

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

IInd Appeal No.3-59 of 2022

Manthar Ali & another

Appellants

Versus

Registrar Sindh University
Jamshoro & others

Respondents

Date of hearing & order: 04.11.2022.

Barrister Azmatullah Channa, Advocate for appellants.
Nemo for Registrar Sindh University Jamshoro, though served.
Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

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JUDGMENT

ADNAN-UL-KARIM MEMON, J. Through this IInd Appeal, appellants are asking for setting aside the Judgment and Decree dated 11.05.2022 & 16.05.2022 passed by learned IInd Additional District Judge, Jamshoro @ Kotri in Civil Appeal No.10 of 2021 (Re-Manthar Ali & another v. Province of Sindh & others) dismissing the appeal filed against the Judgment and Decree dated 10.02.2021 and 15.02.2021 whereby Suit No. 29 of 2015 of respondent No.1/ plaintiff was disposed of in the terms as under:-

- a. Defendant No.10 by virtue of entry No.96 dated 03.11.1991 is not the lawful owner of the suit land.
- b. The order bearing No.EDO(Rev)/Reader/1027/2008 Jamshoro dated 18.6.2008 is fake order.
- c. The entry No.96 dated 3.11.1991 in favour of defendant No.10, the general power of attorney dated 17.4.2014 in favour of defendant No.11 and the subsequent sale deed dated 8.1.2015 in favour of defendant No.12 are hereby cancelled as the same have no value in the eyes of law. All concerned officials are directed to keep the cancellation remarks against the above mentioned documents in the relevant record.
- d. The defendant Nos. 10 to 12, their agents and or their subordinates are hereby restrained from claiming the piece of land of the plaintiff on the basis of entry No.96 dated 3.11.1991 the general power of attorney dated 17.4.2014 and the sale deed dated 8.1.2015.”

2. Brief facts of the case as per memorandum of appeal are that plaintiff/respondent No.1 (hereinafter called as "respondent") was allotted total 8500 acres land out of which 3500 acres were situated in Deh Mohro Jabal while 5000 acres in Deh Sonwalhar (Makan Goh) wherein time and again some pieces of land were handed over to Mehran Engineering University, Liaquat University, NHA and other Government Departments by keeping revenue entries; soon after, respondent started housing projects on the said allotted land and completed its first phase; however in the year 2014, second phase of housing scheme through its contractor M/S TREC Private Limited was started; that on 06.01.2015 respondent No.12 appeared on the suit land along-with 35 other persons claiming ownership over subject property based on revenue entry No.96 dated 3.11.1991 mutated in favour of respondent No.11 who gave power of attorney to appellant No.1 in the year 2014 who executed sale deed in favour of appellant No.2 on 08.01.2015, hence this triggered cause of action to respondent-university for filing Suit for declaration, cancellation of registered sale deed & revenue entry, damages, mandatory and permanent injunction.

3. The Suit of the respondent-university was admitted whereupon official respondents filed written statement denying the allegation leveled in the memo of plaint while a joint written statement was also filed by the appellants, thereafter learned Trial Court on the pleadings of the parties framed six issues and recorded the evidence of both the parties on the above issues and decreed the suit vide Judgment and decree dated 10.02.2021 and 15.02.2021. The said Judgment and Decree were assailed in Civil Appeal No. 10 of 2021 whereby the learned Additional District Judge-II, Jamshoro @ Kotri dismissed the Appeal hence the instant Second Appeal.

4. Barrister Azmatullah Channa learned counsel for appellants during the course of arguments, while reiterating the contents of memo of appeal, has urged that the courts below while passing the impugned judgments and decree failed to consider the registered instruments i.e sale deed bearing serial No.11 dated 8.1.2005 and registration No.68 dated 19.1.2015 and digital scanning No. BOR 15.18.69 dated 21.1.2015 and revenue entry No.131 of Deh Sonwalhar (Makkan Parity) thus the impugned judgment and decrees are liable to be set aside. Learned counsel referred the evidence brought on record in favor of appellants and submitted that the power of attorney bearing No.151 dated 17.4.2014, with registration No.41 VB, M.F No.U1708 dated 8.5.2014 is based upon the order of EDO Revenue Jamshoro which is based on an entry dated 20.11.2014 thus there was no occasion for the courts below to dispute the

registered instruments and order its cancellation without evidence. He prayed for allowing the instant appeal.

5. Mr. Allah Bachayo Soomro, learned additional Advocate General, Sindh has supported the decisions of both the courts below and argued that the revenue entries relied upon the appellants are found to be fake thus penal action is required against the appellants as well as revenue officials, who supported the appellants in usurping the subject land and used the precious time of the courts of law. He prayed for dismissal of the appeal.

