

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S – 15 of 2015

Applicants : Manzoor Hussain Noohpoto and others,
through Mr. Tariq G. Hanif Mangi, Advocate

Respondents : Shahnawaz Noohpoto and others, through
No.1 to 6(G) Mr. Nisar Ahmed Bhanbhro, Advocate

Respondents : Mst. Bibul Khatoon and others
No.7 to 8(F) (Nemo)

Respondents : The Taluka Mukhtiarkar (Revenue),
No.9 to 14 Kandiaro and others, through Mr. Ali Raza
Baloch, Assistant Advocate General Sindh.

Date of hearing : 05.09.2022
Date of order : 05.09.2022

ORDER

ZAFAR AHMED RAJPUT, J. – This Civil Revision Application under section 115, C.P.C. is directed against the judgment and decree dated 16.01.2015, where by the Addl. District Judge, Kandiaro while dismissing Civil Appeal No. 37 of 2009, filed by the applicants, maintained the judgment and decree, dated 27.05.2009 and 02.06.2009, respectively, thereby the Senior Civil Judge, Kandiaro decreed F.C. Suit No. 23 of 2006 filed by the respondents/ plaintiffs No.1 to 8 for declaration, possession, mesne profits, cancellation of registered sale deed and permanent injunction against the applicants/ defendants No. 1 to 10.

2. After hearing the learned Counsel for the parties as well as learned A.A.G., Sindh, it appears that in the subject suit, *inter alia*, a “gift deed/ statement of gift” has also been challenged by the respondents No.1 to 8; however, there are two gift deeds/statements of gift referred to in the memo of plaint; one was allegedly executed by Mst. Subhan Khatoon on 14.01.1992 and the other by (1) Mst. Zule khan (2) Mst. Bibul (3) Mst. Zubaida (4) Mst. Allah Warai and (5) Mst. Mirzadi on 20.03.1994 in favour of applicants No. 1 & 2. Subsequently, on 20.03.2006, legal heirs of Mst. Zulekhan (*respondents/ plaintiffs*

No.1 to 6) Mst. Bibul and Mst. Mirzadi (*respondents/plaintiffs No.7 & 8*) filed aforesaid Civil Suit; however, without adding Mst. Subhan Khatoon, Mst. Zubaida and Mst. Allah Warai as defendants in the suit.

3. So far the prayer clause (a) is concerned, that is related only to one gift deed; however, the learned trial Court framed issue No.1 as follows:

1. *Whether Mst. Subhan Khatoon, Mst. Mirzadi, Mst. Zulekhan, Mst. Bibul and Mst. Zubaida, the legal heirs of Late Mughal Khan and Mst. Hayat Khatoon have not gifted their shares in the suit land to the defendant No:1 Manzoor and defendant No:2 Mir Muhammad, if so, what is its effect?*

4. The aforementioned issue was apparently out of pleadings of the parties as the contents of the plaint as well as prayer clause (a) do not refer specifically as to which of the two gift deeds was challenged by the private respondents/plaintiffs. In this regard, the contention of learned counsel for the private respondents/plaintiffs is that both the gift deeds were challenged. If so, there appears again an irregularity and illegality that neither the legal heirs of Mst. Subhan Khatoon nor Mst. Zubaida and Mst. Allah Warai, the other executants and beneficiaries of the alleged gift deeds, were joined as party/ defendants in the suit, and aforementioned issue No.1 was decided by the trial Court behind their back; hence, as the impugned judgments and decrees passed by the Courts below suffer from material defect, the same are not sustainable in law.

5. It is being an admitted position by learned counsel for the parties as well as learned A.A.G., Sindh and with their consent, both the aforesaid impugned judgments and decrees passed by the Courts below in F.C. Suit No.23 of 2006 and Civil Appeal No.37 of 2009, are hereby set aside. The matter is remanded to the trial Court to decide the same afresh in accordance with law, after adding Mst. Zubeda, Mst. Allah Warai and legal heirs of Mst. Subhan Khatoon as defendants.

6. At this juncture, learned Counsel appearing for private respondents, states that since prayer clause (a) has not been properly drafted, he may be permitted to file amended plaint. It goes without saying that once the parties are added, the plaintiff(s) and defendant(s) are at liberty to file amended plaint and written statement.

7. Since it is an old matter of year 2006, the learned trial Court is directed to expedite the same and decide in accordance with law preferably within six (06) months hereof.

8. The civil revision application stands **disposed of** in the above terms along with pending applications.

J U D G E

Abdul Basit