

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Civil Revision No. S – 16 of 2004

(Ubedullah & another through LRs. vs. Province of Sindh & others)

Date of hearing: 07-03-2022

Date of Judgment: 07-03-2022

Mr. Mushtaque Ahmed Shahani, Advocate for the Applicant
Nemo for the Respondents

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned judgment dated 18-11-2003 passed by learned District Judge, Sukkur in Civil Appeal No.09 of 2003, whereby, while dismissing the Appeal, judgment dated 26-11-2002 passed by 2nd Senior Civil Judge, Sukkur, in F.C Suit No.210 of 1994 has been maintained, through which the Suit of the Applicant was dismissed.

2. Heard learned Counsel and perused the record, whereas, nobody has turned up on behalf of the private Respondents despite being served.

3. It appears that the Applicant No.1 had filed a Suit for declaration and injunction seeking the following prayer;-

- (a) To declare that the plaintiff No.3 is absolute owner of the suit land viz. S.No.150, 220, 269 of deh Haleji Sharif, Taluka Panoakil, District Sukkur.
- (b) To issue permanent injunction against the defendants No.2 to 6 restraining them from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit land without due course of law.
- (c) To award the costs.
- (d) To award any other relief which this Honourable Court deems fit and proper under the circumstances of the case.

4. After exchange of pleadings and settlement of issue the Suit was dismissed and the finding of the learned trial Court is as under;-

"I have heard learned counsel for the parties. Perused the record. I have also gone through the material brought on record.

Mr. Soomar Das learned counsel for the plaintiff has placed his reliance on Order R 2 CPC and case law reported in 1983 CLC 482 Karachi, PLD 1992 Karachi 423, 1995 CLC Quetta 88, 1995 CLC Karachi 183, 1996 MLD Peshawar 1409, 1999 MLDS SC (AJK) 236, Section 100 of Qanun-e-Shahadat, PLJ 1999 S.C (AJK) 18, PLD 1963 (W.P) Karachi 613 and 1998 CLC 382 Karachi.

After hearing learned counsel for the parties I have given the due consideration to the submissions made by the learned counsel for the parties. Perused the evidence adduced by the parties. Perusal of evidence of P.W Mohammad Ismail transpires that there are different sub castes of Indhar castes and also transpires that they belongs to Bakhrani sub caste of Indhar caste. Ghulam Hyder was his grand-father. Rabban was grand-father of Pinio. He do not remember the name of father of Rabban.

It is pertinent to point out here that the suit filed by the plaintiffs father namely Ghulam Hyder for specific performance of contract and permanent injunction has already been dismissed by the learned Senior Civil Judge, Ghotki and by the learned Vth Additional District Judge, Sukkur. So also the plaintiffs have not produced documentary evidence i.e. Nikahanama of Mst. Wahid Dini regarding her second marriage after death of her husband Dater Dino. As well as the plaintiffs have not produced any pedigree / Shujra of the legal heirs of deceased Gaman, Dater Dino, Ghulam Nabi and Mst. Wahid Dini further plaintiffs have also not adduced any documentary evidence that they are legal heirs of Sadoro.

According to documentary evidence Ex.103 that Bhagio had died unmarried as well as plaintiff has not produce the register sale deed alleged to have been executed by Sadoro in favour of Moulvi Ghulam Hyder.

Not only this but it has come on record that there are 22 sub castes of Indhar sub caste and late Gaman was Joro of sub caste of Indhar caste. Moulvi Ghulam Hyder was not cousin of Late Gaman, Moulvi Ghulam Hyder was Bakhrani sub caste of Indhar sub caste. Therefore, I am of the opinion that the plaintiffs are not owners of the suit land. Hence issue No.1 is answered in the affirmative.

Issue No.2

The burden of proving of this issue lies upon the defendants as they have pleaded that the suit is not maintainable according to law and this issue is framed out of the pleadings but defendants have not adduced any specific evidence on this issue. It is admitted position that the plaintiffs have prayed for declaration of their ownership over the suit land and permanent injunction as they are claiming their ownership over the suit land being their inherited property and purchased property. They have joined the defendants as party in the suit and valued the suit properly, therefore, I am of the opinion that the suit of the plaintiff does not appear to be barred by any law. Thus Issue No.2 is answered in the negative.