6. No one has bothered to appear on behalf of respondent-university to defend the case and assist on the subject issue involved in the matter though notice was issued to learned counsel for the parties vide order dated 16.9.2022.

7. I have heard learned counsel for the appellants as well as learned A.A.G. and have also gone through the record available before me.

8. Scanning of evidence on record transpires that learned trial court while delivering the Judgment observed that the order dated 18.6.2008 was fraudulently prepared with the fake signature of DDO Jamshoro, as in evidence he denied the execution, issuance and existing of order dated 18.6.2008 on the basis which fraudulent entry No. 118 dated 20.11.2014 was kept and general power of attorney was prepared. Learned trial court also observed that the appellant was required to make compliance of orders passed by Honourable Supreme court in Cr. Org. Petition No. 4-K/2014 in C.A. No. 96/2010 and the suit of the plaintiff was disposed of; the appeal preferred was also dismissed. This court also called report from Commissioner Hyderabad Division vide order dated 3.10.2022 who submitted report with the recommendation 'that entry No.96 dated 3.11.1991 of VF-VIIB, Deh Sonwalhar, Taluka Kotri and subsequent entries 118 dated 20.11.2014 and entry No. 131 dated 22.01.2015 of VF-VII-B, Deh Sonwalhar and referred entries (mother entries) are not available in the record of rights, viz, VF-VII-A (re-written 1985-86), are bogus and managed and are liable to be cancelled under the relevant laws.

9. The question in the instant appeal is as to whether the appellants can be permitted to lay emphasis on fraudulent revenue entry time and again and court has to be silent spectator under the guise of label of various legal proceedings at different stages by taking untenable stands.

10. Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. The definition of "fraud" as defined in Black's Law Dictionary, which is as under:

"Fraud : (1) A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is wilful) it may be a crime. ... (2) A misrepresentation made recklessly without belief in its truth to induce another person to act. (3) A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment. (4) Unconscionable dealing; esp., in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain."

2. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine .

3. Reverting to plea of learned counsel for the appellants that the registered sale deed ought not to have been cancelled by the civil court as a whole. On this proposition I am of the view that Civil Court is only competent to cancel the registered deed but here question is only with regard to cancellation of revenue entry/mutation and Sale Deed based upon that mutation which was challenged by respondent-university and learned trial Court framed issues and discussed the same on evidence produced by both the parties and while reaching at the conclusion that subject property was fraudulently mutated as whole in favour of predecessor of appellants, hence one cannot be entitled to derive his legal character from a fraudulent transaction, therefore, this plea taken by learned counsel has no force. Besides, learned counsel for appellants has failed to point out any illegality or irregularity in impugned judgments. Reference can be made to the cases of Nawab Khan v. Raisa Begum and others (2003 SCMR 1498), Talib Hussain and others v. Member Board of Revenue and others (2003 SCMR 549), Yousuf Ali v. Muhammad Aslam Zia (PLD 1958 SC (Pak.) 104), Lal and another v. Muhammad Ibrahim (1993 SCMR 710) Government of Sindh through Chief Secretary and others v. Khalil Ahmed and others (1994 SCMR 782), Abdul Hameed through L.Rs and others v. Shamsuddin and others (PLD 2008 SC 140).

11. The grounds taken in the instant appeal were raised before the trial court as well as before the learned first appellate court who after framing proper issues and recording oral as well as documentary evidence gave

exhaustive judgments. Both the courts below have unanimously held that the Appellants could not prove their case in respect of the subject property.

12. It is well-settled law that ordinarily concurrent findings recorded by the courts below could not be interfered with by the High Court while exercising jurisdiction in second appeal howsoever erroneous findings may be, unless such findings had been arrived at by the courts below either by ignoring a piece of evidence on record or through perverse appreciation of evidence. In the present case, both the courts held that the documents relied upon by the learned counsel for the appellants are fake, thus this court in the second appeal is not in a position to contradict the view as taken by both the courts below as no material has been placed on record to suggest that the findings arrived by both the courts are perverse and against the well settled principles of law.

13. In my view, the Judgment and Decree passed by the trial Court is based upon sound reasoning and proper appreciation of evidence, which has been maintained by the 1st Appellate Court. Two Courts below, while recording findings of fact have neither misread the evidence nor ignored any material piece of evidence. No other point worth consideration has been raised in support of this Appeal. The concurrent findings on the face of record are neither arbitrary nor fanciful or perverse; hence, interference of this Court is not warranted, scope of which is restricted. Hence, the instant Second Appeal being devoid of any force is dismissed.

JUDGE

Karar_Hussain/PJ*