

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No. S – 31 of 2010

**(Hadi Bux (deceased) through his L.Rs v.
Muhammad Yousif (deceased) through his L.Rs)**

Date of hearing: 12-05-2022

Date of Judgment: 12-05-2022

Mr. Shamsuddin Rajper, Advocate for the Applicant
Mr. Muhammad Asim Malik, Advocate for Respondents

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicant has impugned judgment dated 13.11.2009 passed by 3rd Additional District Judge, Khairpur in Civil Appeal No. 91 of 2002, whereby, the Appeal has been dismissed and Judgment and Decree both dated 03.12.2002 in F.C Suit No.04/1994 (New No.27/2000) passed by 2nd Senior Civil Judge, Khairpur, has been maintained, through which the Suit of the Applicants was dismissed.

2. Heard learned Counsel for the Applicants as well as Respondents and perused the record.

3. It appears that the Applicants had filed a Suit for declaration, possession and mesne profits and permanent injunction and had sought the following prayers;-

- (i) This Honourable Court may be pleased to declare that the plaintiff is the bonafide rightful and exclusive owner of the suit land to the extent of his share viz. 8-30 acres in S.No.216 and others of deh Allah Warayo Chano, Taluka Faiz Ganj and possession of the defendants over said land is illegal unauthorized without right.
- (ii) To hand over possession of the suit land to the plaintiff by dispossessing the defendants.
- (iii) To award mesne profits to the plaintiff for the suit land for the last one year and afterwards till delivery of possession.
- (iv) To grant permanent injunction thereby restraining the defendants and others from directly or indirectly mortgaging, encumbering or alienating in any manner the suit land or changing the entries in the revenue record on false statements and by fabrication of fake documents or otherwise.

(v) To award costs of the suit and other relief deemed fit and proper.

4. The said Suit after evidence of the parties was dismissed, whereas, the Appeal has also failed, hence this Civil Revision Application.

5. It would be advantageous to refer to the evidence of the Applicant, which reads as follows;-

“My father left away 30 acres land after his death. The said lands are situated in Deh Allah Warayo and deh Akree. The Survey numbers 255, 256, 216, 223, 226, 261 measuring about 22 acres in deh Allah Warayo were left away by my father whereas 2 numbers were in (torn) whose numbers are not remembered at present. My father had two (torn). My share would be about 15 acres. I am in possession of 10 acres land. They survey numbers, which were sold out by Mohammad Yousif in favour of Ameer Dad are not remembered by me at present. The said survey numbers were in the name of my father and I had also put signature in the said transaction done in favour of Ameer Dad after sale of eight acres in favour of Ameer Dad about 22 acres remained in name of my father. I am in possession of 10 acres land out of 22 acres land. The survey numbers 255, 256, 261(to extent of 1-38 ghuntas) and one Jreb out of 252 are in my possession. I am not in possession of survey No.222 which was also sold out to Sain Dad with our Joint signatures. It is fact that survey number 218 and 219 are purchase property of the defendant Mohammad Yousif through the registered sale deed. The Makata was written at Kharipur. I do not remember the names of witnesses of Makata. There was no crop standing at that time on (torn) which was given to the defendant number 1 on Makata after (torn) the wheat crop. Makata document was also lying with us which (torn) by my son Shah Nawaz in his name and it was lying in my house. (torn) remember the date of purchase of Makata document. I cannot disclose about the time of purchase of Makata document by my son. I along with defendant No.1 came to Khairpur, where the Makata document was written. I do not know about the person who wrote the Makata document, I do not remember the place where the Makata document was written. The document was signed by me and another person whose name is not remembered to me. The signature of the Khoshi Muhammad was obtained in Akree. This document was also signed by another person. The Makata writer informed me about Makata. It is incorrect to suggest that the Makata document is a forged document and it was not executed by the defendant Mohammad Yousif. The cane crop was standing on the said land at the time of expiry Makata period. It is incorrect to suggest that Mukhtiarkar decided the case against me on my application. Which was referred to SDM. It is incorrect to suggest that I failed to prove the Makata before SDM. It is incorrect to suggest that SDM opined about entries as managed one by tempering the record with the help of Tapedar. Allahdad was known to me. Azeem was his relative. It is incorrect to suggest that the survey No.218 was purchased by the defendant No.1 through the registered sale deed executed in 1954 in form of the above named person voluntarily says that the said land was never owned by those persons. It is fact that survey No.216 measuring 3 acres 26 ghuntas was purchased by the defendant Mohammad Yousif from Bulbahar and Gullan through registered sale deed. Voluntarily says that there is my share in the said survey numbers to the extent of 20 paisas. It is fact that survey No.225 (13-10) was purchased by the defendant No.1 from Peroz through registered sale deed voluntarily says that I have also share in the above survey numbers (torn) the extent of 30 paisas. It is fact that the survey No.227 measuring (torn) was also purchased by the defendant No.1