Issue No.3

The burden of proving of this issue lies upon the plaintiff as they have averred that the defendants No.4 to 6 are harassing them and trying to dispossess them over the suit land. To prove this issue P.W Mohammad Ismail Indhar has not deposed any single word on this issue. In rebuttal defendants No. 4 to 6 have already filed civil suit against the plaintiffs for declaration, cancellation and permanent injunction and possession of the suit land in this court. Hence I am of the opinion that the defendants are not harassing the plaintiffs. Hence this issue answered in the negative.

Issue No.4

In view of findings recorded under forgoing issues I am of the opinion that the plaintiffs are not entitled to the relief sought for. Hence issue No.4 is answered in the negative.

Issue No.5

In view of the evidence brought on the record and discussed in detail above, I am of the opinion that the plaintiffs have miserably failed to prove their case, thus the suit of the plaintiffs is dismissed with no order as to costs.”

5. The aforesaid judgment of the trial Court was then impugned in appeal and the learned Appellate Court through impugned judgment also dismissed the Appeal in the following terms;-

“8. I have considered the submissions and have gone through the pleadings of the parties as well as evidence recorded in the case.

9. From the pleadings of the parties and evidence, points for consideration are as under;-

1. Whether appellants/plaintiffs are owners of S.Nos.150 to the extent of 60 paisa and S.No.220 and 269 to the extent of 20 paisa share by virtue of inheritance and purchase and also owner of 20 paisa share of the land by virtue of agreement executed by the land by virtue of agreement executed by Mst. Nawazi in favour of respondent/plaintiff No.3?

2. Whether the appellants/plaintiffs are entitled for the relief claimed?

10. Appellants/plaintiffs have produced Muhammad Ismail appellant/plaintiff No.2 Wahid Bux and Abdul Sattar Brohi Clerk in evidence.

11. PW-1 Muhammad Ismail Indhar in his evidence has testified that suit land was originally owned by Gaman who left Datardino as soon as the legal heir. Said Datardino also expired and left Mst. Wahidinni as sister and Ghulam Nabi as son at the time of his death. Ghulam Nabi expired during his child hood and left Mst. Wahidini as mother and Moulvi Ghulam Hyder appellant/plaintiff No.3 being son of the grand father's cousin. Mst. Wahidini had contracted second marriage with Bhagio after the death of her first husband Datardino and left Bhagio as husband and Mst. Nawazi as sister as legal- heirs and Mst. Wahidini had inherited 15 paisa share out of S.NO.150 and 20 paisa out of S.No.220 and 269 from her sister Mst. Nawazi. He has further testified that Bhagio had inherited the land from his wife Mst. Wahidini and after the death of Bhagio, Sadoro as brother and Mst. Arbab as wife inherited the land. Sadoro had executed 14 paisa out of S.No.150, 17½ out of S.No.220 and 269 from his brother Bhagio while Mst. Arbab had inherited 02 paisa share out of S.No.150 and 2½ paisa share from S.No.220 and 269 from her husband Bhagio and Ghulam Hyder had inherited 44 paisa share out of said survey numbers. Moulvi Ghulam Hyder had purchased the land from Sadoro through registered sale deed and has also purchased the land from Mst. Nawazi through agreement to sale and khata to the extent of share of Mst. Nawazi was not mutate in favour of Moulvi Ghulam Hyder as she expired after 15 days of the contract, hence Civil suit was filed.

12. In cross examination PW Muhammad Ismail had admitted that there are different sub-caste of Indhar tribe and they belongs to Bakhrani sub-

caste of Indhar and Hyder was his great grand-father who was not cousin of Gaman. Hyder had one son and Panio's father was Gaman. Rabban was father of Panio.

13. On the other hand, PW:2 Wahid Bux has stated that he know Gaman son of Panio and Gaman had died leaving Datardino as son. He has further stated that Mst. Wahid Dini died and he do know the legal heirs of Mst. Wahid Dini. He has stated in cross examination that the parties in the suit are not his relatives as he is Napar by caste.

14. PW:3 Abdul Sattar Brohi Clerk of the Court is also examined who has produced the copy of agreement executed by Mst. Nawazi in favour of Moulvi Ghulam Hyder appellant/plaintiff No.3 and certain copies of land Revenue receipts.

