IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S-52 of 2012

Applicant	:	Ladho Rind, through Mr. Ali Asghar K. Panhyar, Advocate.
Respondents No.1 & 2	:	Mukhtiarkar Land Revenue Taluka Ubauro and another, through Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.
Respondent No.3	:	Jumo Rind through his legal heirs (Nemo)
Date of hearing	:	29.08.2022
Date of order	:	29.08.2022

JUDGMENT

ZAFAR AHMED RAJPUT, J. **–** Applicant / plaintiff filed old F.C. No.40 of 2006 *(new F.C. Suit No.96 of 2010)* for declaration and permanent injunction before the Court of Senior Civil Judge, Ghotki, *inter alia*, alleging therein that his uncle, namely, Jumo s/o Nabi Bakhsh Rind was issueless and a landless *hari,* who was granted estate land under the Guddu Barrage Command bearing *(i)* Barrage Survey No.91/12 (0-38), 92/9 (2-01) & 92/10 (0-11) in Deh Dewari, Taluka Ubauro, *(ii)* Barrage Survey No.148/8, 148/1 & 148/9 (4-18) in Deh Dewari, Taluka Ubauro and *(iii)* Barrage Survey No.149/6 (1-30) in Deh Rind, Taluka Ubauro by Guddu Barrage Authority **("the Authority")** under the Land Grant Policy framed by the Government of Pakistan. It is further alleged that the said Jumo had given an undertaking *(Iqrarnama)* that the subject land would remain in his name as *benamidar* and the applicant would be the owner of the same as and when the T.O. Form will be issued by the Authority, which would be transferred in the name of applicant. It is also alleged that the applicant paid all the installments to Authority and got the name of said Jumo mutated in the record of rights; he brought the land under cultivation after incurring huge

expenses over its development and he is in peaceful cultivating possession of the subject land. It is averred that said Jumo died years back and the applicant brought in the notice of Mukhtiarkar (Revenue), Ubauro that he was the rightful owner of the subject land on account of *benami* transaction, but he paid no heed in this regard; on the contrary, he denied the title of the applicant, hence, cause of action accrued to him to file the said suit seeking declaration to the effect that he is the lawful owner of the subject land as per *benami* transaction.

2. The respondents No.3 (a) & (b) contested the suit by filing their written statement wherein, while admitting that deceased Jumo was granted subject land by the Authority being landless *hari* and that he was issueless, they denied the rests of the averments/claims made by the applicant in the plaint. The official respondents No.1 & 2 were declared *ex-parte* by the trial Court.

3. The learned trial Court after framing issues on the divergent pleadings of the parties, recording pro and contra evidence and hearing the parties decreed the suit in favour of the applicant vide judgment, dated 15.09.2011, and decree drawn on 20.09.2011. Against that, the respondents No.3 (a) & (b) filed Civil Appeal No.57 of 2011, which was heard and allowed by the learned District Judge, Ghotki by setting aside the impugned judgment and decree of the trial Court vide judgment and decree, dated 31.03.2012. Aggrieved by the same, the applicant has preferred this revision application.

4. Learned Counsel for the applicant has contended that the trial Court passed the judgment and decree by appraising the evidence on record, whereas the findings of the appellate Court are erroneous; hence, the same are not sustainable in law; that the appellate Court has erred in not believing the evidence of the applicant recorded by the trial Court; that as a matter of fact, the

applicant examined only one witness in support of "*iqrarnama*", while the other witness had already died, hence, the applicant was not in a position to produce second witness of the "*iqrarnama*"; that the alleged "*iqrarnama*" was not for the sale of property but in respect of *benami* transaction of the subject land acquired by deceased Jumo on the expenses of the applicant; that the learned appellate Court did not read the evidence on record correctly and, consequently, it passed the impugned judgment and decree on surmises, conjectures, presumptions and assumptions, hence, the same are being not sustainable in law is liable to be set aside and that of the trial Court be maintained.

5. On the other hand, learned A.A.G., Sindh has fully supported the impugned judgment and decree.

6. Heard, record perused.

7. I deem it appropriate to reproduce relevant findings of the learned Appellate Court, as under:

> **"***The private respondent during course of his examination before learned trial court has produced two documents to enforce his claim, one is "iqrarnama" while other is "Wasiatnama", both according to him were executed by late Jumo in his favour making him entitle to inherit the suit land, on his death as entire expenses towards grant of suit land in favour of Jumo were incurred by him. If it was so, then very execution of "iqrarnama" was in violation of land grant policy as none can obtain grant of land in his favour by involving another person. If for the sake of arguments, it is believed that; there was "iqrarnama," then there was hardly need of "Wasiatnama", which indeed appears to be gift deed in favour of the private respondents. The preparation of both the said documents it is rightly being contended here are an attempt on the part of private respondent to deprive legal heirs of late Jumo of their legitimate right of inheritance in the suit land. Be that as it may be, none of the attesting witness to "Wasiatnama" has been examined by the private respondent, for the reason that; they have died, in these premises, it is*

