

# **IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 136 of 2010**

**Syed Bahadur Ali Shah & others v. Lal Dino & others**

Date of hearing: **21-03-2022**

Date of decision: **21-03-2022**

Mr. Nishad Ali Shaikh, Associate of Mr. A. M. Mobeen Khan,  
Advocate for the Applicants  
Syed Jaffer Ali Shah, Advocate for Respondent No.1 to 4  
Mr. Shahryar Imdad Awan, Assistant Advocate General Sindh

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

**Muhammad Junaid Ghaffar, J.-** Through this Civil Revision Application, the Applicants have impugned judgment dated 27-03-2010 passed by 2<sup>nd</sup>. Additional District Judge, Khairpur in Civil Appeal No.38/2005, through which judgment dated 29-04-2005 passed by 2<sup>nd</sup>.Senior Civil Judge, Khairpur in Civil Suit No.170/2002 has been set-aside whereby the Suit filed by Respondents 1 and 2 was decreed.

2. Applicants' Counsel has filed written arguments. Heard learned Counsel for Respondents and perused the written arguments and record.

3. It appears that Respondents 1 and 2 had filed Suit for declaration, cancellation of sale deed, entries in revenue record, possession, mesne profits and injunction and had sought the following prayers; -

- a) *Declaration that the Plaintiffs are the legal owners of the suit land viz Survey No.296, 297, 299, 300, 399, 400, 794, 795, 796, 797 and 798, total admeasuring 29-05 acres, situated in Deh Mulko Wahan Tapo Jhando Mashaikh Taluka Kot Diji, District Khairpur and mutation is to be made in their names in records of rights and also that the entries regarding illegal mutation in the name of defendants No.9 to 17 and others is null, void, abinitio, illegal, unlawful, malafide, fraudulent of no legal effects liable to be cancelled and not binding on the Plaintiffs.*
- b) *Cancellation of entry in record and sale deed that this Honourable Court may cancel all the entries, sale deed in the name of defendants or other persons in the record of rights having been made in suit land.*
- c) *To direct the defendant No.9 to 17 deliver the vacant possession of the suit land i.e. Survey Nos.296, 297, 299, 300, 399, 400, 794, 795, 796, 797 and 798, total admeasuring 29-05 acres, situated in Deh Mulko Wahan Tapo Jhando Mashaikh Taluka Kot Diji, District Khairpur to the plaintiffs.*

- d) *To direct the defendants to pay mesne profit at the rate of Rs.5000/- (five thousand) per acre per annum to the Plaintiffs from December, 1999 till the delivery of vacant possession of the suit land to the plaintiffs.*
- e) *Permanent injunction restraining the defendants No.9 to 17 their agents, servants, legal representatives or any person or persons claiming through them in any way directly or indirectly from interfering in the peaceful possession of Plaintiffs in suit land for survey Nos.297/2-33 & 299/2-31 (2-27 acres) and also restraining defendants No.1 to 17 from changing the Khata or mischieving in revenue record/record of rights of suit land of survey Nos.296, 297, 299, 300, 399, 400, 794, 795, 796, 797 and 798, total admeasuring 29-05 acres, situated in Deh Mulko Wahan Tapo Jhando Mashaikh Taluka Kot Diji, District Khairpur, or from doing any acts, things, prejudicial to the interest of Plaintiffs in any manners without due course of law.*
- f) *The defendants shall bear the cost of suit.*
- g) *Any other relief or reliefs which this Honourable Court may deem fit and proper be granted to the Plaintiffs.*

4. The learned trial Court after recording evidence came to the conclusion that these Respondents had made out a case and accordingly the Suit of these Respondents was decreed in the above terms. Being aggrieved, the Respondents filed Civil Appeal and through impugned judgment, the Appeal has been allowed and the judgment of the trial Court has been set-aside. The relevant finding of the learned Appellate Court whereby the Appeal has been allowed is as under; -

“Point No.i:-

11. *The PW-1 Bahadur Ali Shah (respondent No.1/plaintiff NO.1) has deposed in his examination in chief (Ex.52) that his father Late Syed Khan Shah was owner of survey Nos.296/2-33, 297/2-23, 299/2-31, 300/3-01, 399/0-07, 400/3-24, 794/3-11, 795/2-18, 796/2-29, 797/2-04 and 798/3-24 total admeasuring 29-05 acres in deh Mulko Wahan, Taluka Kotdiji and after his death they (respondents No.1 & 2/plaintiffs) became owners of the land. During cross examination he denied the suggestion that in the year 1962 his father sold out the land bearing survey No.296, 798 & 300 in the name of father of appellants No.1 to 4/defendant No.15.*

