

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

R.A No. 202 of 2021

Applicants : Dilawar and another through
Mr. Arbab Ali Hakro, Advocate

Respondents : Mst. Tahira Bibi and others through
Mr. Sajjad Hussain Soomro, Advocate

Date of hearing
and Order : 22.08.2022

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant revision application, the applicants have called in question the vires of the order dated 25.09.2021 passed by learned 2nd Additional District Judge / Model Civil Appellate Court, Sanghar in Civil Misc. Appeal No. 08 of 2021, whereby the learned Judge while disposing of the Appeal directed the applicants to hand over possession of the suit land to the respondents. Primarily, the said appeal was preferred by the applicants against the order dated 13.9.2019 passed by learned Senior Civil Judge, Shahdadpur on an application under Order VII Rule 11 CPC moved in F.C. Suit No. 131 of 2019 by the applicants; and, the application under order 39 rule 1 and 2 CPC filed by the respondents, whereby the applicants were restrained not to sale out the suit property bearing Survey No.134 and 135/1 total land 14 acres and 8 Ghuntas, till final disposal of the subject suit, now, the applicants being seriously aggrieved by the aforesaid orders have preferred the instant Civil Revision Application under Section 115 CPC inter-alia on the ground that the partition has already been ordered by Deputy District Officer (Revenue), Shahdadpur, vide order dated 09.04.2008; that, since the respondents have nothing to do with an area of land i.e. 7.4 acres in Survey No.134, 135/1,2; that decision was/is erroneous and needs to be set at naught by this court.

2. Brief facts of the case as per memo of Revision Application are that respondents 1 to 4 filed suit for declaration, cancellation, possession, permanent injunction, and mense profit against applicants on the premise that they jointly own 50 paisa share in the suit property bearing Survey No. 134, 135/1, 2 situated in Shahdadpur viz. total area 14-08 acres; that after filing the suit applicants filed written statements denying the allegations leveled against them. During the pendency of the suit, respondents applied under Order 39 Rule 1 & 2 CPC while the applicants applied under Order VII Rule 11 CPC whereby the learned Trial Court allowed the application under Order 39 Rule 1 & 2 CPC while the application under Order VII Rule 11 CPC was dismissed vide impugned order dated 13.09.2019 with directions to the applicants not to create third party interest in the suit property till the decision of the suit. Applicants being aggrieved by and dissatisfied with the

aforesaid decision filed Miscellaneous Civil Appeal which was disposed of with direction to the applicants to hand over possession to the respondents or in case of failure ordered for appointment of receiver.

3. Mr. Arbab Ali Hakro learned counsel for the applicants has argued that the Judgment of learned appellate court is not sustainable in law as it has acted beyond its powers; that the appellate court had no power to pass any order directing the appellants to handover possession and appointment of receiver without framing of issues; that application for appointment of receiver had already been dismissed vide order dated 20.02.2021 by the learned trial court and respondent did not challenge the same. Learned counsel further submitted that the applicants have no objection in terms of the partition as already ordered by Deputy District Officer (Revenue), Shahdadpur, vide order dated 09.04.2008. He emphasized that learned trial Court while passing the impugned order failed to consider that deceased Late Ghulam Mustafa was owner to the extent 7-4 acres in various survey numbers; that learned trial Court has failed to consider the ground raised by the respondents for obtaining injunctive order dated: 13-09-2019 far from the reality; that injunction order obtained by the respondents violates order 39 Rule 2(b) CPC, thus liable to be set-aside; that if the above order is not set aside and varied the applicants shall suffer loss and injury; that the applicants have made out prima facie case for grant of instant revision application on the premise that balance of convenience lies in their favor. He lastly prayed for setting aside the decisions of the courts below.

4. Mr. Sajjad Hussain Soomro, learned counsel for respondents 1 to 4 has refuted the stance of the applicants by referring to the sale deed and attached the schedule of the property i.e. 134 (7-20) and 133/I,2 (6-280) total land 14 acres and 8 Ghuntas and submitted that respondent No. 1 to 4 are exclusive owners of the subject land and applicants has no role in the land, thus they filed Suit having prayers of declaration, cancellation, possession, mesne profit and permanent injunction in which learned trial Court had granted restraining order which continued; and, after six months, the applicants filed an application for vacation of the same, which was dismissed; and, in the appeal preferred thereto, learned appellate Court directed the applicants to handover possession, failing which recovery is to be effected. He supported the orders passed by the courts below and prayed for dismissal of the instant revision application. At this juncture, learned counsel for the applicants has submitted that the restraining order may be vacated so that he may deal with the other part of the property owned by the applicants under the law. This assertion has been objected to by the learned counsel for respondents 1 to 4 on the ground that if the restraining order is vacated the applicants will create third party interest in the matter which will multiply the litigation as such the request of the applicants is unreasonable and liable to be discarded as they have not yet released the remaining portion of the land to the respondents 1 to 4.

5. I have heard learned counsel for the parties on the subject issue and perused the record with their assistance.

6. It appears from the record that Ghulam Mustafa (deceased) and Zulfiqar Ali purchased suit property jointly as (50) paisa share, after the death of Ghulam Mustafa, the suit property was mutated in the name of legal heirs / private respondents. The stance of the applicants is that they had purchased the suit property from their deceased brother. The aforesaid factum has been denied by the legal heirs/ respondents, with the assertion that the applicants have attempted to illegally occupy the entire suit land. Both the parties are inter-se related, their dispute is pending adjudication over the residential house and land of the deceased. The learned trial court dismissed the application of the applicant under Order VII Rule 11 CPC and allowed the application of the legal heirs/respondents under Order 39 Rule 1 & 2 C.P.C with direction to the applicants not to create third party interest in the suit land till decision of the suit. The appellate court concurred with the order and further directed the applicants to hand over possession of the suit property to the respondents and disposed of the subject appeal which is under challenge.

7. Primarily, cases can be revised by this Court as it possesses revisional jurisdiction as defined under Section 115 of the Code of Civil Procedure. This Court has the right to revise cases decided by subordinate courts to ensure the delivery of justice and maintenance of fairness. In the present case, the applicants throughout the proceedings have lost their case up to the level of appellate stage and at the revisional stage, on the purported pleas taken by them, now they have agitated the grounds already exhausted by him and properly adjudicated by the competent forum, thus in my view, no perversity and illegalities have been pointed out in the findings of the courts below on the subject issue of restraining order and other ancillary points discussed supra, as the matter, between the parties, reportedly is still under adjudication before the trial court, therefore no ground existed for a second look of the legal aspect, and thus, I maintain the decisions of the courts below.

8. Before parting with this order, it is observed that undoubtedly, Revision is a matter between higher and subordinate courts, and the right to move an application in this respect by the Applicant is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; the first part enumerates the conditions, under which, the Court can interfere and the second part specifies the type of orders which are susceptible to Revision. In numerous judgments, the Honorable Supreme Court was pleased to hold that the jurisdiction under Section 115 C.P.C. is discretionary.

9. I am of the considered opinion that the concurrent findings recorded by learned trial as well as Appellate on the point of law are not open to any exception at this stage. Learned counsel for the applicants has also failed to point out any legal or factual infirmity in the impugned decisions to justify interference in exercise

of jurisdiction of the Courts below. Hence, this Revision Application is found to be meritless and is accordingly dismissed along with pending application(s) with no order as to costs.

Karar Hussain/PS

JUDGE