rightly being contended that; this document has not been proved in evidence in accordance with law. One of attesting witness to "iqrarnama" namely Rajo Khan has been examined, who on asking was not able to disclose the name of other attesting witness. How this could be? It reflect adversely on the very authenticity of this "iqrarnama". Be that as it may be, the examination of one of the attesting witness to a document, even otherwise is not requirement of law, as per provisions of Qanoon-e-Shahadat Order 1984, which call for examination of at least two of its attesting witnesses, if they be alive and in case they are not alive, then legitimately the person who may be acquainted with their signatures are to be examined. No person acquainted with the signatures of dead witnesses to either of the document was examined by the private respondent for no obvious reason. In that situation it is rightly being contended here that; the private respondent was not able to discharge his liability of proof as per provisions of Qanoon-e-Shahadat Order 1984. In spite of above both of the documents were concluded to have been proved in evidence by private respondent in accordance with law, by learned trial court, for the reason that; those were subject to proof under Evidence Act and not under the provisions of Qanoon-e-Shahadat Order 1984. Evidence Act was no more alive at the time when the said documents were being enforced, therefore, those legally were subject to proof as per provisions of Qanoon-e-Shahadat Order 1984. The conclusion of the learned trial court in that respect could not be sustained.

On death of Jumo, the suit land was inherited by his legal heirs namely Ladho (the private respondent), Muhammad Murad, Niaz Ahmed, Mst. Haleema, Mst. Ameeran and Mst. Muradan, to the extent of their respective share, some of them according to appellant Muhammad Murad have also sold their share to Pir Bux and others. Mst. Haleema, Mst. Ameeran and Mst. Muradan or even Pir Bux, were not made party in the suit and they too were not think to be heard by learned trial court, for the reason that; no copy of "foti khata badal" has been produced and no suit is to be defeated for misjoinder and non-joinder of any party. It was admitted, on asking by the private respondent himself that; "foti khata" has been mutated in respect of the suit land. In presence of this admission on the part of private respondent there was hardly a need for production of copy of "foti khata badal" for joining Mst. Haleema, Mst. Ameeran and Mst. Muradan or even Pir Bux as party in the suit. They indeed were necessary and essential party and ought to have been heard before

depriving their legitimate right of ownership in the suit land. None indeed is to be condemned unheard, which is against the golden principle of natural justice. In their absence the suit of the private respondent obviously was hit by non-joinder of necessary and essential party. The conclusion of learned trial court in that respect could not be sustained too.

*In view of above, it could be concluded safely that; learned trial court was not right in its conclusion to decree the suit in favour of the private respondent.***"**

8. It appears from the perusal of the record that the applicant in support of his case has produced in his evidence before the trial Court an *Iqrarnama, dated 17.08.1978* (Ex. 82) and *Wasiatnama, dated 12.02.1983* (Ex. 83) allegedly executed in his favour by his deceased uncle Jumo, entitling him to inherit the subject land. It may be observed that the subject land was granted to deceased Jumo being "landless" *hari* by the Authority. The very execution of alleged Iqrarnama was violative of Land Grant Policy under which only the landless *hari* was entitled to such grant of land and the person already having land was not entitled to obtain land; besides, no person could have obtained land by involving or introducing another person as land less hari under the Land Grant Policy. So far Execution of the alleged *Wasiatnama* is concerned, it may be observed that the applicant nowhere in his pleadings has claimed the execution of alleged *Wasiatnama;* even no copy thereof was annexed by him with his plaint and it was first time placed on record by the applicant in his evidence. The very claim of the applicant is based on his assertion that he is owner of the subject land by virtue of *Benami* transaction *(paragraph 12 of the plaint and prayer clause 20 (a) may be referred to)*. It is now well-settled principle of law that evidence of a plea/point not raised in pleadings could not be allowed to be led and if so led, the same could not be looked into or considered by the court for decreeing suit and suit decreed on the basis of plea nor raised by the plaintiff in pleadings would not

be sustainable; hence, the said *Wasiatnama* carries no legal value in the matter in hand. The learned Appellate Court has also rightly observed that *"if for the sake of arguments, it is believed that; there was "iqrarnama," then there was hardly need of "Wasiatnama", which indeed appears to be gift deed in favour of the private respondents. The preparation of both the said documents it is rightly being contended here are an attempt on the part of private respondent to deprive legal heirs of late Jumo of their legitimate right of inheritance in the suit land."*

9. The learned counsel for applicant failed to rebut aforementioned observations of the learned Appellate Court, even he could not satisfy the Court on the query regarding execution of alleged *Iqrarnama* and *Wasiatnama.* The points raised by the learned counsel for the applicant in his arguments have already been discussed by the learned Appellate Court with sufficient reasoning which do not need reappraisal of this Court.

10. For the foregoing facts and reasons, as no case is made out on the ground of any irregularity or exercise of jurisdiction not vested in the Appellate Court or failure of exercise of jurisdiction vested in it, the impugned judgment and decree of the Appellate Court does not call for any interference or exercise of discretion on any point of law in the case in hand. Accordingly, the instant civil revision application is dismissed along with pending applications but with no order as to costs.

11. Above are the reasons of my short order, dated 29.08.2022, whereby the instant civil revision application was dismissed.

J U D G E

Abdul Basit