

**ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
AT HYDERABAD**

R.A No.288 of 2018

Ghulam Hussain @ Ghulamoon and another v. Mst. Sibyani and others.

1. For order on CMA No.2372/2018.
2. For hearing of main case.

01.02.2021

Mr. Mazhar Ali Leghari advocate for applicants.

ARSHAD HUSSAIN KHAN, J: - The applicants through instant Revision Application has challenged the Judgment & Decree both dated 08.10.2018 passed by learned Additional District Judge-II, Mirpurkhas in Civil Appeal No.21 of 2018 maintaining the Order dated 07.05.2018 passed by Senior Civil Judge, Digri, whereby plaint of the suit filed by applicants being F.C. Suit No.60 of 2018 [Re-Ghulam Hussain & another v. Mst. Sibyani & others] was rejected under Order VII rule 11 CPC.

2. Brief facts leading to the filing of this revision application are that the applicants/plaintiffs filed suit for declaration and permanent injunction against the respondents/defendants and others, in the court of learned Senior Civil Judge Digri, stating therein that there is a plot bearing CS No.310 area 134-4 sq. yards situated in Ward No.A-178, Taluka Digri, corresponding No.308 of Deh-178 Taluka Digri in Deh Form-II sikni area, which is shown in the name of Muhammad Ismail s/o Phullo Sheedi under entry No.2 dated 26.05.1933; said land was granted for five years and despite expiry of grant period of five years it existed in the name of Muhammad Ismail, who in collusion with revenue department illegally sold out the same to one Alam son of Bhoray Khan showing 0.75 paisa share and 0.12 paisa share out of 1210 sq. feet vide entry No.88. Respondent / defendant Mst. Sibyani who was daughter of said Muhammad Ismail, claims two Annas share over the suit plot being the lawful heir of said Muhammad Ismail. In this regard she in collusion with revenue staff on the basis of fraudulent statement of heirship, got mutated CS No.310 in her name though she and other legal heirs of deceased Muhammad Ismail have

no right, title or interest in the said property. It is further asserted in the plaint that the applicants / plaintiffs being legal heirs of Piyaro are entitled for their shares and they have been illegally dispossessed by demolishing portion of their house and the private respondents were raising construction on which the applicants / plaintiffs requested them to stop construction work but they issued threats, hence, the applicants / plaintiffs filed suit with following prayers:-

- a) Declare that the plaintiffs are legal heirs of Piyaro son of Phullo Sheedi and they are co-sharers and co-owners in the suit property/plot/house.
- b) Declare that the act of the private defendants are illegally, void, malafide, wrong, against the law and natural justice.
- c) Permanent injunction be issued against the defendants restraining and prohibiting them not raise any construction over the dispute house/plot by themselves, their agents, men, labourers, attorney or through anybody else except in due process of law.
- d) Costs of the suit be borne by the defendants.
- e) Any other relief, which this Honourable Court deems fit and proper under the circumstances of the case.

3. Learned trial court at the time of admission of the above suit directed learned counsel for the applicants/plaintiffs to satisfy the court with regard to the maintainability of the suit as the plaint did not disclose the cause of action against the respondents/defendants. Subsequently, learned trial court after hearing the applicants' counsel vide its order dated 07.05.2018 rejected the plaint of suit. The said order was subsequently challenged by the applicants before the learned Additional District Judge-II, Mirpurkhas in Civil Appeal No. 21 of 2018. Learned ADJ, after hearing the counsel for the parties vide its judgment dated 08.10.2018 while maintaining the order of learned trial court dismissed the appeal of the applicants. Consequently, the applicants / plaintiffs have challenged the above said orders and decrees in the present revision application.

4. Learned counsel for the applicant, *inter alia*, contended that the suit is not barred by any law; cause of action is disclosed in the plaint. He further contended that it is well settled law that the rights of parties must be decided on merits, as such, rejection of plaint / impugned orders are not sustainable under the law. He next contended that the parties to suit could have been given opportunity of bringing on record

their evidence, as such, he prayed for setting aside the impugned orders.