12. *On other side the DW-1 Mian Dad deposed that his father Late Muhammad Sadique Channa purchased the land bearing survey No.296, 798 & 300 to the extent of 50 paisa share from Khan Shah and 50 paisa from Sachal Shah, Haji Mehmood Shah and Ibrahim Shah. In support of his claim the DW-1 has produced true copy of sale deed dated: 20.03.1963 at Ex.57/A of the R & Ps. This sale deed confirms the version of DW-1.*

13. *The order dated: 22.11.2001 passed by then D.D.O (Revenue) Kotdiji (respondent NO.6/defendant No.4) available at Ex.52/D of the R & Ps reads as under;-*

*“The tapedar of the beat has produced relevant record and submitted the report that S.Nos.296/2-33, 798/3-24, 0-50 ps. out of*

S.No.300/3-01, stands sold out through registered sale deed dated: 20.03.1963 by S. Khan Muhammad Shah S/o Allan Shah and S.No.794/3-11, 795/2-18, 297/2-23, 299/2-31, 399/0-7, 400/3-24, 797/2-04 deh Mulko Wahan stands mutated in favour of S. Khan Muhammad Shah and Allan Shah (50 ps. Each) vide entry No.133 new number 68 dated: 16.9.1974.”

It is clear that the sale deed dated: 20.03.1963 (Ex.57/A of the R & Ps) was entered in the revenue record.

14. The PW-1 has deposed in his examination in chief as under:-

“Syed Sachal Shah, Ibrahim Shah, Murtaza Shah, Mehmood Shah asked me after death of my father to the revenue Department in order to mutate the title in my name as well as in the name of my brother. Syed Sachal Shah and Murtaza Shah gave statement that I and my brothers are real legal heirs of deceased Syed Khan Shah. I produce Form-VII/A in which the suit land was mutated in my name and in the name of my brother on 16.09.1974 at 52/C.”

In view of above statement it can be said that the mutation available at Ex.52/C of the R & Ps has been accepted by the respondents No.1 & 2/plaintiffs.

15. The Fotikhata Badal dated: 16.09.1974 available at Ex.52/C of the R & Ps shows the transfer of property of Syed Khan Shah in the names of respondent No.1 & 2/plaintiffs as under:-

Entry No.	Name of owner	Area with survey numbers		Transfer in the name	Area
		Survey Numbers	Area		
132	Syed Khan Muhammad Shah S/o Allah Shah  50 PAISA	794	3-11	50 paisa  Syed Allan Shah S/o Khan Shah	8-19
		795	2-18		
		297	2-23		
		299	2-31	50 paisa  Bahadur Ali Shah s/o Khan Shah	
		399	0-07		
		400	3-24		
		797	2-04		
		<b>Total area</b>		<b>16-38</b>	
<b>50 paisa share</b>		<b>8-19</b>			

16. The minute perusal of the mutation dated 16.09.1974 reproduced in the preceding paragraph No.13 shows that the area viz; 296/2-33, 798/3-24 and 50 paisa share of survey No.300/3-01 (total measuring 7-37-05 acres) is not included in the FOTIKHATA of deceased Khan Shah and this supports the evidence of DW-1 discussed in preceding paragraph No.12 & 13 that Syed Khan Shah, the father of respondents No.1 & 2/plaintiffs sold out the land bearing survey Nos.296/2-33, 798/3-24 and 50 paisa share of survey No.300/3-01 through sale deed dated 20.03.1963. The D.D.O (Revenue) Kotdiji (respondent No.6/defendant No.4) has also discussed the sale of these three survey numbers by Late Khan Shah.

17. The contention of respondents NO.1 & 2/plaintiffs is that Late Khan Shah was not exclusive owner of suit land and that first time he (late Khan Shah) was recognized as owner on 13.08.1963 in the open

Katchehry held by the Inquiry Officer/Deputy Collector Mirwah. The order of Inquiry Officer dated 13.08.1963 produced by PW-1 at Ex.52/A of the R & Ps shows that suit land was already entered in the name of Khan Muhammad Shah S/o Allan Shah in Deh Form VIII-A and Inquiry Officer/Deputy Collector had only confirmed that previous entry. As such, it is clear from Ex.52/A of the R & Ps that Late Syed Khan Shah was owner of the suit land even before 13.08.1963. In these circumstances, the contention of respondents No.1 & 2/plaintiffs that on 20.03.1963 Khan Shah was not competent to sell the land does not attach weight.

18. For the above reasons & discussion given in paragraph No.11 to 17, I am of the considered view that it is proved from the evidence on record that Late Khan Shah sold out survey Nos.296/2-33, 798/3-24 and 50 paisa share of survey No.300/3-01 (total measuring 7-37-05 acres) through registered sale deed dated 20.03.1963 and accordingly point No.1 is replied in affirmative.

