

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Revision Application No. 212 of 2009.

Applicant : Darhoon s/o Haji Ramzan
Through Syed Anwar Ali Shah Advocate.

Respondent No.1. Abdi s/o Padoo [deceased] through legal heirs:
Through Mrs. Razia Ali Zaman Khan Patoli Advocate.

Respondent No.2. Mir Hassan s/o Haider Khan
Through Mr. Muhammad Ishaque Khoso Advocate.

Date of hearing: 17.02.2020.

Date of Judgment: 17.02.2020.

J U D G M E N T

MUHAMMAD SHAFI SIDDIQUI, J.- Brief facts of the case are that U.A. No.77 comprising of 18-00 acres of Deh Badeero, Taluka Matli was granted to two persons namely (i) Ismail s/o Darya Khan and (ii) Darhoon s/o Haji Ramzan Lund in the ratio of 12-00 acres and 06 acres respectively in terms of the sketches and were in possession of their respective lands. It was a “running grant” for a limited period. After the sad demise of one of the grantee namely Ismail a Foti Khata Badal was made in the name of his son Padoo s/o Ismail while the grant was still a running grant. The legal heir Padoo s/o Ismail allegedly gifted the same out of U.A. No.77 Deh Badeero Taluka Matli to his son Abdi prior to the issuance of T.O. Form and alleged agreement of sale was executed by Abdi in favour of Mir Hassan s/o Haider Khan Nizamani. On the basis of the alleged agreement a Suit for specific performance was filed as F.C. Suit No.43 of 1992 against Abdi. The amended title, after the sad demise of Abdi was filed disclosing all legal heirs including those who were minors. The suit was compromised between Mir Hassan as Purchaser and Khamiso, Mst. Hakeema widow of Abdi. She claimed to have signed the compromise on behalf of her minor children. The compromise was in respect of the entire land including the land of another grantee i.e. Darhoon. An application under section

12(2) was then filed by Darhoon whereby judgment and decree was set-aside which was maintained by the appellate court in Civil Revision No.17 of 2004 vide order dated 22.3.2006. The trial court then proceeded the suit on merit having new No.32 of 1993. Though the original suit and agreement was in respect of 12-00 acres of land being original grant to Ismail, during the pendency it was discovered that there was some additional land as well and hence the respondent No.2 started claiming the entire land in excess of the agreement.

The following issues were framed by the trial court.

1. Whether the demarcation of U.A. No.77 of Deh Badeero Taluka Matli is illegal and unlawful new numbers formed out of U.A. No.77 have no legal and lawful strength and U.A. No.77 is still in its original position?
2. Whether the defendant Abdi entered into agreement of sale with the plaintiff in respect of suit land including U.A. No.77 of deh Badeero and had sold out the same on the consideration of Rs.200000/- if so its effect?
3. Whether agreement No.174 dated 28.3.1990 has got legal and lawful strength and is binding upon the parties?
4. Whether the agreement No.174 dated 28.3.1990 is null and void and the vendors of agreement were eligible and entitled according to law to sale out the land granted by the Barrage department to Ismail s/o Darya Khan out of U.A. No.77 of deh Badeero and the agreement has become infructuous illegal and unlawful?
5. Whether the entire sale is in favour of plaintiff is totally illegal and unlawful?
6. Whether the plaintiff has obtained the T.O. form in respect of 18-00 acres out of U.A. No.77 of deh Badeero by fraud and the same T.O. Form has been cancelled and the entries made on the basis of unlawful T.O. Form has been cancelled which made the entire transaction infructuous and illegal unlawful?
7. Whether the claim of plaintiff for execution of registered sale deed in respect of suit land including an area of 18-00 acres out of U.A. No.77 of deh Badeero is malafide, illegal and unlawful?
8. Whether the defendant No.7 is grantee of an area of 6-00 acres out of U.A. No.77 of deh Badeero and his grant is still intact?
9. Whether the plaintiff is not come with clean hands before this court and is not entitled of any relief?
10. Whether the defendants were not authenticated to sale out suit land and their sale is illegal and unlawful?
11. Whether the suit is not maintainable?
12. Whether the suit is barred by law?

13. Whether the agreement of sale of land in suit in favor of plaintiff creates any right or title if not its effect?
14. Whether the plaintiff is entitled to relief claimed?
15. What should the decree be?

The evidence of Darhoon, Qurban Ali, Muhammad Azeem and Iqbal Solangi was taken on record as Ex.73, 88 and 82 which was recorded under section 12(2) CPC. This exercise was carried out by consent of the parties.