15. On the other hand, respondent/defendant Abdul Halim had examined him who has testified that there are 24 sub-castes of Indhar and Gaman belong to Jhoro sub-caste while Moulvi Ghulam Hyder belonged to Bakhrani Branch of Indhar Caste and Gaman had left Datardino as legal heir who left Ghulam Nabi and Mst. Wahid Dini. He has further testified that his mother Mst. Nawazi had not sold her land to Moulvi Ghulam Hyder and the Suit No.58/1982 filed by Moulvi Ghulam Hyder was dismissed by the High Court on 17-9-1984. Appeal was filed which was dismissed by the appellate Court and her mother had not sold the land to Moulvi Ghulam Hyder.

16. From the evidence and pleadings of the parties, it stands established that appellant/plaintiff No.3 Moulvi Ghulam Hyder had filed a Suit for Specific Performance of Contract and Permanent Injunction in respect of 20 paisa share of the land allegedly sold by Mst. Nawazi to him, is dismissed by the Court of Senior Civil Judge vide Judgment and decree dated 17-9-1984 in F.C Suit No.58/1982 and thereafter appellant/plaintiff No: preferred an appeal against the said Judgment and decree which is also dismissed by the learned V-Additional District Judge, Sukkur on 4-6-1986 and now the present suit filed by appellant/plaintiffs in respect of the land of Mst. Nawazi claiming to be owner of the land by way of agreement is hit under the principle of Resjudicata the suit of the appellant/plaintiff No.3 Moulvi Ghulam Hyder bearing Suit No.58/1982 for Specific Performance of Contract and Permanent Injunction in respect of the land of Mst. Nawazi is also dismissed.

17. So far the rest of the land is concerned, appellant/plaintiffs have not produced any "Pedigree" of the legal-heirs of deceased Gaman and his legal heirs Datardino, Ghulam Nabi or Mst. Wahid Dini. Appellants/plaintiffs have not produced any witness of marriage of Wahid Dini with Bhagio as second marriage, nor the attesting witnesses of the sale of the land executed by Sadoro in favour of appellant/plaintiff No.3 Ghulam Hyder as such the trial Court has rightly dismissed the suit of the appellant/plaintiffs and I do not find it fit and proper to interfere with the Judgment and decree passed by the trial Court. Consequently, the appeal is dismissed, however with no order as to costs."

6. From perusal of the aforesaid findings of the two Courts below, it appears that the Applicants had miserably failed to establish their case with any cogent and confidence inspiring evidence, whereas, even their own witnesses while being cross-examined, admitted various facts which do not support the Applicants case. It is also a matter of record that Applicant No.2 had also filed Suit for specific performance in respect of

some 20 paisa share in the suit land allegedly sold by Mst. Nawazi, which was dismissed vide judgment dated 17-09-1984 in F.C Suit No.58 of 1982 by the trial Court against which an Appeal was also dismissed by the Court of Additional District Judge, Sukkur on 14-06-1986, whereas, the said judgments were never challenged any further; hence, the claim to that extent had no basis and no further indulgence is warranted.

7. As to the remaining claim in the suit property, the Applicant further failed to produce and establish the pedigree of the legal-heirs of deceased Gaman and thereafter his further legal-heirs as they failed to produce appropriate evidence to this effect. The Applicant also failed to establish as to any second marriage of Mst. Wahid Dini with Bhagio; nor they were able to establish and prove the purported sale deed executed in their favour by Sadoro by examining the attesting witnesses.

8. All in all the concurrent findings of the two Courts below appear to be based on the evidence which was led by the Applicant, whereas, no case for any misreading or non-reading of the evidence has been made out. Neither this Court has been assisted in any manner to make out a case of any exception to such findings of the two Courts below. After going through above findings and the material evidence available on record, which has been relied upon on behalf of the Applicants, I am unable to convince myself to exercise any discretion in favour of the Applicants so as to upset the impugned findings and substitute the same with my own on the basis of the evidence as suggested on behalf of the Applicants. This, in the present facts and circumstances is impermissible. If the conclusion drawn is not suffering from any infirmity, then it ought not to be interfered with and a mere fact that on examining the evidence, another view can be taken or is possible, it is not sufficient to upset the decision of the Courts below, until and unless the facts so warrant. Unfortunately, the case of the Applicant is not an exception of that nature¹.

8. In view of hereinabove facts and circumstances of this case, this Civil Revision Application fails and is hereby dismissed.

Judge

ARBROHI

¹ Reliance may be placed on the cases reported as *Abdul Qayum v Mushk-e-Alam* (2001 SCMR 798) and *Abdul Ghaffar Khan v Umar Khan* (2006 SCMR 1619)