

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:  
**Mr. Justice Muhammad Shafi Siddiqui**

R.A. No. 180 of 2006

Province of Sindh & others

Versus

Syed Murad Ali Shah

Date of Hearing: 06.12.2017

Applicants: Through Mr. Ziauddin Junejo, AAG along with Zulfiqar Kandhro, Mukhtiarkar Mirpur Bathoro.

Respondent: Through Mr. Faisal Siddiqui Advocate.

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

**Muhammad Shafi Siddiqui, J.** - This revision application was filed by impugning an order dated 20.10.2006 passed in Civil Appeal No.38 of 2005.

Brief facts of the case are that a suit bearing No.16 of 1995 was filed which got the new number on its transfer as Suit No.29 of 2004. Suit was filed by respondents for declaration and permanent injunction in respect of a property as Survey No.189, Deh Mirpur Bathoro Taluka Mirpur Bathoro, District Thatta, measuring 9-21 acres. In the first round litigation the case was remanded by condoning delay of 16 months and 25 days on the land of applicant in Revision Application No.2 of 1999 vide order dated 06.05.2004. They (applicants) were further directed by this Court that they may file written statement in the suit whereafter the suit may proceed on its own merits in accordance with law.

Despite this indulgence, it is urged that the applicants did not come forward to cross examine the respondent/plaintiff. The evidence of the plaintiff Murad Ali Shah was recorded who was partially cross examined by the DDA whereas evidence of Mukhtiarkar Chandi Ram, as being one of the defendants in the suit, was also recorded and he was

also subjected to cross-examination by the respondents only. The examination-in-chief of the respondent/plaintiff has gone almost unchallenged and un-rebutted as no material questions were put/raised by the DDA. The respondent stated on oath that he came to know in the year 1993 that the disputed property was his ancestral property and the Settlement Department issued Form-I in respect of Survey No.189 and 191 in the name of grandfather namely Murad Ali Shah, the present defendant was also named against his grandfather. The Mukhtiarkar was also stated to have been approached to keep an entry in Deh Form II on the basis of Deh Form-I which entry was kept in the record in the name of his grandfather and Mukhtiarkar mutated the record of Foti-Khata Badal in the name of respondent's father Gul Muhammad Shah. The two sisters stated to have gifted their respective shares to the respondents. Deh Form-I and Deh Form-II were exhibited by the respondent as Ex. 69A and 69B.

The cross-examination conducted by DDA is reproduced as under:-

*"I am educated upto graduate. I am zamindar by profession. I own agricultural land measuring 2-17 in deh Bathoro and 50 acres in deh Moddi in Taluka Sujawal excluding the land of suit. I have purchased 50 acres land while 2-17 acres is my ancestral property. I do not remember as when footi khata was changed in my name for the land measuring 2-17 acres. Foti Khata was changed at the time when I was minor. My father died in year 1960 when I was 6 years old. I do not have any uncle. I had one sister of my father she also died. Husband of sister of my father was seen by me, he was zamindar and was residence u.c Bello Taluka Sujawal. He also died after one year from the death of my father."*

The Mukhtiarkar in his examination-in-chief submitted that Survey No.189 measuring 9-51 acres situated in Deh Mirpur Bathoro is a government property and is reserved for Asiash of Dargah by Revenue Officer Kotri Barrage. Deh Form-I was issued in the year 1993 in favour of Syed Murad Ali Shah son of Mehar Shah, grandfather of the

respondent, showing wrongly grant his Qabooli Land. Similarly, it is also stated that the respondent obtained Form-II in the year 1993 showing the disputed property in the name of his grandfather.

He stated that the respondent had no right over the disputed property and documents were fake. He was cross examined by the respondent's counsel and he maintained that Deh Form-II is an arranged document and not available on the official record. He however admitted it to be in the name of respondent as Survey No.477. The trial Court decreed the suit as no evidence was led by the applicants as against the evidence of the respondent.

Aggrieved of the judgment and decree, a time barred appeal was filed as Civil Appeal No.38 of 2005 along with an application under section 5 of Limitation Act. The appellate Court after considering the facts of the case including that of an earlier remand, dismissed the appeal as being barred by time. The appellate Court assigned the reason that the misplacement of copies by the applicants was an act of gross carelessness and therefore delay in filing the First Appeal could not be condoned on that account and hence order was considered to be unexceptional. The appeal was delayed by 24 days. The appeal was filed on 05.05.2005 as against the judgment and decree of 20.02.2005 and 25.02.2005 respectively.

The written statement filed by Province of Sindh and Director of Settlement Survey and Land Record stated in Para 2 of the written statement that the entries shown by the respondent was not for the purpose of preparation of record of rights. Relevant pages showing entries relating to Survey No.185 to 211 were fraudulent and made by replacing the leaves of the said register. The color of paper and ink used and handwriting on the other part was found to be different and fraud is apparent.

Despite this defence and clear stance why the officials have not produced the record is not difficult to understand. Despite all these facts I am facing a situation where the revision before me impugned an order passed in an appeal rendering appeal as barred by time.

There is no cavil that government may be not treated other than ordinary litigant before the Court of law. There may or may not be a collusion between the respondent and some of the officials of applicants who may have acted collusively guarding the alleged interest of respondent by not proving their stance and disproving the case of respondent before trial Court and also by rendering the appeal as time barred.

Appellant may have lost the remedy of appeal but not their rights as to the entitlement over the subject land, as they claimed, and they may pursue actions and/or approach revenue forum to get the title clear, in case it is so desired, which may be considered and decided in accordance with law and the exparte finding may not come in the way of such judicial proceedings which shall be in accordance with law. This is a case where the provincial government shall also initiate proceedings against the “officials” who were responsible for not contesting the case on merit or who may be in collusion with the respondents and shall submit report to this Court within three months. State’s interest and/or the revenue interest is to be jealously guarded and more importantly when some officials appeared to have acted negligently and carelessly.

This revision is thus dismissed along with pending applications with the above observations.

Dated:

**Judge**