

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S-151 of 2011

Applicants : Abdul Hayee, since deceased through his legal heirs & three others, through Mr. Syed Jaffar Ali Shah, Advocate.

Respondents : Ghulam Mehdi & others through Mr. Kalander Bux M. Phulpoto, Advocate.

Date of Hearing : **26.09.2022**

Date of Decision : **26.09.2022**

ORDER

ZAFAR AHMED RAJPUT, J.- This Civil Revision Application filed under section 115, C.P.C. is directed against the judgment, dated 30.06.2011, whereby the learned 1st Additional District Judge, Khairpur dismissed Misc. Application No. 02 of 1996 filed by the applicants under section 12(2), C.P.C. ("*the Application*"), seeking setting aside the judgment and decree passed in Civil Appeal No.20 of 1988 (*New No.01 of 1989*) arising out of F.C. Suit No.47 of 1984, which was dismissed by learned Senior Civil Judge, Gambat vide judgment and decree, dated 15.02.1988 and 20.02.1988, respectively.

2. Briefly stated the facts of the case, as pleaded by the applicants, are that their deceased father Mir Mohammad in the year or about 1937, during the days of Khairpur State, was allotted Government's agricultural land measuring 54-32 acres (as described in the Schedule 'A' attached to the plaint of F.C. Suit No.47 of 1984), situated in Deh Tando Mir Ali (*Dato Dasti*), Taluka Mirwah on permanent *Malkana*, at the rate of Rs. 35-00 per acre. Total price i.e. Rs. 2,037-14 *anna* was to be paid in ten yearly installments up to the year 1948. A-Form No.496 was issued on 30.3.1938 in the name of Mir Muhammad, who in the year 1941-42, leased out the subject land to Chanesar and Ghulam Ali, the predecessors-in-interest of the respondents No.1 to 5 ("*the Vendees*"), and

proceeded to perform Hajj, where he expired. The vendees arranged a factitious certificate from Land Sales Officer of Former Khairpur State for transfer of the grant and got a sale deed registered in their favour by producing a fictitious person before the Sub-Registrar. In year 1979, the applicants and Shah Mohammad predecessors-in-interest of respondents No.7 (a) to 7 (h) came to know about the grant of subject land in favour of their father Mir Mohammad; they obtained T.O. Form in favour of Mir Mohammad and got the subject land mutated in his name in revenue record. Knowing all such facts, the respondents No.1 to 3 filed suit No.180/1981 in the Court of Senior Civil Judge, Mirwah for declaration of their title in respect of the subject land. The applicants and deceased respondent Shah Mohammad contested said suit and filed their counter claim, which was disallowed by the said trial Court; hence, they filed F.C. Suit No. 47/1984 against the respondents. Respondents No.2 to 5 contested the said suit by filing their written statement, wherein they took the plea that deceased Mir Mohammad obtained permission for transfer of the grant in favour of vendees/their predecessors-in-interest, and by virtue thereof, he executed registered sale deed on 11.04.1942 in their favour and also handed over the possession of the subject land to them. The trial Court dismissed the said suit, vide judgment and dated 15.02.1988 & 20.02.1988, respectively. The applicants and respondent No.7 filed Civil Appeal No. 20/1988 (*new No.01/1989*), which was dismissed by the Court of 1st Addl. District Judge, Khairpur, vide judgment & decree dated 18.04.1994 & 24.04.1994, respectively.

3. The applicants then filed the Application before the 1st Addl. District Judge, Khairpur (*"Appellate Court"*) on the grounds that both the judgments and decree passed by Courts below were obtained by fraud and misrepresentation; that the respondent No.7 had expired during the pendency of the appeal but

his legal heirs were not joined and the respondent No.3 had expired during the pendency of the appeal, but no proper guardian ad-litem was appointed for his minor legal heirs, hence, the judgment and decree passed by the Appellate Court were without jurisdiction. Respondents No.1 to 3 (a) to 3 (f) filed their joint objections to the Application. The rest of the respondents were declared ex-parte. Out of pleadings of the parties, following Issues were framed by the Appellate Court to decide the Application.

1. *Whether Judgment and decree has been obtained by means of fraud and misrepresentation?*

2. *What should the decree be?*

4. In the first round, the Appellate Court dismissed the Application, vide judgment dated 06.01.1998. Against that, the applicants preferred Civil Revision Application No. 36 of 1998, which was dismissed by this Court, vide order dated 23.01.2003. Against that order, the applicants preferred Civil Petitions No.132-K and 133-K of 2003, which were allowed by the Honorable Supreme Court, vide Judgment dated 18.10.2006, by setting-aside the judgment and order, dated 06.01.1998 & 23.01.2003 remanded the case to Appellate Court to decide the Application afresh, with following observations:

"7. Admitted position between the parties is that allottee Mir Mohammad, processor-in-interest of the petitioners was granted agricultural land measuring 54-32 acres in Deh Tando Mir Ali, substituted as Deh Dato Dasti, taluka Mirwah in the year 1937 as such "A" Form was issued in favour of Mir Mohammad on 30.3.1938 and price of the land was to be paid in annual installments till 1948. After the death of Mir Mohammad, his son Shah Mohammad who also subsequently expired allegedly paid installments and got T.O Form issued in his favour on 25.05.1981. As per contents of suit No.180 of 1982 filed by respondent Ghulam Mehdi and two others respondents, late Mir Mohammad had sold the land to Chanesar and Ghulam Ali, predecessors-in-interest of Ghulam Mehdi and Sher Mohammad through registered sale deed on 11.4.1942.

