

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 62 of 2004

Hidayatullah & others v. Province of Sindh & others

Date of hearing: **15-11-2021, 06-12-2021 & 11-04-2022**

Date of Judgment: **29-04-2022**

Mr. Abdul Qadir Shaikh, Advocate for the Applicants.
Mr. Sarfraz A. Akhund, Advocate for private Respondents.
Mr. Mehboob Ali Wassan, Assistant Advocate General Sindh.

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned judgment dated 06-03-2004 passed by the Additional District Judge (Hudood), Sukkur in Civil Appeal No.25 of 2003, whereby, while dismissing the Appeal, judgment dated 17-12-2002 passed by the IInd Senior Civil Judge, Sukkur in F.C. Suit No.19 of 1996 has been maintained, through which the Suit of Applicants was dismissed.

2. Heard learned Counsel for the parties and perused the record.
3. It appears that the Applicants filed a Suit for declaration and injunction and sought the following relief(s):

- a) *To declare that the plaintiffs NO:6 to 10 are owners of the suit property bearing S.NO: 144/3 (0-28), S.NO: 184/ (0-07) and S.NO: 186/7 (1-06) acres situated in deh Kot bulla, taluka panoakil district Sukkur by virtue of purchase from deceased Ranjhoo.*
- b) *To declare that the orders passed by the defendants NO: 3, 4 and 5 on 9.8.94, 22.6.95 and 29.11.95 respectively are illegal malafide, void abinitio and in excess of their jurisdiction exparte and are liable to be set aside. And that the cancellation of entries from the name of the plaintiffs and subsequent entries in the name of the defendants and their ancestors on the basis of impugned order dated 9.8.94 passed by the defendant NO: 3 be declared as illegal, malafide and the entry in the name of the plaintiff be maintained.*
- c) *To grant permanent injunction restraining the defendants from interfering with the possession of the plaintiffs themselves, agents or by any other means.*
- d) *To grant any other equitable relief which this Hon'ble court deems fit as per circumstances of the case.*
- e) *To Decree the suit with costs.*

4. The learned Trial Court, after settling various issues and evidence of the parties, came to the conclusion that the Applicants had failed to make out a case for grant of relief as prayed; whereas, in Appeal as well, the judgment of the Trial Court was maintained; hence, this Civil Revision.

5. Perusal of the record reflects that in the Complaint, it was averred on behalf of the Applicants that the Suit property was devolved in favour of Mst. Methal as a legal heir from Khudadad, who was residing after death of her husband with her nephew namely Sukhio, who used to maintain the property and also look after her; hence, in lieu of such services purportedly the Suit property was gifted by Mst. Methal to *Sukhio*. It was further stated that Mst. Methal thereafter contracted second marriage with Mazar; whereas, during her lifetime as well as in the lifetime of Mazar, the entry in favour of Sukhio was never challenged by anyone. Subsequently, after death of Sukhio, the property was then mutated in the name of Ranjhoo in 1975. The Plaintiffs in the Suit appear to be the legal heirs of Ranjhoo; whereas, the private Defendants are the legal heirs of Mazar, the second husband of Mst. Methal. Somewhere in 1992, a dispute arose when the private Defendants / Respondents approached the Assistant Commissioner by way of some representation / appeal challenging the mutation in the name of Ranjhoo; whereas, the Revenue authorities then cancelled the entries, and thereafter, restored the same in the name of deceased Khuda Dad, the original owner of the property and first husband of Mst. Methal. The Applicants, being aggrieved, availed the alternate remedy by way of an appeal and a revision before the Revenue authorities, but lost at all forums, and thereafter, filed the Suit seeking the above declaration.

