

IN THE HIGH COURT OF SINDH AT CIRCUIT COURT,
HYDERABAD

Civil Revision Application No. 151 of 1996

Present:

Mr. Justice Mahmood A. Khan

Amjad Hussain and others

Versus

Arif Ali Abbasi and another

Date of Hearing : 01.10.2019

Applicants : Through Mr. Arbab Ali Hakro,
Advocate

Respondent No. 1 : Through Mr. Prakash Kumar, Advocate

Respondent No. 2 : Through Mr. Wali Muhammad Jamari,
Asst. Advocate General

J U D G M E N T

MAHMOOD A. KHAN, J: 1. By this revision concurrent findings have been impugned in the suit filed by the appellants titled for declaration and permanent injunction, wherein recorded evidence is also present in the file, the same was however dismissed on an application U/s.151 CPC filed by the respondent calling for dismissal on the ground that the said proceedings have become infructuous as the possession of the subject land had been taken over on account of proceedings decided by the Chief land Commissioner and the suit is barred by the provisions of MLR 151. The said application was heard along with another application under Order VI Rule 17 CPC filed on part of the applicants for amendment of the plaint and it was ordered

that suit and the said application for amendment both be dismissed, the said findings were also upheld at the appellate stage.

2. In the suit seeming to have been filed on 5-5-1982 it is claimed that the subject land of 219-10 acres, situated in Delh Hingoro, Tapa Hote Wassan, Taluka Sinjoro District Sanghar was in the ownership of Respondent No.1, Arif Ali Abbasi (hereinafter referred to the said owner) residing at Karachi and on promulgation of MLR 89 the said defendant surrendered and repurchased the same under MLR 91. It is claimed that the said owner being unable to pay the required installments agreed to sell the said land in the sum of Rs.2,50,000/- to the plaintiffs and appointing one Sabih Khan Liskani as his attorney (hereinafter referred to the said attorney) for the said purpose along with for making of payments to the authorities. On completion of the required payments through the said attorney by way of bank-drafts as well as in cash, the land record was transferred in the name of said owner to whom the original challans were handed by the said attorney. On 7-7-1981 the said owner executed sale deed through his said attorney in favor of the plaintiffs and the same was registered before Sub-Registrar, Sanghar on 8-7-1980 based upon which the mutation was made favoring the plaintiffs in the land records in December 1980. The plaintiffs also claim having improved the land by spending amounts and that since the price had gone up on instigation of the neighboring zamindars being opponents the said owner filed a time barred application before Assistant Commissioner for setting aside the mutation on the ground of fraud, who condoned the delay illegally and issued notices to the plaintiffs for 8-5-1982. It is also claimed that the said exercise of Assistant Commissioner is



malafide, illegal, without jurisdiction and in excess of jurisdiction is a nullity in law. The said owner contested the matter and filed the written statement claiming that his deceased father had gifted the subject land to him. It is however admitted that the said land was surrendered under MLR 89 and repurchased under MLR 91 and it is not also not denied that the subject land was recorded in the name of the said owner however the other claims as to the sale were denied and it is contended that the forged document of power of attorney has been got made and that the execution is fraudulently acquired by collusion of the Sub-Registrar. That the said Registrar had given a no transection certificate for the date when the said sale deed was executed (this certificate however is strangely not brought on record) and that the said land has been sold by the said owner vide agreement dated December, 1981 to one Ahmad Khan Marri by agreement and that said owner legally and properly filed the application before the Assistant Commissioner. It seems that an application order 7 rule 11 CPC was earlier filed by the said owner before the learned trial Court which was dismissed by an order dated 31st May 1988 brought on record holding that the plaint cannot be dismissed on the grounds of the suit being not maintainable, hit by MLR 115, is pre-mature and no cause of action has accrued concluding that the said grounds require leading of evidence. The learned trial Court was however pleased to order dismissal of the suit considering the provisions of section 7 (1) (a) of MLR 115/1972 concluded that the alienation made after crucial date of 20-12-1971 been declared as void and as such the transaction made by the said owner through his said attorney in the year 1980 became bad and no legal sanctity can be enforced through the process of law. Whereas

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the learned appalled Court was also pleased to confirm the same also referring to PLD 1985 Supreme Court page 144 holding that the Land Commissioner and Chief Land Commissioner are competent to cancel alienation after the crucial date also referecing to paragraph 26 of MLR 115 providing protection to such orders.

