

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 12 of 2004

(Molvi Ghulam Hyder deceased through legal heirs V/s Hafiz Pandi & others)

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

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

Mr. Mushtaq Ahmed Shahani Advocate for the Applicants
Nemo for Respondents

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision the Applicants have impugned judgment dated 12.11.2003 passed by the District Judge, Sukkur, whereby, while dismissing the Appeal, judgment dated 26.11.2002 passed by 2nd Senior Civil Judge, in F.C. Suit No.212 of 1994 (old No.73 of 1989) through which the Suit of the Respondents for possession was decreed has been maintained.

2. Heard learned Counsel for the Applicants and perused the record. insofar as Respondents are concerned, no one has turned up to assist the Court despite being served. Since the matter pertains to the year 2004, the same is being decided with the assistance of the Applicants Counsel and on the basis of available record.

3. As per record the Respondents had filed a Suit for possession and mense profits on 5.4.1989 which was decreed by the trial court against which the appeal has been dismissed and the impugned judgment has been maintained by the Appellate Court.

4. The Applicants Counsel was confronted as to any legal defect or error in the concurrent findings of the two Courts below and to this the learned Counsel for the Applicants has not been able to assist the Court in any manner satisfactorily, except making reference to some proceedings and orders between the parties in other cases. To this it may be observed that this Revision is against an independent and separate judgment(s) of the Courts in respect of a separate cause of action and grievance, having no direct nexus with other proceedings as contended; nor the same has been agitated or recorded in the impugned judgments. Therefore, this

aspect of the case cannot be looked into by this Court while deciding this Revision.

5. The Respondents had filed suit for possession on the ground that the Applicants claim for possession based purportedly on some agreement of sale allegedly entered into between the parties and or their predecessor in interests, had been decided against the Applicants who had filed a Suit for specific performance bearing F.C. Suit No.58 of 1982 which was dismissed vide judgment dated 17.9.1984 passed by Senior Civil Judge, Ghotki, against which an appeal also failed vide judgment dated 30.4.1986 in Civil Appeal No.58 of 1985. Admittedly, thereafter the Applicant never preferred any Revision or any other proceedings and the said judgment and decree had attained finality. Based on this the Respondents filed a Suit for possession which has been decreed. The Applicants Counsel could not controvert the facts as above. Once a Suit for specific performance is filed against any person on the basis of an agreement to sell; then presumption is that at least the said Plaintiff admits the ownership of the Defendants against whom a decree of specific performance is being sought. Once the trial court and the appellate court had recorded adverse findings in such suit of the Applicants which had attained finality, then any other plea at this stage of Revision that no declaration of ownership was sought by the Respondents; nor they had ever sought a relief for cancellation of the agreement; does not hold water. Neither the decree of possession can be challenged on such basis; nor the Applicant can otherwise claim lien on the possession anymore, under any other pretext. Except, this no other ground has been raised before this Court.

6. In view of hereinabove facts and circumstances no case for indulgence is made out, whereas, the concurrent findings of the two Courts below are unexceptionable and does not warrant any interference in this Civil Revision, and therefore, the same is hereby dismissed.

J U D G E