POINT NO.ii:-

19. The respondents No.1 & 2/plaintiffs have pleaded in the paragraph No.7 of the plaint as under:-

“That on advised of the defendant No.9, the fotikhata of the whole suit land was mutated in favour of plaintiffs on 16.09.1974 in equal share of 0.50 p.s each vide entry No.133 new number 68 dated: 16.09.1974 at the time of said mutation the legal heirs of the father of the plaintiffs were verified by the defendant No.9 and by one Syed Ghulam Murtaza Shah (defendant No.13) who is son of defendant No.11 and have given statement on oath regardingly.”

20. The respondents No.1 & 2/plaintiffs have based their title on mutation dated: 16.09.1974 which has been produced by the PW-1 at Ex.52/C of the R & Ps and the same is reproduced in the preceding paragraph No.15 and it shows the transfer of 8-09 acres area being 50 paisa share out of total area 16-38 acres in the names of respondents No.1 & 2/plaintiffs. This mutation, as pleaded in the paragraph No.7 of the plaint and so also evidence has been accepted by the respondents No.1 & 2/plaintiffs and now they can not claim more area and rather their claim will be hit by **law of Estoppel**.

21. **Article 114 of Qanun-e-Shahadat** reads as under:-

“**114. Estoppel.** When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing”.

The mutation as claimed by the respondents No.1 & 2/plaintiffs has been recorded on 16.09.1974 and this suit has been filed on 21.11.2002 i.e. after about more than 20 years. As such the present suit of the respondents No.1 & 2/plaintiffs is hit by law of Estoppel because they have not challenged the mutation entry No.132 dated: 16.09.1974 and this amounts to waiver/omission.

22. *For the above reasons & discussion given in paragraph No.19 to 21, I am of the considered view that the respondents No.1 & 2/plaintiffs are entitle 50 paise share measuring 8-19 acres comprising survey Nos.794/3-11, 795/2-18, 297/2-23, 299/2-31, 399/0-07, 400/3-24 and 797/2-04 being 50 paise out of total area of 16-38 acres and accordingly point No.1 replied in negative.*

POINT NO.iii:-

23. *As a result of my findings on point No.i, ii & iii, the Civil Appeal No.38/2005 is allowed with no order as to costs with the result judgment and decree dated: 29.04.2005 & 06.05.2005 respectively stands set aside and the F.C Suit No.170/2002 (Re;- Syed Bahadur Ali Shah and another V/S Government of Sindh & Others) previously decreed stands dismissed.”*

5. Perusal of the aforesaid finding clearly reflect that insofar as the case of the Applicants is concerned, the same was by itself contradictory. Further, it was also hit by limitation. Their case was that the Suit property as claimed by private Respondents was never sold by their father and in support reliance was placed on their Foti Khata Badal and the mutation entry thereof dated 16.09.1974. However, as reflected from the above finding of the learned Appellate Court, the Survey Nos. being claimed by the Applicants as legal heirs were never recorded in their name pursuant to Foti Khata Badal; hence, at that point of time it stood clear that the Suit property was no more owned by the Applicants father and had never devolved upon them. This resultantly led to a presumption which then also stands proved, that their late father had already sold the Suit property as being claimed by the private Respondent. As to the Foti Khata Badal and the entry thereof, the Applicants had no issue or grievance; rather they had even relied upon the same in support of their claim. The only objection raised by them was that since the property by itself was allotted in the name of their father subsequent to the date of Sale Deed of private Respondents i.e. 13.8.1961, therefore, it could not have been sold prior to such dates; hence, the sale deed in favor of Respondents was a forged and managed document. To that it may be observed, that if this was their case, then they ought to have challenged such sale deed on the date when Foti Khatal Badal was recorded in their names on 16.09.1974. This is not so; hence, by that count their Suit was hopelessly time barred. Secondly, and as rightly observed by the Appellate Court that as per report of the Inquiry Officer dated 13.08.1963 produced by the Applicants themselves as Ex-52/A the Suit land was already entered in the name of Khan Muhammad Shah S/o Allah Shah in Deh Form VII-A, whereas, the inquiry officer had only confirmed the previous entry and never said that

this entry was recorded on that date. This clearly established that land was already in his name before the date of the inquiry report. Therefore, the contention that on 20.03.1963, the Applicants father was not competent to execute any sale deed is not only presumptive, but so also vague and without any basis. The date of inquiry report, in absence of any other supporting material could not be presumed to be the date on which the suit land was allotted to Applicants father; rather it was already in his name and was sold accordingly. Except this, no other ground has been seriously raised on behalf of the Applicants.

6. In view of hereinabove facts and circumstances of the case, it appears that the Appellate Court was fully justified in setting aside the judgment of the trial Court which was not based on proper appreciation of facts and law as apparently the trial Court had fallen in error. Therefore, no case is made out on behalf of the Applicants; hence, by means of a short order this Revision was dismissed on 21.03.2022 and these are the reasons thereof.

Judge

ABROHI