

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 69 of 2006

(Naeem Arshad & others v. Mst. Zubeda Khatoon)

Date of hearings: **17.01.2022**

Date of Announcement: **01.04.2022**

Mr. Mumtaz Ali Jehangiri Advocate holding brief for Mr. Manoj Kumar Tejwani, Advocate for the Applicants
Mr. Nishad Ali Shaikh, associate of Mr. A.M. Mobeen Khan Advocate for the Respondent

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned Judgment dated 26.4.2006, passed by Additional District Judge, Moro, in Civil Appeal No. 19 of 2006 (**Mst. Zubeda Khatoon & another v. Naeem Arshad & Others**), whereby, Civil Appeal stands allowed and order of the Trial Court dated 19.1.2006, passed in F.C Suit No.35 of 2005 (**Mst. Zubeda Khatoon & another v. Naeem Arshad & Others**) has been set-aside, through which the Application of Applicants under Order 7 Rule 11 CPC was allowed by rejecting the Plaint in the above Suit.

2. Both Learned Counsel have filed written arguments, which have been perused including the record placed before this Court.

3. It appears that Respondents No.1 & 2 had filed a Civil Suit for Declaration and Permanent Injunction seeking the following prayers;

- (a) That Honourable Court may be pleased to declare that the Plaintiffs are owners of land situated in Deh Dars and Dejarja as inherited by them from their father and the Defendants No:1 to 4 have no right, title over the land i.e. share of Plaintiffs, to claim the same in any way.
- (b) That Honourable Court may declare that the document of gift in favor of Defendants No: 1 to 4 i.e. entry No:33, dated: 17.07.1980, alleged, forged, illegal and void and is not binding upon the Plaintiff.
- (c) That this Honourable Court may be pleased to direct the Mukhtiarkar Moro to correct the Entry No:33 dated: 17-07-1980 and names of Plaintiffs may be entered in place of Defendants No.1 to 4 in Revenue record after deleting the names of Defendants No:1 to 4.
- (d) This Honourable Court may be pleased to grant permanent injunction against the defendants No:1 to 4, restraining them from claiming and selling the suit land and also restraining the defendants No:5 to 9 from creating any new situation in Revenue Record as

- already it is in existence and interfering in possession of suit land by themselves, their agents, sub-ordinates in any manner whatsoever.
- (e) Cost of the Suit to be borne by the defendant.
 - (f) Any other relief which this Honourable Court deems fit and proper be awarded to plaintiff.

4. The Applicants filed an application under Order 7 Rule 11 CPC for rejection of the Plaint on the ground that Respondents had already availed alternate remedy by approaching the District Officer (Revenue) Naushahro Feroz impugning order dated 28.9.2005, whereby, the Foti Khata badal Entry in favor of the Respondents had been cancelled in favor of the Applicants. The said application was allowed by the trial Court on the ground that the contention of the Applicants is justified as the jurisdiction of the Civil Court is barred and the Respondents may approach the concerned officials and pursue their remedy. The Respondents being aggrieved preferred Civil Appeal which has been allowed by the Appellate Court by setting aside the order of rejection of plaint and has been pleased to hold that since disputed facts are involved and voluminous documents have been brought on record; hence, the matter must be decided on merits. The Applicants being aggrieved by such order have filed instant Revision praying for setting aside the said order of the Appellate Court.

5. Insofar as the finding of the Appellate Court is concerned, without any disrespect to the said Court, the same does not appear to be justified and in accordance with law; notwithstanding, that the final conclusion drawn is correct. Mere filing of voluminous documents does not entitle a party to seek adjudication of every *lis* brought before the Court. To that extent the said observations are not sustainable. Similarly, by holding that it is a must that a written statement shall be filed before filing of an application under Order 7 Rule 11 CPC; again the same is not correct appreciation of law and again cannot be sustained. Even in both situations, if a case is otherwise made out, a plaint can be rejected without a formal application to that effect.

6. Having said that, the final conclusion that plaint ought not to have been rejected in the present case appears to be correct and does not warrant any interference. The same is however, on the reasoning assigned by this Court and not on the one which have been dealt with and relied upon by the Appellate Court in the impugned order. The gist of the Respondents case (Female Members) is that they are daughters of Late Muhammad Afzal Khan, whereas, the Applicants are their cousins (**father of Applicants**

and Respondents being real brothers). The Suit property admittedly was owned by the Respondents father, and after his death even a Foti Khata Badal was also recorded in their favor vide Entry No.233. As per the plaint the Respondents are Parida Nashim women, whereas, the Applicants being influential persons, have managed a forged Gift documents purportedly executed by the late father of the Respondents in their favor, and on such basis, they have got the Foti Khata Badal cancelled in their favor and an entry has also been recorded in their name by way of an order dated 12.11.2005. It is their further case that they had no knowledge of execution of any such gift by their late father in favor of the Applicants, whereas, the Applicants had been regularly paying them zamindari share. It is their case that as soon as it came into their knowledge the same was challenged.

7. Insofar as the only ground which has prevailed upon the trial Court in rejecting the plaint that since the Respondents had also availed some departmental remedy for seeking cancellation of entry in favor of present Applicants, is concerned, ordinarily, the same may be true; however, in the present fact the same cannot be applied or invoked. Admittedly, the said entry is based upon some alleged Gift executed by the father of the Respondents. The same has been denied, whereas, in their Plaint they have also challenged the said Gift (notwithstanding the fact that no specific prayer for its cancellation has been made); and such declaration and cancellation cannot be granted or entertained by any Revenue Official. They have maintained the entry on the basis of a Gift and once it is challenged, then even if an alternate remedy has been availed, the said Officials cannot declare a Gift to be valid or otherwise. This is the function of a Civil Court to either declare the Gift to be invalid or order its cancellation after recording of evidence. The Revenue Officials cannot do so and are only required to maintain the Revenue Record on the basis of documents of ownership. Therefore, the order of the trial Court whereby the plaint was rejected could not be sustained, whereas, the Appellate Court has though set-aside the same; however, the reasons so assigned are not based on proper appreciation of law; hence, cannot be approved. But at the same time the impugned order as to its final conclusion is maintained; however, for the reasons so assigned hereinabove.

8. In view of hereinabove facts and circumstances of this case, this Civil Revision does not merit any consideration and is hereby **dismissed**. Before parting it may be observed that unfortunately, for numerous reasons which need not be discussed herein, this matter has taken up years to be decided by this Court; though a very short legal issue was involved, therefore, it is expected that the learned Trial Court would endeavor and make all best possible efforts to decide the main Suit on merits within 6 months from today. Office to issue copy of this judgment to the trial Court for compliance.

Dated: 01.04.2022

J U D G E