

THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

R.A. No. 303 of 2016

[Muhammad Yamin & another versus Muhammad Salih & others]

Applicants : Muhammad Yamin & another  
through Mr. Arbab Ali Hakro,  
Advocate.

Respondent 1 : Muhammad Salih son of Muhammad  
Yousif through Mr. Altaf Sachal  
Awan, Advocate.

Respondents 2-3 : Nemo.

Respondents 4-7 : S.H.O., P.S. Johi, Mukhtiarkar, Sub-  
Registrar and T.M.O., Johi, District  
Dadu, through Mr. Rafique Ahmed  
Dahri, A.A.G. Sindh.

Date of hearing : 06-12-2021.

**ORDER**

**Adnan Iqbal Chaudhry J.** - F.C. Suit No. 54/2012 filed by the Respondents 1 to 3 [**plaintiffs**] for declaration of title to the suit plot and for an injunction to restrain the Applicants [**defendants 1 and 2**] from encroaching the same, was dismissed by the Senior Civil Judge, Johi *vide* judgment dated 18-04-2016. However, on Civil Appeal No. 46/2016, the learned Additional District Judge-II, Dadu decreed the suit *vide* judgment dated 03-09-2016 as follows:

“In the light of above discussion I allow the appeal, the Impugned Judgment dated 18-04-2015 and decree dated 19-04-2015 hereby set aside and the suit of appellants/plaintiffs is hereby decreed with following observations:

The learned trial court is directed that prior allowing the execution application (if appellants file), Mukhtiarkar Revenue Johi be directed to get demarcate the area of respondent No.1 over which he is in possession in presence of both parties. If respondent No.1/defendant No.1 find in possession of excess area same be delivered to the appellants not more than 1½ Ghunta out of S.No.1062/3 with further direction that with the possession of respondent No.1 not to be interfered or dispossess him for which he possess registered sale deeds as mentioned above regarding S.No.1062/3 situated in Deh Johi, Taluka Johi.”

The judgment and decree passed by the appellate court is challenged by the Applicants (defendants 1 and 2) by way of this revision application.

2. Heard the learned counsel and perused the record.

3. The '**suit plot**' was 1½ ghunta of agricultural land as a small part of Survey No.1062/3 in deh and Taluka Johi, District Dadu. The plaintiffs (Respondents 1 to 3) claimed to be co-owners of the suit plot on the basis of a registered sale deed dated 21-02-2012 from one Muhammad Ali. Per the plaintiffs, the entire area of Survey No. 1062/3 was being used as *sikni* and the defendant No.1 (Applicant No.1) was operating a petrol pump on the adjacent plot which was also a part of said survey. The suit was filed alleging that the defendants 1 and 2 had encroached upon the suit plot while raising construction on the adjacent plot.

4. The defendants 1 and 2 (Applicants) pleaded that Survey No.1062/3 was originally 1-28 acres and owned by one Abdul Khalique; who sold that entire land to Abdul Ghaffar under a registered sale deed dated 01-10-1985; who sold the same to one Muhammad Bux Jamali under a registered sale deed dated 18-06-1999; who converted Survey No.1062/3 to *skini* land and sold plots thereof to different persons; that the plot being claimed by the plaintiffs was in fact the plot purchased by the defendant No.1 from Muhammad Bux Jamali under registered sale deed dated 10-03-2006, the possession whereof was with the defendant No.1 ever since.

5. At the trial it was acknowledged by the plaintiffs, included Muhammad Ali who appeared as their witness, that their case was that Muhammad Ali, who had sold the suit plot to the plaintiffs, he had purchased the same in 1992 from its original owner, Abdul Khalique, who was at the time owner of the entire Survey No. 1062/3. The fact of Abdul Khalique's ownership, as in the year 1985, was also mentioned in the Mukhtiarkar's reply, however, he could not verify subsequent transactions as the record of rights had been burnt during riots. On the other hand, the defendants 1 and 2 contended that

Abdul Khalique had already sold the entire Survey No.1062/3 (including suit plot) to Abdul Ghaffar under a registered sale deed dated 01-10-1985, and therefore it was false to say that Muhammad Ali had purchased the suit plot in Survey No. 1062/3 in the year 1992. Thus, the question before the courts below was not to the 'execution' of the registered sale deed dated 21-02-2012 (exhibit 53-A) held by the plaintiffs, or to the registered sale deeds dated 10-03-2006 (exhibits 78-C and 78-E) held by the defendant No.1, but to the title of their respective predecessors-in-interest.

6. To assert that Abdul Khalique had never sold the suit plot to Muhammad Ali in 1992 and so he had no title to transfer to the plaintiffs, the defendant No.1 produced as exhibit 78-A a copy of the registered sale deed dated 01-10-1985 whereby Abdul Khalique had allegedly sold the entire Survey No.1062/3, including the suit plot, to Abdul Ghaffar. Though cross-examination by the plaintiffs' counsel on such document raised many questions, the fact of the matter remained that it was for the plaintiffs to first prove that their predecessor-in-interest, Muhammad Ali, had title to the suit plot. Though the plaintiffs produced the sale deed dated 21-02-2012 executed by Muhammad Ali in their favor (exhibit 53-A), they did not produce the instrument whereby Muhammad Ali had acquired title to the suit plot. In the absence of such evidence, the plaintiffs had not proved their title to the suit land. Reliance placed by the appellate court solely on the sale deed dated 21-02-2012 to decree the suit in their favor, was a mis-reading of the evidence. Having concluded so, I need not deal with the observation made by the appellate court for demarcating the suit plot.

7. For the foregoing reasons, this revision application succeeds. Judgment and decree dated 03-09-2016 passed in Civil Appeal No. 46/2016 is set-aside, and judgment and decree dated 18-04-2016 passed in F.C. Suit No. 54/2012 is restored, with the result that the suit stands dismissed.

**JUDGE**