. It is admitted position that the suit of the father of the defendant No.4-A to 4-C for specific performance of contract and permanent injunction had already been dismissed by the court of Senior Civil Judge, Ghotki as well as appeal filed by them before learned Vth Additional District Judge, Sukkur. So also the defendants No.4-A to 4-C have not adduced any documentary evidence regarding second marriage of Mst. Wahid dini with Bhagio after death of her first husband Datar Dino. As well as they have not produced any evidence that Ghulam Hyder was legal heir of Ghulam Nabi son of Datar Dino, being grand father's cousin.

Non only this but D.W Muhammad Ismail admitted during his cross examination that there are 22 sub castes of Indhar community and

late Gaman was Juro sub caste of Indhar caste and his father Ghulam Hyder was Bakhrani sub caste of Indhar caste. It is also admitted that his brother Ubedullah has given statement on 22.8.1984 that Mitho had dies as unmarried. It is pertinent to point out that D.W Muhammad Ismail voluntarily says that Allah Wasayo son of sister of Wahid Dini has got falsely recorded statement of the witnesses namely Farid Maitlo and Ghulam Hussain Maitlo that Mst. Wahid dini was sole legal heir of Gaman. Further defendant No.4-A to 4-C have not examined the attesting witnesses of the alleged registered sale deed purported to have been executed by Sadoro in favour of Moulvi Ghulam Hyder to prove the execution of the registered sale deed. More so the defendants have not produced the pategory of the Gaman, Datar Dino, Ghulam Nabi and Wahid dini as well as no Nikahnama has produced if any performed with Bhagio of Mst. Wahid dini after death of her husband Dadar dino. Therefore I am of the considered view that the plaintiff has fully established that they are owners of the suit land. Hence issue No.1 is answered in the affirmative.

Issue No.2:-

Keeping in view of the findings recorded under issue No.1 that the plaintiffs are owners of the S.No.220 and 269 full and S.No.150 to the extent of 75 paise of Deh Haleji taluka Pano Akil as same had been inherited by their mother Mst. Nawazi from her sister Wahid dini as well as Bhagio had not contracted second marriage with Wahid dini after the death of Datar Dino. Therefore Bhagio and Sadoro have not inherited the suit land from Mst. Wahid Dini and Ghulam Hyder was not nephew of grand father of son of Ghulam Nabi. Thus I am of the opinion that mutation of the suit S.Nos. in favour of defendant No.3 and Mst. Arbab are illegal malafide fraudulent and depends on the false statements. Hence issue No.2 is answered in the affirmative.

Issue No.3:-

Since Bhagio and Sadoro have not inherited any share in the S.Numbers from deceased Mst. Wahid dini as defendant No.4-A to 4-C have failed to produce Nikahnama of Bhagio with Wahid Dini therefore registered sale deed if any alleged to have been executed by Sadoro in favour of defendant No.3 is not binding upon the plaintiffs and same is liable to be cancelled. Thus the issue No.3 is answered in the affirmative.

Issue No.4:-

In view of the findings recorded under fore-going issues the evidence brought on record and discussed in detail. I am of the opinion that the plaintiffs have fully proved their case, hence suit of the plaintiffs is decreed as prayed with no order as to costs.”

8. Perusal of the aforesaid judgment of the Trial Court clearly reflects that the Applicants as well as other Defendants miserably failed to adduce any confidence inspiring evidence; rather their own witness DW Muhammad Ismail also made admissions in his cross-examination, which do not support the case of the present Applicants. Neither the Applicants; nor other Defendants were able to rebut the contention of the private Respondents; whereas they could neither examine any supporting witnesses of the registered sale deed purportedly executed by deceased Sadoro in favour of the Applicant. The Applicants also failed to establish the pedigree of Wahid

Dini so as to establish their claim and also to rebut the Plaintiffs' / Private Respondents allegation in this regard. The said order has been maintained by the Appellate Court and it appears that the Applicants have failed to make out a case; hence, this Revision Application does not merit any consideration.

9. In view of the above and for the reason that there are concurrent findings of the two Courts below, which do not appear to be perverse or based on any misreading or non-reading of evidence; hence, no inference is required. Therefore, this Civil Revision Application being misconceived is hereby **dismissed**.

Abdul Basit

J U D G E