

**IN THE HIGH COURT OF SINDH, CIRCUIT  
COURT, HYDERABAD**

R.A No. 152 of 2020

Applicant : Nawab through Mr. Bharat Kumar Suthar,  
Advocate who is called absent today

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of hearing  
and Order : 15.08.2022

**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through instant revision application, the applicant has called in question the judgment and decree dated 15.09.2020 passed by learned District Judge / MCAC Tharparkar at Mithi in Civil Appeal No. 23 of 2019, whereby the learned Judge while dismissing the appeal maintained the Judgment dated 02.11.2019 passed by trial Court in F.C Suit No. 125 of 2017. The applicant has now attempted to re-open the case through this revision application under Section 115 CPC, inter-alia on the ground that the suit filed by the respondent was not maintainable under section 172 of the West Pakistan Land Revenue Act as he has no legal character; that there was a dispute between the parties on the issue of demarcation. He prayed for allowing the instant revision application.

2. None present for the applicant and no intimation is received. It appears from the record that this Revision was filed 5.10.2020, and after obtaining the order for issuance of notices the applicant and his counsel have chosen to remain absent and have not come forward to even fix this matter before the Court, which shows that perhaps he has lost interest in these proceedings, therefore, I have gone through the record as available before me and find that there are concurrent finding available against the applicant which does not require further interference by this Court. An excerpt of the appellate judgment is reproduced as under:-

“ Perusal of the record reveals that as per attested copy of entry No.212 dated 24.09.2001, in Deh Form VII-B, denotes that the respondent No.1/plaintiff is owner of agricultural land falling in Blocks No.3/1 to 4 (14-09 acres) and some other blocks in Deh Phant, Tapo Additional Bhitro, Taluka Kaloi, which he had purchased from Farooq and 4 others, through registered sale-deed No.376 dated 28.08.2001. The version of respondent No.1 / plaintiff is supported by the official respondents/defendants No.2 to 5 in their joint written statement and in order to determine the real controversy between the parties, the demarcation/measurement was got conducted at the site, which strengthened the claim of respondent/plaintiff, on the basis of which the learned trial court rightly found entitled the respondent No.1 / plaintiff for recovery of possession of his land admeasuring 203 feet in Blocks No.4 & 5, in Deh Phant, Tapo Additional Bhitro, Taluka Diplo (now Kaloi) from the appellant/defendant No.1, hence he rightly directed the Mukhtiarkar

concerned for properly demarcating said blocks and then hand-over their possession of respondent No.1 / plaintiff after evicting appellant / defendant No.1 from said blocks and imposed fine of Rs.50,000/- payable to the respondent/plaintiff by the appellant / defendant No.1 out of his property, determining the Commissioner's fee, issuance of process to the Superintendent, Settlement Survey, Mirpurkhas Division for site inspection. The record also transpires that trial court took efforts for resolving the controversy between the parties, got inspected the site U/O XXVI Rule 9 CPC on the application moved by the plaintiff to ascertain whether disputed 73 feet comes within the limits of plaintiff's land or are part of State land and accordingly vide order dated 22.09.2018, the Additional Deputy Commissioner-I, Tharparkar was appointed as Commissioner to inspect the site and ascertain the illegal encroachment upon suit land in presence of special attorney of plaintiff and defendant No.1 and in compliance of the order, he submitted his report dated 02.10.2019 along with report of Tapedar and site inspection map and copies of revenue record relevant with site which tantamount that after constituting a team, comprising of Mukhtiar (Rev) Taluka Kaloi and three senior Tapedars, he had visited the site in presence of special attorney of plaintiff and defendant No.1 and during measurement of boundaries at site, observed that the appellant/defendant No.1 had built his house and had possessed an area of 3-20 acres in Block Nos.5/1,2 & 4/1 with him which otherwise is the property of Abdul Momin, the grandfather of respondent No.1 / plaintiff. Against which the appellant/defendant No.1 filed objections on the report of Commissioner alleging that the Commissioner has given undue favour to the respondent No.1/plaintiff and that the site inspection should have been carried out by the Settlement Survey Department having jurisdiction as per spirit of the order dated 22.09.2018. The record further reveals that the respondent/plaintiff didn't resist such plea of appellant/defendant No.1 and conceded for the fresh inspection of site by the Settlement Survey Department, who after visiting the site in compliance of the order of trial court, submitted his report on 29.11.2019 along with joint report of Surveyors and Tapedar of Tapo Additional Bhitaro, which manifests that the appellant/defendant No.1 had illegally encroached upon 203 feet on the land of respondent No.1/plaintiff.

In the light of above discussion, I do not find any illegality, irregularity or impropriety in the impugned judgment & decree which may require or justify interference of this court, hence the point No.1 is answered in the affirmative.

**Point No.2.**

In view of the foregoing discussion on point No.1, the appeal stands dismissed while the impugned judgment & decree dated 02.11.2019 & 30.11.2019 respectively, are maintained.

3. Primarily, cases can be revised by this Court as it possesses revisional jurisdiction as defined under Section 115 of the Code of Civil Procedure. This Court has the right to revise cases decided by subordinate courts to ensure the delivery of justice and maintenance of fairness. In the present case, the applicant throughout the proceedings has lost his case up to the level of appellate stage, and at the revisional stage, he has agitated the grounds already exhausted by him and properly adjudicated by the competent forum, thus in my view, no perversity and illegalities have been pointed out in the findings of the courts below, therefore no ground existed for re-evaluation of evidence, and thus, I maintain the Judgments and Decrees passed by the courts below.

4. Before parting with this order, it is observed that undoubtedly, Revision is a matter between higher and subordinate Courts, and the right to move an application in this respect by the Applicant is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; the first part enumerates the conditions, under which, the Court can interfere and the second part specifies the type of orders which are susceptible to Revision. In numerous judgments, the Honorable Supreme Court was pleased to hold that the jurisdiction under Section 115 C.P.C. is discretionary.

5. In the light of the above facts and circumstances of the case, I am of the view that this Court in its Revisional Jurisdiction cannot interfere in the concurrent findings recorded by the two competent Courts below and I also do not see any illegality, infirmity or material irregularity in their Judgments warranting interference of this Court. Hence, this Revision Application is found to be meritless and is accordingly dismissed along with the pending application(s) with no order as to costs.

**JUDGE**

*\*Karar\_Hussain /PS\**