

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

R.A No.187 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
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Applicants	:	Through Mr. Arbab Ali Hakro advocate
Respondent No.1	:	Through S. Gh. Hyder Shah advocate
Respondents	:	Nos.2 to 4 Nemo
Date of hearing	:	23.09.2019
Date of decision	:	23.09.2019

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**J U D G E M E N T**

**MAHMOOD A. KHAN J:-** 1. This revision arisen from concurrent findings wherein the suit of the respondent Nos.1 and 2 titled for declaration, cancellation and permanent injunction stands allowed after recording of evidence by the learned trial Court and the same stands maintained at the appellate Court.

2. The facts as alleged in the plaint present on 30-5-2008 are that the agricultural land as described in the plaint being of 17 acres was allotted to claimant Abdul Sattar and was verbally leased to defendant No.1. That the said claimant died on 14-4-1972 leaving behind the plaintiffs and the mother since expired. That after the death of the said claimant the defendant No.1 continued with the payment of lease money to the plaintiffs, however since last year the payment has been stopped and the said defendant has disclosed that he has purchased the suit land in his name and co-defendant No.2 on sale statement before Mukhtirkar Sinjhoru. The two plaintiffs claiming to be pardanashin through their attorney approached the said official and found entries made on 29-6-1994 favouring the said claimant and Yar Muhammad, which are claimed to be fictitious for Yar Muhammad in respect to which an approach to the revenue officials has failed and it has come in the knowledge of the plaintiffs that during the pendency of the suit

the defendant No.5 to 8 have sold the said land to defendant Nos.2,5 to 8. The said claim was contested on part of the defendants admitting the initial allotment as alleged however denying the claims made thereafter contending that the said subject property was purchased from the late owner first by oral statement and thereafter by and between the defendants through registered documents. The date of death as claimed by the plaintiffs was specifically denied and the same was claimed to be incorrectly. The learned trial Court recorded the evidence after framing the following issues based upon the pleading;

- i. Whether Abudl Sattar owner of the suit land expired due to natural death on 14-4-1972?
- ii. Whether the Abdul Sattar leased out the suit land orally to defendant No.1 who was paying lease money of suit land to Abdul Satar up to 1993?
- iii. Whether after 1993 Abdul Sattar sold out the suit land through sale statement on 29-6-1994 before Mukhtirkar Sinjhoru in the sum of Rs.85000/- to defendant No.1 in presence of witnesses or the sale statement is managed fraudulent, illegal and entries on the basis of which in the revenue record with full on the ground?
- iv. Whether the subsequent sale and entries of the suit land are legal, lawful or illegal and a result of fraud?
- v. Whether the plaintiffs are entitled for the relief claimed?
- vi. What should the decree be?

The learned trial Court in respect to issue No.1 considered the oral statement and the production of a death certificate by the attorney sufficient to be convinced in the jointly discussion to the issue Nos.1, 2 and 3 along with the other material brought up from the office of the concerned revenue authorities (which was not brought up under oath) and has although referred the evidence of the

other side (without comparing the same to the contrary evidence), wherein the other contentions of the plaintiffs were also treated as convincing as to the lease and its payment up to 1993 and the entries of the revenue record present in a disorderly manner along with the contents of the written statement filed by Yar Mohammad although the said Yar Mohammad never appeared in the witness box said to have expired and his legal heirs though joined never appeared to contest the matter. The issue Nos.4, .5 and 6 stood concluded without any independent discussion and based upon the findings of issue Nos.1 to 3 in favour of the plaintiffs. Whereas the learned appellate Court considering the same material on its part by framing the conventional two points without any input as to the issues and confining itself to the death certificate of the original owner issued in the year 2000 pertaining to the death said to have occurred in 1972 questioning the very relevant conclusion of impossibility as to "how could Abdul Sattar having died in the year 1972 effected sale statement in the year 1994" dismissed the appeal.

3. Learned counsel for the applicants contends that the present applicants have acquired their title from the late owner Abdul Sattar whose inheritance was claimed by the respondents and in this regard as to the proceedings the prime issue was whether the death of late Abdul Sattar had occurred in 1972 or otherwise, in respect of which the learned trial Court as well as appellate Court have failed to appreciate the quality of evidence which was entertained despite being objected to as the same was restricted to a mere death certificate issued by Municipal Committee in the year 2000 pertaining to the death of 1972. He further contends that the said certificate itself showed that the only criteria for issuance of said certificate was the statement/request of Mst.Saeedan Bibi. He also

contends that the said Mst.Saeedan Bibi was even never examined herself in Court to establish the said facts.