from Peroz. Voluntarily says that I have also share in the above survey number to the extent of 50 paisa. It is incorrect to suggest that the entire survey numbers 223, 226 came into the share of the defendant No.1. Voluntarily says that I have also there in the above survey No. to the extent of 50 paisas. It is incorrect to suggest that I have sold out my share of survey No.261 to Mohammad Yousif. It is incorrect to suggest that survey numbers 255, 256 and 222 as whole came into the share of the defendant No.1. It is incorrect to suggest that I was given survey number 261 and 253 in satisfaction of my claim from the property of my father. It is incorrect to suggest that I want to obtain possession on the basis of Makata deed. It is fact that I had filed the case before Commissioner in respect of same property, which was not purchased by me due to pendency of civil suit (torn). I was advised not to persued the civil suit. I also known about the (torn) share list which is in the name of all the parties. It is incorrect to suggest that entire share list is in the name of defendant No.1 exclusively. It is incorrect to suggest that I am possession of alleged Makata deed which I have concealed to take away from the court. It is fact that Mohammad Yousif has transferred the entire land in the name of his sons. It is incorrect to suggest that I am deposing falsely. It is incorrect to suggest that Tapedar examined by me resides with me and I have got the record tempered with his help.”

6. It appears that the Applicants on the one hand had filed a Suit both for declaration as well as possession, and on the other hand, had pleaded that he was already the owner of the property and had leased out the same for five years to Respondent No.1, who is his real brother. Both these pleas appear to be contradictory, as if the property was leased by him for a period of five years, then apparently he only ought to have sought possession and not a declaration as well. When the plaint as well as the evidence is read in juxtaposition, it reflects that the stance of the Applicant that the property was leased out is belied from the contents of the plaint and the evidence. In fact, the Applicant is apparently claiming his share in the property, which according to him was owned by the father of the Applicant and Respondent No.1 and it devolved upon the Applicant as a legal-heir. However, in his cross-examination at various occasions he has clearly admitted in respect of various survey numbers that the property was owned by Respondent No.1 (his brother) pursuant to purchase of the same and sale deeds have been registered in his name. In that case by merely asserting and that too as voluntarily that there is also his share involved in the property is not supported by his own conduct in the evidence. If the property was purchased by Respondent No.1 in his own capacity and sale deeds were registered in his name, then how any share could be claimed by the Applicant in these properties as a legal-heir. While confronted, learned Counsel for the Applicant frankly conceded that perhaps before the Courts below the Applicant was ill advised and may be it is a case of ignorance and mistake that he has so stated. If that be the case then perhaps in this Revision Application no indulgence can

be granted as it is to be decided on the basis of available record and the evidence available with this Court.

7. In view of hereinabove facts and circumstances of this case, no case for indulgence is made-out, whereas, the two Courts below have arrived at a just and fair conclusion and moreover, there are concurrent finding of facts against the Applicants, therefore, by means of a short order in the earlier part of the day, this Civil Revision Application was dismissed and these are the reasons thereof.

Judge

ARBROHI