5. I have heard the learned counsel for the applicants at considerable length and gone through the documents appended to the revision petition with his assistance.

6. The applicants through the instant revision application have challenged the concurrent orders of the courts below. It is well settled that revision is a matter between the higher and subordinate Courts, and the right to move an application in this respect by the Applicants, is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; First part enumerates the conditions, under which, the Court can interfere and the second part specify the type of orders which are susceptible to revision. From bare reading of the section 115, C.P.C., it is manifest that on entertaining a revision petition, the High Court exercises its supervisory jurisdiction to satisfy itself as to whether the jurisdiction by the courts below has been exercised properly and whether the proceedings of the subordinate Court do suffer or not from any illegality or irregularity. Reference may be placed in the case of Muhammad Sadiq v. Mst. Bashiran and 9 others (PLD 2000 SC 820).

7. From perusal of the impugned orders, it appears that the same have been passed after hearing counsel for the parties and taking into account the material facts as well as law on the point, have passed speaking orders. For the sake of ready reference relevant portion of the impugned judgment of appellate Court is reproduced as under:-

“Admittedly, prior to the present suit aforesaid, two FC Suits No.114/2011 and FC Suit No.221/2017 had also been filed by the plaintiffs/appellants against the private respondents in the courts of learned 3rd Senior Civil Judge Mirpurkhas and Senior Civil Judge Digri on the same cause of action, against same parties and regarding same matter in issue/property in question, out of which, FC Suit No.114/2011 was dismissed for non-prosecution, while, FC Suit No.221/2017 was withdrawn on 01.02.2018 on the ground that the plaint was defective and unreadable. However, the plaintiffs/appellants once again filed present FC Suit bearing No.60/2018 without removing aforesaid defects as the plaint of present suit was also ambiguous and defective and the claim of plaintiffs/appellants regarding property in question was neither clear nor understandable.

Besides, cause of action was also not disclosed clearly, due to which, the trial Court issued direction to the counsel of plaintiffs to explain the cause of action and satisfy the court in that regard, but, despite that the advocate for the plaintiffs failed to do so, and hence, the impugned order was passed rejecting the plaint of aforesaid suit of the

plaintiffs/appellants being not maintainable as the plaint did not disclose any cause of action against private defendants/respondents.

After careful consideration of above contentions of both sides as well as thorough scrutiny of pleadings of the parties came on record, it is my humble view that trial court after hearing of both parties and their advocates rightly rejected the suit in question of the appellant, as, the plaintiff failed to disclose the cause of action in plaint clearly against defendants regarding their claim in respect of suit property.”

8. It is clearly provided under Order VII rule 11 CPC that apart from other ingredients that where a plaint does not disclose cause of action, the plaint be rejected. It is also settled law that an incompetent suit should be laid at rest at the earliest moment so that no further time is wasted over what is bound to collapse not being permitted by law. It is necessary incidence that in the trial of judicial issues i.e. suit which is on the face of it incompetent not because of any formal, technical or curable defect but because of any express or implied embargo imposed upon it by or under law should not be allowed to further encumber legal proceedings. Reference can be placed on the cases of *Ali Muhammad and another v. Muhammad and another* [2012 SCMR 930] *Ilyas Ahmed v. Muhammad Munir and 10 others* [PLD 2012 Sindh 92].

9. The upshot of the above is that there is no illegality or gross irregularity and infirmity in the concurrent findings of both learned courts below; more particularly, the impugned orders are not passed without jurisdiction. The applicants have also failed to point out any error and or any illegality, infirmity or jurisdictional error in the impugned orders, which could warrant interference by this Court in exercise of its revisional jurisdiction. Consequently, the revision application in hand, being devoid of any force and merit, was **dismissed** in *limine* along with listed application by my short order dated 01.02.2021 and these are the reasons for the same.

JUDGE

Dated 03.02.2021

Abdullah Channa/PS