

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

R.A. No. 192 of 1995

DATE	ORDER WITH SIGNATURE OF JUDGE
25.04.2022	

For hearing of main case

None present for applicants
Mr. Rafiq Ahmed Dahri, Asstt: A.G.

This is an old matter pending since 1995 against the concurrent findings of two courts below. The trial court dismissed the suit which order was maintained by the appellate court. After providing certain reasoning and national the following issues were framed by the trial court:-

1. Whether the suit is time barred?
2. Whether the suit is undervalued?
3. Whether the suit is not maintainable?
4. Whether the plaintiffs father namely Mohammed Saleh was the only legal heir of deceased Muhammad Ibrahim son of Muhammad Issa?
5. Whether the order passed by Revenue Authority dated 4-12-1993 are illegal without jurisdiction? If yes what is its effect? (correct date 04-12-1978)
6. Whether the plaintiff is entitled to the relief prayed for?
7. What should the decree be ?

Since the main issue that is issue No.4 has gone against the applicant and reasoning has been provided by the two forums below. Findings of issue No.4 is crucial and goes to root of case and is reproduced as under:-

“Issues No.4&5:- The burden was upon the plaintiff to prove that their father Mohammed Swaleh was the only legal heir of deceased Mohammed Ibrahim.

The plaintiff in his statement before the court had deposed that the father’s name of Mohammed Ibrahim was Mohammed Issa. His father was the son of his first cousin and defendant No.1 was the son of

cousin's sister of late Mohammed Ibrahim. In cross examination he denied that he has not stated in examination in chief that name of Mohammed Ibrahim was Mohammed Issa but Mohammed Issa was father of Mohammed Ibrahim. The father's name of defendant No.1 is Noor Mohammed. He did not know father's namely of Noor Mohammed and so also relation of Noor Mohammed and his father. He did not know the great grandfather of late Mohammed Ibrahim. The plaintiff did not produce any witness in order to corroborate his version nor has produced any documentary evidence in order to discharge his burden. On the other hand the defendant in his statement before the court has deposed that the deceased Noor Mohammed expired in June 1961 leaving behind himself and one Mohammed Swaleh as his legal heir. His grandfather and grandfather of Mohammed Swaleh were real brothers. In cross examination he proposed that the name of his mother was Mst. Rehmat. The father's name of Mst. Rehmat was Mohammed Daud. His father and father of Mohammed Swaleh were cousin. He denied that his mother was cousin sister of Mohammed Swaleh but she was paternal aunt of his father. He denied that he is maternal nephew of deceased Mohammed Swaleh.

From the entire evidence adduced by the parties I am of the humble view that the plaintiff has failed to establish that he was cousin of deceased Mohammed Ibrahim and the defendant No.1 was the son of cousin sister of deceased Mohammed Ibrahim as such he has failed to discharge his burden that his father was the only legal heir of deceased Mohammed Ibrahim. My answer on the issue in hand is therefore being not proved.”

Prime facie there is no reasonable ground which could enable this court being revisional court to exercise its jurisdiction under Section 115 CPC as the frame of Section 115 CPC is very limited. However since the applicant and their counsel are called absent I dismiss it for non-prosecution.

JUDGE