

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 60 of 2010

(Bibi Nooran and 02 others v. Province of Sindh & others)

Date of Hearing: **16-05-2022**

Date of Judgment: **16-05-2022**

**Mr. Tariq G. Hanif Mangi, Advocate for the Applicants.
Mr. Safdar Ali Bhatti, Advocate for Respondent No.3 since deceased
and for one of the legal heirs of Respondent No.3 i.e. Respondent
No.3(a)**

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Pursuant to earlier orders, an amended title has been filed bringing the legal heirs of Respondent No.3 on record; whereas, Mr. Safdar Ali Bhatti, Advocate has filed Vakalatnama on behalf of one of the legal heirs of Respondent No.3 i.e. Respondent No.3(a), which is taken on record.

2. Through this Civil Revision, the Applicants have impugned Judgment dated 10.11.2009, passed by the 1st Additional District Judge, Khairpur in Civil Appeal No.176 of 2000 (**Haji Azizullah & others v. Bibi Nooran & others**), whereby while allowing the Civil Appeal Judgment dated 08.08.2000, passed by 1st Senior Civil Judge, Khairpur in F.C Suit No.05 of 1997 (**Bibi Nooran & others v. Province of Sindh & others**) has been set aside through which the Civil Suit filed by the Applicants was decreed.

3. I have heard learned Counsel for the parties and perused the record.

4. It appears that the Applicants had filed a Suit for declaration and injunction seeking the following prayer(s):

“(i). That it may be declared that the order dated 25.2.1997 passed by the defendant No.2 directing the plaintiffs to remove the ‘kandhi’ from the disputed property is illegal, void ab-initio, malafide without jurisdiction, ultra-vires bad in law, in excess of the lawful jurisdiction, ineffective, inoperative and not binding upon the plaintiffs and plaintiffs have full rights to hold the disputed property.

(ii). That a permanent injunction may be granted in favour of the plaintiffs restraining the defendants from interfering with the rights, title, enjoyment and possession of the plaintiffs over the disputed property in any manner what so ever.

(iii). That any other relief which this Honorable court may deem just and proper be allowed.

(iv). That the costs be allowed”.

5. The Trial Court after settlement of issues decreed the Suit in favour of the Applicants; whereas, in Civil Appeal, the same has been set aside.

6. Though learned Counsel for the Applicants has made an attempt to make extensive arguments, however, it appears that the only prayer sought in the Suit was to the effect that order dated 25.02.1997, passed by the Assistant Commissioner on some application regarding dispute raised by the Applicants may be set aside. On perusal of the said order, it appears that it was only to the extent of removal of some fence encircled on the plot in dispute; whereas, it was further observed that for remaining dispute, the matter be taken up before a Civil Court. It is an admitted position that the application so made before the Assistant Commissioner is not on record. Be that as it may, the Applicants’ Counsel has not been able to satisfy as to the present grievance remaining for the Applicants, as apparently the learned Appellate Court while deciding the Appeal has though discussed various issues raised between the parties, but the only finding is to the effect that the very Suit of the Applicants was not maintainable. It would be advantageous to refer to para-12 of the Judgment of the Appellate Court, which reads as under:

“In the light of aforesaid findings, I hold that the suit is not entertain-able in law and it will be thus, futile to comment upon other issues as within meaning of Order 20 Rule-5 CPC, the findings on issues of law warrant in their entirety to decide the entire fate of suit on issue of maintainability. Subsequently, I set aside the judgment and decree of trial Court and in the circumstances dismiss the suit. The appeal is allowed with no order as to cost”.

7. Perusal of aforesaid observation clearly reflects that the Civil Appeal has been allowed only to the extent by observing “*that the very Suit was not maintainable and therefore it would be futile attempt to comment on other issues so decided by the Trial Court below*”. In that case, there remains no further grievance as the finding of the Appellate Court is only to the extent of non-maintainability of the Suit, and on this the impugned judgment of the trial court has been set-aside. Insofar as the validity of the impugned order of Assistant Commissioner is concerned, it was only in respect of removal of unauthorized act and some hindrance, hence, there could not have been any exception to that, and the entire exercise on the part of the Applicant was based on some erroneous

advise. Neither any declaration of property or ownership or any other dispute was raised in the Suit; nor the Appellate Court has maintained any such finding of the trial Court; hence, the apprehension on the part of the Applicant in any form or manner is unwarranted. The observations of the Appellate Court in respect of the dispute between the parties is of no relevance; being obiter dicta, as finally the Suit has been dismissed as not maintainable, and in that case no declaration or finding can be given in favor of the Defendants / Respondents. In fact, there was no occasion for filing of this Revision Application.

8. In view of the hereinabove facts and circumstances of this case, this Civil Revision appears to be misconceived and is hereby **dismissed** accordingly.

JUDGE

Ahmad