

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S-133 of 2015

Applicant : Naseer Akhtar, General (Rtd) through hi legal heirs, through Mr. Tariq G. Hanif Mangi, Advocate.

Respondent No.1 : Abdul Khalique, through Mr. Muhammad Qayyum Arain, Advocate.

Respondents No.2&3: Muhammad Akram & Zaffar Ali (*Nemo*).

Date of Hearing : 10-10-2022

Date of Order : 10-10-2022

ORDER

ZAFAR AHMED RAJPUT, J:- This Civil Revision Application filed under section 115, C.P.C. is directed against the judgment dated 28.08.2015 and decree drawn on 29.08.2015 whereby the learned Additional District Judge, Ubauro while dismissing Civil Appeal No.08 of 2015 (*Re: Naseer Akhtar General (Rtd) v. Abdul Khalique and 02 others*) maintained the judgment dated 02.12.2014 and decree dated 06.12.2014, thereby learned Senior Civil Judge, Ubauro decreed the Suit of the respondent No.1 bearing F.C Suit No.03 of 2014 (*Re: Abdul Khalique v. Naseer Akhtar General (Rtd) and 02 others*).

2. Briefly stated the facts of the case are that the respondent No.1/plaintiff filed aforementioned suit against the applicant/defendant No.1 and respondents No.2&3/defendants No.2&3 averring therein that agricultural land bearing survey No.613 (02-00) aces situated in Deh Tig Tapo Mohammadpur, Taluka Ubauro-Ghotki was owned by him which he on the request of the applicant and respondents No.2&3 leased out to the applicant No.1 and respondent No.2&3 on harap/batai basis. It was case of the respondent No.1 that he demanded his share in crop, but the applicant and respondents No.2&3 keeping him false hopes finally in the month of June, 2013 refused him to pay his share/batai, hence cause of action accrued to him to file aforementioned suit.

3. On being served, the applicant contested the suit by filing written statement. The trial Court after framing issues out of divergent pleadings of the

parties, recording pro and contra evidence and hearing the parties decreed the suit in favour of the respondent No.1 vide judgment and decree dated 02.12.2014 and 06.12.2014 respectively. Against that, the applicant preferred Civil Appeal No. 08 of 2015, which was heard and dismissed by learned Additional District Judge, Ubauro vide judgment and decree dated 28.08.2015 and 29.08.2015 respectively. It is against these concurrent findings of Courts below that the applicant has preferred the instant Civil Revision Application.

4. At the very outset, learned counsel for the parties submit that since the applicant denies his possession over the subject land and no evidence has been brought by the parties to ascertain whether the subject land is amongst the survey numbers/own land of the applicant, no such findings on the issues framed by the trial Court is available in this regard, hence, impugned judgments and decrees passed by the Courts below may be set aside by remanding the matter to the trial Court to decide afresh after recording evidence of the parties on the specific issue including witnesses of the Revenue department and thereafter the trial Court shall decide the suit afresh.

5. The submissions of learned counsel for the parties appear to be reasonable. Accordingly, the impugned judgments and decrees of the Courts below are set aside and the matter is remanded to the trial Court to decide afresh after recording evidence on the specific issue of possession over the subject land. The parties shall be at liberty to produce witnesses from Revenue department in support of their claim.

6. The instant Civil Revision Application stands disposed of in the above terms.

JUDGE

Ahmad