6. The main objection, which has been taken by the learned Counsel for the Applicants and on which the entire case of the Applicants is dependent, was that the Respondents' representation before the Revenue authorities, whereby they had challenged the Revenue entries / mutation in the name of Ranjhoo was hopelessly time barred. The said objection was taken as Issue No.10 that whether "*the appeal filed by the defendant No.6, 8 and others before defendant No.3 was time barred. If so what is its effect?*" The learned Trial Court came to following conclusion in respect of this issue:

"Issue No.10:-

The burden of proving of this issue lies upon the plaintiffs but they have not adduced single word on this issue as well as they have not produced any copy of appeal if any filed by the defendants NO.6

to 8 before Assistant Commissioner Rohri in support of their contentions. Even P.W Sanaullah has not deposed that appeal filed by defendant NO.4 to 6 was time barred.

On the other hand D.W Jan Muhammad and Naimatullah unanimously deposed that they came to know about the mutation of suit land in favour of Sukhio in 1992 when he came at suit land for taking possession of the same they have approached to Sukhio for transfer of suit land in their favour through Nek Mards but he refused to transfer the same in their favour.

Keeping in view of the above position and discussion the plaintiffs have failed to prove that appeal filed by the defendants NO.6 to 8 was time barred appeal before Assistant Commissioner Rohri as well as it is settled law that when the order is illegal and without jurisdiction then there is no question of limitation. Hence issue NO.10 is answered in the negative.”

From perusal of the aforesaid finding of the learned Trial Court which has been maintained by the Appellate Court, it appears that though an objection was raised to this effect but no proper evidence was ever led on behalf of the Applicants to establish that the Respondents were in knowledge about such mutation. The precise reason being that the property has always been in the possession of Respondents and their case was that somewhere in 1992 when an attempt was made to dispossess them, hence, they immediately took up the matter with the concerned Revenue authorities. Therefore, notwithstanding the fact and as claimed that the Revenue entry was recorded earlier in time, it cannot be said that the appeal of the private Respondents was time barred. There is also another aspect of the matter in that the Respondents are claiming their inheritance right as legal heirs, whereas, as to possession and other enjoyment of the suit property it has come on record that it was always with them; hence, even otherwise the question of limitation, even if any, cannot be applied strictly. There appears to be no justification to disrupt or interfere with the concurrent findings of the two Courts below, which otherwise appear to be correct and arrived at after perusal of the evidence led by the parties. Even otherwise, once it has come on record that the mutation purportedly on the basis of a gift was not proved and was an apparent outcome of a fraud and forgery, then even the question of limitation would never arise as it is settled law that no limitation runs against a void order, whereas, the entire superstructure built upon such a void order cannot be sustained. Further, it is needless to observe that in like cases of inheritance, such an objection is seldom sustained.

7. In fact the crux of the issue is that whether Mst. Methal had gifted the property to her nephew Sukhio and whether any such gift transaction had taken place or not. The Trial Court in this respect settled Issue No.5 that *“whether Mst. Methal wd/o Khuda dad after death of her husband used to reside with Sukhio son of Wali dad and out of love and service rendered by Sukhio, Mst. Methal gifted her property in favour of Sukhio and record of right mutated in his name?”* The finding of the learned Trial Court in respect of Issue No.5 is as under:

“Issue No.5:-

The burden of proving of this issue also lies upon the plaintiffs as it is their case that Mst. Methul widow of Khudadad was residing with Sukhio after death of her husband Khudadad and gifted her property in favour of Sukhio due to love and service rendered by Sukhio. To prove this issue P.W Sanaullah reiterated the same contentions as contended in the plaint P.W Hamzo has also deposed in the same line as deposed P.W Sanaullah on this issue.

In rebuttal D.W Jan Muhammad at Ex.161 that the suit land originally owned by one Khudadad. Khudadad was husband of his mother. Khudadad has left his legal heirs Mst. Methul as widow and Mst. Sain as daughter at the time of his death. Mst. Methul wife of Khudadad has contracted second marriage with his father Mazar Khan. Sukhio has got mutated suit land in his favour fraudulently after death of Khudadad. He has also deposed that his mother Mst. Methul had given birth to three sons namely Jan Muhammad, Abdul Rahim and Allah Jurio out of wedlock of his father Mazar Khan version of D.W Jan Muhammad is supported by D.W Naimatullah at Ex.162 who has deposed that one Sukhio son of Walidad had got mutated in suit land in his favour by showing Khudadad as issueless.

