

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Civil Revision Application No. S- 55 of 2012

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For Katcha Peshi.
2. For hearing of CMA 392-2012.

Mr. Soomar Das R. Parwani Advocate for Applicants.
Mr. Abdus Salam Arain Advocate for Respondents.

Date of hearing: 22-05-2017

J U D G M E N T

MUHAMMAD SHAFI SIDDIQUI J. Applicants have filed this civil revision application against concurrent findings of the two courts below. Brief facts leading to filing of the suit (copy of which is available at page-227 Annex-J) are that respondent No.1 filed an appeal under section 161 of the Land Revenue Act for redressal of their grievance in relation to illegal and fraudulent entry regarding survey No. 172 having area of 00-25 Ghutas. The appeal was heard and decided. Although it is claimed in the suit that it was *ex parte* decision, but the order of Assistant Commissioner, Ghotki revealed that both the parties were called and were heard twice and subsequently applicants remained absent without any intimation and hence appeal as disposed of by the Assistant Commissioner, Ghotki declaring that fraudulent Khata of survey No.172 having area of 00-25 Ghuntas in the name of Abdul Jabbar son of Muhammad Khan Ghoto dated 14.3.1981 in Dakhil Kharij Register No. 6595 at page 54 of Deh Lалуwali Taluka and district Ghotki stands cancelled with all subsequent entries including that of

applicant No.2 and that entry is restored in the name of respondent No.1 as per entry No. 69 dated 17.11.1984 of Village Form-VII-A

2. Learned counsel for applicants amongst other grounds submits that the Assistant Commissioner had no authority to cancel such entry on the ground of fraud and mis-representation as it could only be decided by a civil court having jurisdiction. He further submits that *ex parte* order of the Assistant Commissioner is liable to be dismissed on this score alone that applicant was condemned unheard. He further submitted and relied upon registered sale-deed in favour of applicant No.2 Sijawal Khan which was executed between applicant No.1 and applicant No.2. He further submits that entry allegedly cancelled by the Assistant Commissioner in favour of applicant No.1 was in fact entered on the basis of statement recorded before witnesses who were examined and the evidence of such witnesses was ignored by the two courts below as the statement of respondent was recorded for consideration.

3. On the other hand, learned counsel for respondents submits that applicants have miserably failed to establish their case before two courts below by not producing proper evidence and witnesses required to establish case of the applicants. Witnesses whose evidence was recorded are not impartial. The official witnesses in whose presence alleged statements claimed to have been recorded were never summoned and there is nothing on record to suggest that any piece of evidence was ignored by the two courts below or that trial court and appellate court exceeded to their jurisdiction. So far as grounds that this fraudulent entry could have been

cancelled only by the competent court of civil jurisdiction, learned counsel submits that applicants had every opportunity to establish their case before civil court but they have miserably failed that statement of respondent No.1 was recorded before competent authority and that too for consideration and that entry in Dakhil Kharij Register was made in favour of applicant No.1 for consideration.

4. I have heard learned counsels and perused the relevant record.

5. At the first instance, I have to see this case within the frame of section 115 CPC as to whether two courts below have acted beyond their jurisdiction and that they have exercised jurisdiction not vested in them and/or material irregularities were exercised. The evidence of one Abdul Jabbar has lost its authenticity and credibility when father's name of applicant No.1 was shown to be different than one disclosed in the NIC. Be that as it may, evidence of applicant No.2 Sijawal is also perused which is on the same line as that of the first witness i.e. Abdul Jabbar. Though the private witnesses were examined but official witnesses such as Assistant Mukhtiarkar, Ghotki and/or Tapedar in whose presence Khata was transferred in the name of applicants and possession was delivered and more importantly statement of respondent was recorded, were never examined. Surprisingly, neither the statement on the basis of which subject-land of 00-25 Ghuntas was transferred in the name of applicants was produced nor such record has been summoned or produced by official witnesses. The first transaction on the basis of alleged statements remain un-proved. The subsequent transaction on the basis of such alleged transfer

was made on the basis of registered sale-deed between applicant No.1 and applicant No.2 is of no consequence since the initial burden as far as original sin is concerned is yet to be washed out by the applicants.

6. I do not agree with the contention of applicants that they were condemned un-heard as far as order of Assistant Commissioner is concerned. They were heard twice and ultimately at the time of final hearing and passing order, referred to above, it was their choice to remain absent which they have exercised and that will not amount to condemning them un-heard. Other issue regarding exhausting remedy by filing appeal before the Commissioner or before Member Board of Revenue also remained un-exhausted. The applicants never pleaded this ground that a fraudulent entry could never be determined by the Assistant Commissioner and it is the civil court which enjoys jurisdiction, hence this question is not available to the applicants. Even otherwise, they had an opportunity to establish their case as to their entitlement on the basis of alleged statement which was recorded before Assistant Mukhtiarkar, Ghotki or Tapedar. Hence, they have failed to establish on second round again as far as the statement of respondent No.1 is concerned. Consequently, since original entry in the name of applicants was never proved, all subsequent entries based on this entry would fail.

7. This is a revisional court and not the appellate court. The jurisdiction of this court as such is confined to the extent:

- a) where the trial court exercised its jurisdiction not vested in it by law,
- b). failed to exercise a jurisdiction so vested,

- c). acted in the exercise of the jurisdiction illegally or with material irregularity.

This court cannot sit as appellate court to form its own view discarding the concurrent view taken by the trial court as well as appellate court based on evidence. The exercise of revisional jurisdiction is limited only to the correction of the errors of jurisdiction committed by the courts below or if they are based on mis-reading or non-reading of evidence which is not the case here. Where courts below had applied their mind to the factual and legal aspect of the case and had given cogent reasons in support of the conclusion arrived at by them and no material mis-reading or non-reading of evidence was pointed out, interference in revisional jurisdiction has always been declined. Re-appraisal of evidence is not permissible in revisional jurisdiction nor can any conclusion drawn by the trial court and/or appellate court be upset merely because an opposite view is also feasible.

8. I do not see any substantial ground available within the frame and parameters of section 115 CPC to interfere in the concurrent findings of the two courts below. He has neither been able to point out which part of the evidence was overlooked nor he was able to point out any wrong assumption of jurisdiction either by trial court or appellate court to cause interference. Infact material witnesses have not been examined by applicants and documents going to the root of the case were never produced or proved.

9. Hence, these are the reasons for dismissing this civil revision application by a short order dated 22.05.2017.

JUDGE

Ahmad