4. Learned counsel for the private respondent however argued that the death certificate having produced shifted the onus of proof to the defendants and the defendants not being able to disturb the said the defendants and the defendants not being able to disturb the said element learned Courts below have rightly given their findings for dismissal concurrently which are not liable to be disturbed. The matter of death and the certificate being dealt hereunder which was not found appealing for the reasons as given, though the matter could have been decided accordingly however as concurrent findings were present, in the interest of justice learned counsel for the respondent was called upon as to whether the respondent requires any further material to be brought up for proving the alleged death, learned counsel for the respondent required an opportunity to be availed by any further material if possible to be brought up.

5. It bears from the impugned judgments/record that the case stands decided on the basis of the death certificate primarily and the all the other evidence/material has been considered presuming the said death certificate to be original and genuine, the Courts below have also considered that as the other-side has not rebutted the said certificate the same is good enough to be so entertained. Perhaps the distinction between an attorney and a witness as present in law in facts of this case has been overlooked. It has not been observed/considered that the two self-admitted pardanashin ladies have never entered the witness box who could have qualified (depending upon the what material may have or comes up) to be the only actual witness to the claimed dealings of the lease amounts requiring corroboration which is found missing even otherwise coming up-to 1993-4 and in any case not up till 2000 as claimed, the attorney is not claimed as a witness to the same, his power of

attorney executed subsequently for litigation and his un-explained, absence to the said claimed dealings leaves the disputed death certificate (which otherwise strangely has been got issued showing the applicant/informant Mst.Saeeden Begum being wife of the deceased dated 27-11 2000 for a death that occurred on 14-4-1972), the said wife also having executed a power of attorney by way of a thumb impression which is also not so clear in May 2000 as such had to be alive is strangely claimed to have expired before filing of the suit on 30-5-2008 in the pleadings. The said death certificate as such acquiring the very substantial document to be positively proved directly and cannot be accepted in the present form of being produced as a document by a person who never even applied for the same. The evidence as present shows that the said attorney is having more of a relationship as an adverse party to the present owners than having any actual links with the plaintiffs. In a very convenient manner the said attorney is found to have been used in the matter without any relationship/nexus with the plaintiffs to such an extent that the power of attorney not been even signed by him to establish any actual link to the actualities, (I have intentionally not commented upon the power of attorney having been executed by whom by way of thumb impression which is not clear itself and its effect in order not to prejudice the trial on account of no original findings present as the matter is being remanded), the same may be looked into by the learned trial Court) irrespectively the said attorney, if he can be called an attorney otherwise not being a witness cannot qualify to the criteria of a witness under the relevant/basic provisions of Qanoon-e-Shahadat Order 1984, irrespectively to his qualifying as an attorney if so?. In the present circumstances, the present death certificate as is said to be on record referred above are found untenable, however, in the interest of justice and in order for the respondents to be given an opportunity to prove the occurrence of the death and if so brought up

and where after only the onus actually shifting on the applicants i.e. defendants, can positive findings as to the death can be ascertained. In the circumstances the matter is remanded to the learned trial Court in order for the private respondents to prove the death of late Abdul Sattar having occurred in the year 1972 irrespective to the said certificate already brought up and in this regard to led evidence to bring forward further material, if available where-after the applicants may also avail opportunity of rebuttal, if so required. As an issue of maintainability on account of power of attorney is found missing let the same be framed by the learned trial Court also. It may further be observe that the evidence already present on record shall also be available to the learned trial Court except as to the death certificate discussed above and the parties are free to lead further evidence in respect to the other issues required and present and the learned trial Court shall give well-reasoned findings in respect to all the issues except issue No.1 as found convenient, no restriction however is being put to any re-framing/recasting of the issues present also except for issue No.1, findings of which stands determined as untenable in both the judgments.

6. The matter pertaining to the year 2008 it is reasonably expected that the learned trial Court shall made a sincere attempt to conclude the same complying with the above observations within a period of three (04) months from the date of this order, for which no further notice shall be required.

This revision application stands allowed and disposed of

in the above terms with no orders as to costs.

Sd/- MEHMOOD A. KHAN,  
JUDGE