Heard learned counsel.

In so far as the land of applicant Darhoon is concerned, said land is outrightly excluded from the purview of the agreement as it was an independent land granted by the Colonization Officer under the Colonization Act, hence it can never form part of the sale agreement. We are more concerned with the land of Abdi s/o Padoo which is claimed by respondent No.2 Mir Hassan through an agreement. It is claimed that an agreement of sale was executed between Mir Hassan and Abdi on 28th March 1990, in consideration of Rs.200,000/- and allegedly paid 1,65,000/- as earnest money. This agreement of sale was executed in presence of witnesses who were not examined and it claimed to have been attested by Assistant Mukhtiarkar and Magistrate. It was a Government 'Naqabooli' land granted to one Ismail and at the time of agreement the land grant was not fully paid nor at the relevant time Transfer Order (T.O) Form was issued in favour of the grantee under section 19 of the Colonization Act and unless Transfer Order is issued in favour of grantee and all annual grants have been paid, the land cannot be subjected to any further transaction and that too without permission of the authority as required under section 19 of the Colonization Act. Section 19 of Colonization Act is reproduced as under:-

19. Transfer of rights to be void. – Except as provided in section 17, none of the right or interest vested in a tenant by or under the Government Tenants (Punjab) Act, 1893, or this Act, shall, without the consent in writing of the [Executive District Officer (Revenue)], or of such officer as he may by written order empower in his behalf, be transferred or charged by any sale, exchange, gift, will, mortgage or other

private contract, other than a sub-lease for not more than one year in the case of a tenant who has acquired a right of occupancy, and seven years in the case of a tenant who has acquired a right of occupancy, any such transfer or charge made without such consenting writing shall be void, and if (after the commencement of this Act) the transferee has possession, he shall be ejected under the orders of the Collector:

Provided that the right of sub-letting conferred by this section shall not release any tenant from a condition requiring him to reside in the estate in which his tenancy is situated.

The respondent has not adduced any evidence that at the time of entering into an agreement of sale with Abdi or with any of his legal heir, the permission of the revenue officer in relation to the land in question was available. It was a suit between private parties only and revenue authorities have not been arrayed. If at all legal heir of Ismail i.e. Padoo could claim right under section 19-A of Colonization Act 1912 there was nothing under the law to empower said legal heir to gift the land to anyone including his son as restricted under section 19 of Colonization Act unless a T.O Form is issued. Abdi claimed title over the land only by virtue of a gift from his father Padoo s/o Ismail. There are serious questions regarding entitlement of the land which have not been explained satisfactorily without a shadow of doubt. Abdi claimed interest in the land by virtue of a gift from his father Padoo in terms of entry No.9 Book No.492 page-9 of Dakhal Kharij Register and also entry No.35 dated 14 March 1986 of Village Form No.XVII. Padoo claimed ownership as being legal heir of Ismail (original grantee) on the basis of entry No.08 of Dakhal Kharij Register 492 at page 08. These entries are in violation of section 42 of the Land Revenue Act as well as 19 of the Colonization Act. Padoo's rights thus restricted under the law to execute such gift.

In the previous round of litigation two legal heirs i.e. Mst. Hakeema and Khamiso entered into a compromise with Mir Hassan respondent No.2. Mst. Hakeema acted on behalf of minors. Those proceedings were quashed in terms of an order passed under section 12(2) CPC hence cannot be relied upon. Even

otherwise these legal heirs cannot pass on any title which was never conferred upon them under the law. T.O. Forms in respect of the new survey numbers i.e. (1) Ismail Block No.6/1,2, 8/1,2,3 area 11-14 acres (2) Darhoon Block No. 7/1,2 area 4-30 acres and the additional block No.7/3 were cancelled on 22.03.1992 which was never challenged.

The appellate court has not considered the case of the applicant at all and on the strength of a compromise executed between the parties decreed the suit of the respondent No.2 whereas the title and rights of predecessor of alleged seller were not scrutinized. The evidence recorded under section 12(2) CPC was considered as evidence in the main case by consent of the parties and it was not a unilateral decision of trial court as held by appellate court. It was obligatory upon respondent No.2 to have proved the entitlement and right of the respondent No.1 and his predecessor u/s 19 and 19-A of Colonization Act 1912. By way of a compromise a valid title cannot be conferred. In the original proceedings the revenue authority have not impleaded as party.

With these reasons this revision application was allowed.

A copy of this order be forwarded to the revenue department to act in accordance with law.

JUDGE

A.