

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

R.A No. 70 of 2021

Applicants : Karam and others through
Mr. Muhammad Ishaque Khoso, Advocate

Respondents : Manoo and others (none present on their behalf)

Date of hearing
and Order : 19.08.2022

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant revision application, the applicants have called in question the vires of judgment dated 14.01.2021 passed by learned District Judge / Model Civil Appellate Court, Badin in Civil Appeal No. 39 of 2020, whereby the learned Judge while dismissing the Civil Appeal maintained the Judgment and Decree dated 31.01.2020 passed by the trial Court in F.C. Suit No. 78 of 2018. The applicants have now attempted to re-open the case, through this revision application under Section 115 CPC.

2. Brief facts of the case as per memo of Revision Application are that an agricultural land bearing survey No.101 admeasuring 01-26 acres, situated in Deh Akae, Tapo Ghara, Taluka Shaheed Fazil Rahu, District Badin, is the subject matter of the present suit and shall here-in-after be referred to as the suit land. The suit land along with other land was purchased by one Karo son of Gajjo, the grandfather of plaintiffs from Daho Kolhi, the father of defendants No.1 to 3 and great grandfather of defendants No.4 to 6, through registered sale deed dated 24.12.1973. That after selling the suit land, Daho Kolhi expired and after his death his legal heirs M/s. Bagho and others, the father of defendants 1 to 3, and grandfather of defendants 4 to 6 along with another got changed his Foti Khatta Badal in respect of the suit land, illegally, unlawfully, and fraudulently vide entry No.18 V.F.VII-B and claimed that they had sold out the suit land to one Khuda Bux Leghari. The owner Karo filed Civil Suit No.17/79, before Senior Civil Judge Badin, against the legal heirs of deceased Daho i.e., M/s. Bagho and others, the father of defendants 1 to 3, and grandfather of defendants 4 to 6 along with another Khuda Bux Lashari for declaration, and permanent injunction to seek his ownership and falsification of their claim in respect of suit land through Foti Khata Badal entry No.18. The said suit was contested and ultimately decreed in favor of Karo vide judgment and decree dated 26.09.1980. That none of the defendants i.e. namely M/s. Bagho and others, the father of defendants No.1 to 3, and grandfather of defendants No.4 to 6 and Khuda Bux Lashari, ever challenged the said judgment and decree passed by the court of law before the appellate forum, as such, the same attained finality in all respect and became binding. The Revenue Authorities also canceled entry No.18 by putting a cancellation note upon it and controversy between the parties come to an

end. That said owner Karo after becoming owner of the suit land along with other lands, gifted out the same to his real son namely Bharoo, the father of plaintiffs, through registered gift deed bearing jiryan No.32 dated: 18.01.1988, registered at Serial No.29 dated 21.01.1988. Such registered gift deed was duly incorporated in the revenue record vide entry No.48 of V.F.VII-B, Deh Akae. The record of the office of Mukhtiarkar Revenue Shaheed Fazil Rahu was burnt due to the assassination of Mohtarma Benazir Bhutto and entry No.48 was also burnt, but in fact, it was already saved in microfilming office, and therefore, a copy was obtained by the plaintiff through Mukhtiarkar S.F. Rahu, which is still intact in the same position as legal and valid. That the owner Bharoo also passed away on 12.10.2017 as a result of natural death, and at the time of death, he left plaintiffs as his surviving legal heirs to inherit the suit land along with other lands as per Hindu law. Accordingly, the plaintiffs have become the absolute owner of the suit land to extent of their respective shares, though the foti Khata of their father has not yet been affected in the revenue record. That, on 04.05.2016, defendant No.1 again re-opened the past and closed transaction by moving an application to Additional Deputy Commissioner-1 Badin, whereby he claimed his father to be the owner of suit land along with other lands by inheritance, based on the same entry No.18. On his application, learned Additional Deputy Commissioner-1 called plaintiffs and after hearing the parties dismissed his application vide order dated 21.09.2016. Such order of competent authority under Revenue laws has also not been challenged and the same has become final. That after dismissal of the above-referred application of defendant No.1 with the help of defendants 2 to 6 illegally and unlawfully dispossessed the plaintiffs from suit land, took over its control, and retained the same into their possession illegally, unlawfully, without the consent permission and authority of plaintiffs and started cultivating the same illegally. That, plaintiff No.1 filed criminal complaint against defendants 1 to 6 along with another whose name has erroneously been mentioned in the complaint. A report was called by learned 2nd Additional Sessions Judge Badin from Mukhtiarkar and SHO S.F. Rahu, who both have confirmed the ownership of plaintiffs and possession of defendants 1 to 6 in respect of suit land. But ultimately the said complaint was dismissed with observation that the dispossession was old one vide order dated 06.02.2018. That since all the plaintiffs are legal and lawful owners of the suit land and entitled to have its vacant physical cultivating possession and mesne profits as per the rental value of the suit land at the rate of Rs.20,000/- per acre, per year with effect from March 2017, till the possession of suit land is vacated by defendant No.1 to 6 and handed over to plaintiffs. That there is a serious apprehension that defendants 1 to 6 shall create third party interest by handing over possession of the suit land to some other person. Such act of defendants 1 to 6 shall prejudice the rights of the plaintiffs attached with the suit land and create a multiplicity of litigation, hence the suit was filed with the following prayer:

