

**HIGH COURT OF SINDH, CIRCUIT COURT  
AT HYDERABAD**

R.A No.60 of 1993

II<sup>nd</sup> Appeal No.01 of 1993

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
Applicants/Appellants	: Through Mr.Arbab Ali Hakro advocate
Respondent No.3	: Mr.Imtiaz Ali Chanhion advocate
The State	: Mr.Wali Muhammad Jamari, AAG
Date of hearing	: 27.08.2019
Date of decision	: 27.08.2019

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**JUDG E MENT**

**MAHMOOD A. KHAN J:-** This revision application as well as II<sup>nd</sup> appeal have impugned the judgments, passed by learned District Judge Hyderabad dismissing the Civil Appeal No.108 of 1993 and First Appeal No.109 of 1993 both filed by applicants/appellants herein against the judgments and decrees passed by the learned II<sup>nd</sup> Senior Civil Judge Hyderabad, whereby, F.C Suit bearing No.516 of 1981 filed by applicants/appellants herein was dismissed while the F.C Suit bearing No.180 of 1984 filed by respondent No.3 herein was decreed.

2. Learned counsel for applicants/appellants contends that the background of the case is that originally the subject property was owned by one Wali Muhammad Nizamani, who had expired in the year 1938 and the property was got acquired by his two sons Yar Muhammad and Sher Muhammad. The said Sher Muhammad though married to one Mst. Bhiroo expired issueless in the year 1947 the entire suit property was claimed by his brother Yar Muhammad. The acquisition, however, was challenged by Mst. Jannat the daughter of Wali Muhammad and sister of late Sher Muhammad on the basis of her inheritance from the father as well as from the issueless late brother. He further contends that approach to the revenue authorities made by the Mst. Jannat was not appreciated at the Assistant Commissioner's level, however, the revision before the Additional Deputy Commissioner was allowed. The revenue record, however, failed to be disturbed and Khatta remained in the name of Yar Muhammad. He also contends that the present applicants/appellants had purchased the suit

property from the said Yar Muhammad by two separate registered sale deeds and possession was also handed over to them and mutation was also effected in their favour in the record. However, after lapse of fourteen years of said mutation Mst. Jannat moved two appeals before the Assistant Commissioner concerned challenging the entries in the record of rights made in favour of applicants/appellants and the said entries were cancelled by the Assistant Commissioner concerned. As such Civil Court was approached by the applicants/appellants claiming rights through the registered sale deed. Whereas, proceedings for cancellation of the said sale deeds as well as correction in revenue record and permanent injunction were initiated by Mst. Jannat. Both matters were consolidated and claim of Mst. Jannat was allowed with concurrent findings, now present challenged before this Court. He contends that proceedings present on part of the Mst. Jannat were of declaratory nature without possession, which are not available and that the registered sale deeds were ordered to be cancelled on the basis of doctrine of lis-pendens, which is not available on account of required certificate to be registered under the Sindh Amendment of the provision of Transfer of Property Act.

3. Learned counsel for the Mst. Jannat contends that time is required to prepare the case, but as the fix date was given, specific question was put to him as to the entitlement of the applicants/appellants to the portion of inherited share which was never contested by its owner i.e. Yar Muhammad. To this aspect learned counsel for Mst. Jannat concedes that the share of Yar Muhammad for himself and acquired from the inheritance of deceased brother Sher Muhammad only having one wife, having not been contested, may be available to the applicants/appellants.

4. Learned counsel for the applicants/appellants was unable to satisfy this Court as to the existence of any legal rights available through the registered sale deed from the inherited property more than the share as was available to the executant and jurisdiction not available to a Civil Court to be exercised being the ultimate Court determining rights especially where cancellation of the sale deed was also required at least for the portion of rights available to Mst. Jannat.

5. In the forgoing circumstances, present revision application as well as II<sup>nd</sup> appeal is allowed to the extent that the preliminary decree

favouring Mst. Jannatis restricted to her rights of inheritance as provided in Sharia and the sale deed is also liable for cancellation to this extent only.

These matters stand disposed of in the above terms.

JUDGE

Sajjad Ali Jessar