After hearing learned counsel for the parties I have gone through the evidence oral as well as documentary adduced by the parties on this issue. Perusal of evidence adduced by the plaintiffs transpires that the plaintiffs have not produced any gift deed alleged to have been executed by Mst. Methul in favour of Sukhio in respect of suit land after death of her husband Khudadad As well as plaintiffs have not even disclosed either in their evidence or in their pleadings that Mst. Methul had made oral gift or in writing in the favour of Sukhio.

Not only this but plaintiffs have miserably failed to prove their possession over the suit land in order to show that gift if any made by Mst. Methul was accepted by Sukhio during his life time. Further it has been come on the record through documentary evidence that fouti khata of deceased Khudadad was mutated in favour of Mst. Methul as widow and Mst. Sain as daughter in the record of rights as such true copy of Deh Form VII has been produced by D.W Naimatullah at Ex.162-A.

Since the plaintiffs have failed to prove that gift was made by Mst. Methul in favour of Sukhio in respect of the suit land and Mst. Methul was sole legal heir of deceased Khudadad therefore I am of the opinion that the plaintiffs have miserably failed to discharge the burden of proving of this issue and not rebutted the documentary evidence adduced by the defendants No.6 to 8 on this issue thus issue NO.5 is answered in the negative.”

From perusal of the aforesaid finding of the learned Trial Court, it appears that the Applicants had miserably failed to establish that any gift deed was executed by Mst. Methal in favour of Sukhio in respect of the Suit land after death of her husband Khuda Dad. In fact, in the entire Pleint, the Applicants had failed to even mention that in what form the purported gift was executed by Mst. Methal; that is, whether it was an oral gift or a gift in writing by way of a proper gift deed. As to possession, again the Applicants had miserably failed to establish that they were ever given possession of the Suit land in order to show that any gift was made by Mst. Methal, which was purportedly accepted by Sukhio during his lifetime. It has also come on record through Ex.162/A that after the death of Khuda Dad, the first husband of Mst. Methal, the *foti khata* was changed in her name as widow and Mst. Sain as daughter in the record of rights; whereas, same has also gone unchallenged. The Applicant No.2 appeared as a witness (Exh-100) and while confronted, has admitted in his cross examination that *“I do not know the name attesting witnesses of the gift deed purported to have been made by Mst.Methal in favor of Sukhio.”* In fact, their entire case was based only on some mutation entry, which by itself, per settled law is not a title document. In view of such position, the learned Trial Court as well as the Appellate Court have correctly held that the gift deed was never established so as to justify the claim of the Applicants in question. As to other remaining issues, they are not of much relevance as they are in respect of certain admitted facts, hence, need not be dilated upon.

8. Lastly, it is needless to observe that in a finding of fact where such findings were based on appraisal of evidence, raising of inferences in its discretion could not be interfered with under S.115, C.P.C. merely because a different view was also possible to be taken¹. It is also settled law that a mere fact that another view of the matter was possible on appraisal of evidence, would not be a valid reason to disturb concurrent finding of fact in a Civil Revision². It is further settled that High Court cannot upset finding of fact; however erroneous such finding is, on reappraisal of evidence and take a different view of such evidence³.

¹ ABDUL QAYUM V. MUSHK-E-ALAM (2001 S C M R 798)

² Abdul Ghaffar Khan v Umar Khan (2006 SCMR 1619)

³ Muhammad Feroz v Muhammad Jamaat Ali (2006 SCMR 1304)

9. In view of hereinabove facts and circumstances of this case, it appears that the two Courts below have arrived at a just and fair conclusion; whereas, there are concurrent finding of facts against the Applicants, which in absence of any plausible justification must not be interfered with; hence, the Civil Revision Application does not merit any consideration and is hereby **dismissed**.

Dated: 29-04-2022

Abdul Basit

J U D G E