8. *Prima-facie on 11.04.1942 the land in suit was not fully paid-up and installments were yet to be paid by the allottee of the land to the Government and no TO Form was issued by the revenue office Sukkur Barrage in favour of original allottee Mir Mohammad or his successors-in-interest, therefore, they possessed no title in their favour to entitle them to alienate the suit property in favour of the predecessor-in-interest of the respondents No.1 to 3. Learned counsel for the respondents has not been able to show any law or rule whereby, the predecessors-in-interest of the petitioners could possess title over the suit so as to sell the suit land before making suit land fully paid-up and in absence of issuance of T.O Form having been issued in his favour, therefore, the alleged sale through alleged registered sale deed dated. 11.4.1942 which is not on record could not have been sold to the processor-in interest of the respondents. We find from the perusal of the evidence and the law applicable to such grants has not been attended to by the learned Additional District Judge while disposing of application under section 12 (2). CPC so also by learned single Judge of the High Court has also failed to consider non-impleadment of all successors of original grantee Mir Mohammad in the suit and subsequent proceedings. We find that in the circumstances, impugned judgment dated 6.1.1998 of the Additional District Judge and of the High Court dated.23.01.2003 cannot be sustained in law".*

Thereafter, in the second round, the Appellate Court after hearing the leaned counsel for the parties dismissed the said application vide impugned order.

5. Heard the learned counsel for the parties and perused the material available on record with their assistance.

6. It appears that the subject land was granted to deceased Mir Mohammad in the year 1938 and he sold out the same to vendees through registered sale deed. He during his life time did not file any case against the vendees before any court of law, challenging the alleged sale deed on the ground of fraud, impersonation, etc. it is matter of record that after grant of subject land in his favour, deceased Mir Mohammad, on 31.03.1942, obtained requisite permission/certificate from the granting authority and then he executed the alleged sale deed on 11.04.1942 in favour of the vendees, while the

applicants filed the F.C. Suit (*No. 47 of 1984*) claiming to be the legal heirs of the deceased Mir Mohammad against the respondents/legal heirs of the deceased vendees in the year 1984 for declaration, possession, permanent injunction and mesne profit. Respondents Ghulam Mehdi in his deposition has produced C.T.Cs. of the permission of Land Sales Officer (*Exh.54*), sale deed (*Exh.55*), receipt of payment of installment (*Exh.56/1 to 56/4*), revenue bills (*Exh.57/1 to 57/32*), land revenue receipt (*Exh.58/1 to 58/88*) and C.T.C. of *Pher Phar* Register (*Exh.59*). It is also matter of record that after purchasing of subject land, the deceased vendees were put into possession of it by the deceased Mir Mohammad, and now the private respondent Nos. 1 to 5, legal heirs of the vendees, are in possession of the dispute land.

7. Learned counsel for the applicants has much emphasized on the point that the learned Appellate Court failed to record its findings on the observation and direction of the Honourable Supreme Court, vide Judgment dated 18.10.2006, wherein it was observed that *"prima-facie on 11.04.1942 the land in suit was not fully paid-up and installments were yet to be paid by the allottee of the land to the Government and no TO Form was issued by the revenue office Sukkur Barrage in favour of original allottee Mir Mohammad or his successors-in-interest, therefore, they possessed no title in their favour to entitle them to alienate the suit property in favour of the predecessors-in-interest of the respondents No.1 to 3."* I am of the view that the learned Appellate Court in its impugned judgment, dated 30.06.2011, has considered this aspect of the matter by observing that the deceased Mir Muhammad before executing sale deed in favour of the vendee had obtained permission from the Government to sell the subject land to vendees, who after purchasing paid the installments, and the applicants have not challenged the alleged permission dated 31.03.1942. It is also surprised that when the subject land was granted to deceased Mir Mohammad in 1938 then how the applicants paid the amount in 1981 and obtained T.O Form in their

favour. Hence, I do not find any force in the said contention of learned counsel for the applicants.

8. There is another aspect of the matter. It is not the respondents who had filed the subject suit and civil appeal but the applicants and the suit and civil appeal were dismissed by the Courts below concurrently. Hence, no question of obtaining judgment and decree through fraud and misrepresentation of the fact arises, as it cannot be said that the respondents have obtained the judgment and decree by playing fraud and misrepresentation of the facts, entitling them to challenge the same under section 12(2), C.P.C.

9. In view of above facts and reasons, no case is made out on the ground of any material irregularity or exercise of jurisdiction not vested in the Courts below or failure of exercise of jurisdiction vested in it; therefore, the impugned judgment do not call for any interference of this Court under its revisional jurisdiction on any point of law. Accordingly, this revision application is **dismissed**, accordingly.

10. Above are the reasons of my short order dated, 26.09.2022

JUDGE

Ahmad