3. Learned counsel for the applicants contended that the proceedings as present before the learned trial Court was in respect to the title and the trial Court while passing the impugned order has failed to consider the very questions required for deciding the title and had restricted the matter to the words of MLR whereby no jurisdiction can be exercised by a Civil Court. Learned counsel of the applicant has relied upon the case reported as PLD 1975 SC 624, contending that in respect of title jurisdiction is available with the Civil Court and that the Civil Court is liable to have reject the plaint in case jurisdiction was not available however, the dismissal of the suit was not available and such aspects were not considered by the appellate Court also.

4. Learned counsel for the private respondents however, contends that the Civil Court on account of MLR 115 is only competent to an element which does not fall within the scope of the Commission and where both have the ability, the final decision shall remain with the Land Commission as held by PLD 1985 SC 44. Learned counsel has also relied upon PLD 2000 SC 31 in respect to the Power of Attorney and Section, 7, 11 and 26 of MLR 115. It is contended that the appellants having failed to approach the required forum as available under MLR 115, the Civil Court was not empowered and as such, the impugned orders need no disturbance.

5. Learned Assistant Advocate General in the matter also supports the impugned orders.

6. In this matter although there are concurrent findings however as the same not found based upon the findings of a regular/complete trial, the matter requires a deeper appreciation. The controversy between the parties already stated above the final order of the Chief Land Commission is first liable to be considered as the same is the actual basis of findings as acquired by the Courts below in this matter, although it is strangely observed that the same is not found referred in the said orders except as to its existence, relevant portion being:

8. I have considered the case. The learned counsel for the respondent has mainly taken the case on limitation side. Perusal of the impugned order shows that it does not mention the date on which it was passed. It is therefore not possible to determine as to from which date the limitation counts. Moreover the alienations were made after promulgation _____ the appellants were not party before the _____ Land Commissioner. The limitation point therefore is not very much material.

(Blanks caused on account of bad photocopying but not being material in nature stands ignored)

9. The declarant had filed declaration under MLR 115 and had disclosed certain alienations to have been made by him within the crucial period of 1.3.1967 to 20.12.71. These alienations were duly scrutinized by the Land Commissioner and Chief Land Commissioner Sindh under para 7(i)(b). The alienations now claimed pertain to the period after the crucial date viz 20.12.1971. According to para 7(1)(b) of the MLR 115 transfer of any land and creation of any right of interest therein or encumbrance on any land, made in any manner whatsoever in respect of any area, on or after 20.12.1971 by any person



holding immediately before that date an area more than permissible ceiling of 12000 P.LUs shall be and shall be deemed always to have been void and the land so transferred and encumbered shall be deemed to have been owned/possessed by the person by whom it was owned/possessed immediately before that date. The claimed alienations are admitted to have been made on 8.7.1980 and 4.9.1980 i.e. after the crucial date viz 20.12.1971 and before the case was finally adjudicated in 1985. The alienations are therefore hit by para 7(1)(a) of MLR 115. The learned counsel contended that the alienations were made from the land involved in the gift made to respondent Arif Ali which was held valid by the Land Reforms Authorities. But is not so. The land gifted to respondent Arif Ali was in deh Hassanali whereas an area of 219-10 acres from the claimed sales is situated in deh Higorja. Moreover the land involved in the alienations was declared by the declarant and it will be covered under para 7(1)(a) of MLR 115 till final adjudication of the case.

10. As regards the contention of the learned Advocate for the petitioners that they were not heard, it may be mentioned that the alienations are claimed to have been made after filing of declaration. These were therefore not within the notice of Deputy Land Commissioner. The question of hearing the petitioners by the D.L.C therefore does not arise. They themselves did not apply to become party.

11. In view of the above legal position the claimed alienations/sales are hit by para 7(1)(b) of MLR 115. Therefore without prejudice to the cases before the various forums between the parties other than the Land Reforms side, the claimed alienations are hereby held to be void for the purpose of MLR 115. The disputed land has been retained by the legal representative of the deceased declarant which right he could avail under para 11 of MLR 115. On Land Reforms side the rights of the petitioners could not be protected so far implementation of impugned order is concerned. The impugned XX

order and action taken thereunder therefore stand maintained.