- A) To declare that the plaintiffs are legal and lawful owners of suit land bearing survey number 101 admeasuring 01-26 acres, situated in Deh Akae, Tapo Ghara, Taluka Shaheed Fazil Rahu, district Badin and entitled to have its vacant physical cultivating possession and mesne profits as per the rental value of the suit land at the rate of Rs.20,000/- per acre, per year from March 2017 till the possession of suit land is vacated by defendants No.1 to 6 and be handed over to plaintiffs). To direct the defendants No.1 to 6 to vacate the suit land and hand over its vacant physical cultivating possession to the plaintiffs.
- B) To direct defendant No.1 to 6 to pay jointly or severally the mesne profits at the rate of Rs.20,000/- per acre, per year with effect from March 2017 till the possession of suit land be handed over to plaintiffs.

3. Upon summons, defendants 1, 3, 5 & 6 filed their joint written statement (Exb.17) wherein they stated that the grandfather of defendants 1 to 3 and great grandfather of defendants 4 to 6 had passed away before the registered sale deed dated 24.12.1973. That Foti Khata was mutated in favor of Bagho vide entry No.18 which is still in the record of rights in favor of Bagho the father of defendants 1 to 3 and grandfather of defendants 4 to 6. That the record of rights is still in favor of ancestors of private defendants. That defendants No.1 to 3 approached ADC-1 Badin for transfer of foti khata. That private defendants are in legal possession since their ancestors. That criminal complaint filed by plaintiff No.1 was also dismissed by the Honorable 2nd Additional Sessions Judge Badin and the plaintiffs also filed F.C. Suit which was too dismissed for non-prosecution after that the plaintiffs filed Civil Revision which was allowed by the learned 1st Additional District Judge Badin on 24.05.2016. That the plaintiff has no right regarding mense profits because the private defendants are legal heirs of their ancestors whose land is on the record of rights; that the plaintiffs are habitual of litigation to pressurize the private defendants; that no cause of action has taken place as the private defendants are in legal possession of the land of their ancestors.

4. Defendants 2, 4, 7 & 8 were debarred from filing of written statements as per order dated 07.11.2018 & 18.12.2018 passed by the learned trial court.

5. On the pleadings of the parties, following issues were framed.

ISSUES

1. Whether the suit is not maintainable?
2. Whether the Judgment dated 26.10.1980 passed in Second Class Suit No.17/1979 by the Decretal Court of learned Senior Civil Judge Badin in favor of Karo son of Gajo (grandfather of the plaintiffs Nos.1 to 6) in respect of lands, including the suit land attained finality? If so, then what is its effect on the present suit?
3. Whether Karo son of Gajo had gifted the suit land to his son Bharoo Mal (father of the plaintiffs Nos.1 to 6 and husband of plaintiff No.7) vide registered gift deed No.29, dated 21.01.1988?
4. Whether the plaintiffs are the only surviving legal heirs of Bharoo Mal son of Karo?

5. Whether the mutation of the suit land vide Entry No.18, in favor of defendants Nos.01 to 06, is illegal, unlawful, and fraudulent?
6. Whether the plaintiffs are entitled to the mesne profits, if so, at what rate, and for what period?
7. Whether the plaintiffs are entitled to the relief claimed?
8. What should the decree be?

