

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

R.A No. 122 of 2017

Applicant : Muhammad Ismail and others through Mr. Javed
Chaudhry, Advocate who is called absent today

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of Hearing
& Order : 15.08.2022

O R D E R

ADNAN-UL-KARIM MEMON, J:- Through instant revision application, the applicants have called in question the judgment dated 18.04.2017 passed by the learned District Judge, Mirpurkhas in Civil Appeal No. 03 of 2017, whereby the learned Judge while allowing the appeal maintained the Judgment and decree dated 23.1.2017 passed by the trial Court in F.C Suit No. 46 of 2011. The applicants have now attempted to re-open the case through this revision application under Section 115 CPC, inter-alia on the ground that the impugned judgment and decree passed by the learned courts below are illegal, void, malafide, and liable to be set aside. That the learned trial court while passing the impugned Judgment failed to appreciate that the applicants are in peaceful cultivating possession of the suit land situated in Deh 72 Taluka Sindhri district Mirpurkhas; that both the learned courts below while passing the impugned judgments and Decree have to failed to exercise the jurisdiction vested in them according to law. They lastly prayed for allowing the Revision Application.

2. None present for the applicants and no intimation is received. The record reflects that since the year 2020 neither the applicants nor counsel turned up which shows that perhaps they have lost interest in these proceedings, therefore, I have gone through the record as available before me and find that there are concurrent findings of the courts below against the applicants which does not require further interference by this Court. An excerpt of the trial court judgment is reproduced as under:-

Issue No.5

The burden to prove this issue lies upon the plaintiffs because it is they who claimed that defendants have no right or interest in the suit land being strangers. As is discussed in the preceding issues No.1 to 3, plaintiff did not bring a single document or adduce a single piece of evidence in this regard. Further admittedly, P.W-4 deposed that the suit land is Government property. No doubt, D.Ws 1 & 2 in their respective cross examinations admitted that they have not produced before this court any proof showing their possession or interest in the suit land but yet it is the plaintiffs to discharge their burden to prove. In the given situation and in view of the

discussion held in issues No.1 to 3, the issue under discussion is answered accordingly.

Issue No.6

In view of above discussion held in the issues No.1 to 3, plaintiffs are not entitled for the relief claimed. Accordingly, the issue under discussion is answered in the negative.

Point No.7

In view of the discussion held in the preceding issues, the suit of the plaintiffs is dismissed however, with no order as to cost. Let the office to prepare such Decree according to law.

3. 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, they have agitated the grounds already exhausted by them and properly adjudicated by the competent forum, thus in my view, no perversity and illegalities have been pointed out in the findings of both the courts below, therefore no ground existed for re-evaluation of evidence, and thus, I maintain the Judgment and Decree passed by the appellate courts.

4. 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.

5. In the light of the above facts and circumstances of the case, I am of the view that this Court in its Revisional Jurisdiction cannot interfere in the findings recorded by the competent appellate court and I also do not see any illegality, infirmity, or material irregularity in the Judgment of appellate court warranting interference of this Court. Hence, this Revision Application is found to be meritless and is accordingly dismissed along with pending application(s) with no order as to costs.

JUDGE