The appeal is hereby rejected.

(Underlining made by me for emphasis)

The above order apart from the discussion following clearly establishes that the final order of the Land Commissioner was without prejudice to the cases before the various forums between the parties other than the Land Reforms side, neither the present applicants being claimants were heard in the matter nor the said order decided the matter of controversy/rights between the said owner and the applicants. It is also clear that the said order shied away from deciding the claim of the applicants and restricting the said order for the purpose of MLR 115 only and went to the extent of further elaboration that the rights of the petitioners i.e. the applicants herein cannot be protected, leaving the civil Court for redress.

7. The controversy in the above given situation leads to following questions?

1. Whether the learned trial Court had available jurisdiction to pass the impugned order?
2. Whether the Land Commission in the matter had exercised jurisdiction as to the controversy between the parties contesting before the Trial Court?
3. Whether the restraint under MLR 115 is having a blanket cover or the same is restricted in the present case?

8. As to the first question the learned trial Court having already held by the earlier order as passed under Order 7 Rule 11 CPC having held that the matter of MLR 115 was to be considered after leading of evidence, re-entertainment of the matter for maintainability



on the ground of MLR 115 can only be termed as an exception without any explanation found present in this regard, however as the other side was heard this element by a very learnt view may be termed as an irregular exercise but subject to its correctness otherwise.

9. However as to second and third questions it may be observed that I have already commented upon the final order as present above and for the sake of brevity the same need no repetition. It may however be further observed that the purpose of MLR 115 is restricted to violation of the maximum limit present by withholding excess land however in the present case as the option of maximum limit stood exercised no restraint was left, even otherwise the right of claim by the appellants starts after making the payments to acquire complete entitlement of the owner within the available limit to which no jurisdiction was exercised to effect the rights of the parties by the Land Commission. It is an admitted position that the land record was transferred in the name of said owner after payment of the required amount and no land was ever acquired by the Commission, yes the jurisdiction may have been available had the said owner preferred to not to retain by exercise of the right available under Para.11 of MLR 115, however the above quoted order clearly specifies that this was never the case. It is as such very clear that the Land Commission in the matter never exercised jurisdiction as to the controversy between the parties contesting before the learned trial Court. As to the blanket cover it was required on part of the learned trial Court to examine the order of the learned Land Commission and observe the exceptions as were ever present. In conclusion it is as such determined that impugned orders are not found sustainable on account of the above discussions being a clear non-reading of the material which was

referred but perhaps never perused to conclude the findings bearing therefrom.

10. The matter of dismissal of the suit or the plaint being distinct needs no discussion in view of the reported case of Muhammad Anwar v. Province of Punjab reported at 2016 CLC page 1660 though this lacuna is ever present in the impugned orders especially as the matter stands concluded as above and further the said entertainment would result in a correction accordingly to that extent, but in presence of the above this revision succeeds, the impugned orders are set aside and the subject suit stands restored.

11. The impugned order to the extent of dismissal of the suit which at best should have been plaint otherwise concluded above, also pertain to exercise of powers under 6 Rule 7 CPC, the same however having been so determined on account of the said dismissal but not found to sustain as above cannot sustain also. While observing that the said applications not affecting the nature and character of the plaint stand allowed also, let amended plaint be filed within a period of 2 weeks from the date of receipt of this order by the learned trial Court. I have intentionally not referred to any material of the evidence as present and the conclusion as may have been available therefrom as no order from the leaned trial Courts below has come up in this regard, however as sufficient time of the parties have already been consumed it is expected that the learned trial Court shall make a sincere attempt to conclude the matter in accordance with law within a period of six months from the communication of this order.

This revision stands allowed as above with costs favoring the appellant throughout.

Sd/- MEHMOOD A. KHAN,
JUDGE 23-11-2019

Announced by me

Sd/- ADNAN-UL-KARIM MEMON,
JUDGE

CERTIFIED TO BE TRUE COPY

ASST REGISTRAR

27/11/2020