6. Learned trial court after framing issues, recorded evidence of both the sides, and hearing the counsel for the parties decreed the suit as prayed vide Judgment dated 31.1. 2020. Appellate court concurred with the view of learned trial court vide judgment and Decree dated 14.01.2021. The applicants being aggrieved by and dissatisfied with the aforesaid Judgments and decrees have preferred the present Revision Application against the concurrent findings. An excerpt of the judgment and decree of the trial court is as under:-

“ISSUE NO.6

Issue No.06 is as to whether the plaintiffs are entitled for the mesne profits, if yes on what rate and from what period. The burden of proving this issue was upon the plaintiffs. In this regard, the plaintiffs in their pleadings have claimed the ownership of the suit land through their father Bhagoo Mal and have further mentioned that the defendants on 04.05.2016 filed an application to Additional Deputy Commissioner-1 Badin for their claim of ownership over the suit land. That such application was dismissed on 21.09.2016 and after the dismissal of their Application, the defendants have illegally and unlawfully dispossessed the plaintiffs from the suit land and started to cultivate the same illegally. That the plaintiffs filed a complaint against the defendants but the same was dismissed on 06.02.2018. The plaintiffs further mentioned that since they are the lawful owners of the suit land and are entitled for its vacant possession, therefore, they are entitled for the mesne profits at the rate of Rs.20,000/- per acre per annum from March 2017, till handing over of the possession to the plaintiffs. The defendants in their written statement have denied the claim of the plaintiffs by contending that they are the legal heirs of their ancestors and in possession of the land for the last 50 years. However, as discussed at issues No.2 to 5, the Plaintiffs are the lawful owners of the suit land and it is also admitted position that the defendants are in possession of the same. Furthermore, as per the plaintiffs, the defendants are cultivating the lands thus the plaintiffs are entitled for the mesne profits being lawful owners. As far as the rate of mesne profits and period is concerned, the plaintiffs have claimed Rs.20,000/- per acre, being the production of the suit land. Under the law, mesne profits are defined as the profits which a man of ordinary prudence could earn from his immovable property. Admittedly the land is in possession of the defendants is about 1-26 acres and is agricultural land, therefore, the claim of Rs.20,000/- per acre seems to be reasonable. Regarding the period, though the defendants are claiming to be in possession since 40/50 years but the plaintiffs have claimed the mesne profits from March 2017 which is not barred under the law of limitation. In view of the above, issue No.6 is answered in affirmative in terms that, the plaintiffs are entitled to mesne profits of the suit land against the defendants No.1 to 6 jointly and severally at the rate of Rs.20, 000/- per acre per annum from March 2017 till vacant possession of the suit land is handed over to the plaintiffs. The issue is answered accordingly.

ISSUES NO.7 & 8

In view of the findings of issues No.2 to 6 the suit of the plaintiffs is decreed as prayed. There is no order as to costs. The office to prepare decree accordingly.”

7. Mr. Muhammad Ishaque Khoso learned counsel for the applicants has submitted that the judgments of both the courts below suffer from misreading of evidence on record and liable to be set aside; that the plaintiffs failed to prove the alleged deed; that the plaintiffs have not produced any iota of evidence to prove the original factum of the deed; that the possession under the deed has not been delivered at all. The deed could be declared void on this score alone; the grandfather of applicants passed away in 1969 before the alleged registered sale deed dated 24.12.1973; that the record is still in favor of the ancestors of applicants and they are in legal possession since their ancestors. He prayed for allowing the instant revision application.

8. I have given my anxious thought to the contentions of learned counsel for the applicants and have gone through the record and the proceedings of the case.

9. 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 applicant throughout the proceedings has lost his case up to the level of appellate stage and at the revisional stage, on the purported pleas taken by him, now he has 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 courts below, therefore no ground existed for re-evaluation of evidence, and thus, I maintain the Judgments and Decrees passed by the courts below.

10. 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.

11. I am of the considered opinion that the concurrent findings of fact recorded by the courts below are not open to any exception. Learned counsel for the applicants has also failed to point out any legal or factual infirmity of misreading or non-reading of evidence 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.

JUDGE