

Judgment Sheet
IN THE HIGH COURT OF SINDH, AT KARACHI
Civil Revisions No.229 & 230 of 2010

BEFORE
Mr. Justice Arshad Hussain Khan

Civil Revision 229 of 2010
Ovais Akhtar & 5 Others vs. Abdullah and another
&
Civil Revision 230 of 2010
Ovais Akhtar & 4 Others vs. Zohra Khanum and others

Applicants: Through Mr. Raghib Baqi Advocate in both
the above Civil Revisions.

Respondents Through Mr. K.A.Wahab along with Fahad
Arif Khilji Advocates in both the above Civil
Revisions.

Date of Hearing 30-01-2023
Date of Judgment 21-02-2023

JUDGMENT

ARSHAD HUSSAIN KHAN, J.- I intend to decide the above captioned two Civil Revisions through this consolidated judgment having similar facts and law.

Through these Civil Revisions, the Applicants have impugned the judgments and decrees dated 7.7.2010 and 14.7.2010 respectively, passed by District Judge, Karachi [South] in Civil Appeal No.165 & 166 of 2002, upholding the Judgments and Decree dated 3.7.2002 and 4.7.2002, passed by IVth Civil and Family Judge, Karachi [South], in FC Suits No. 940 & 1037 of 1992, whereby the suits of the Plaintiffs/Applicants were dismissed.

2. Concisely, the facts giving rise to these revisions are that the applicants filed the suits bearing No. 940 & 1037 of 1992 against the respondents for Declaration and Injunction to the effect that the applicants / plaintiffs are the landlords of Plot No.46, Al-Falah Road, Bihar Colony, Masan Road, Karachi, measuring 960 sq. yds. [subject

property]. It is stated that the applicants are the legal heirs of [late] Moulana Abdul Quddus Bihari, died at Karachi on 14.02.2991, who was allotted the subject property by letter dated 25.7.1947. It is also stated that said Abdul Quddus Bihari, father of the applicants, during his life time had let out the portions of the said property to different tenants [the respondents / defendants]. The applicants being the legal heirs of (late) Moulana Abdul Quddus Bihari are the actual owners of the said plot, however, when the respondents/defendants refused to accept the applicants as their landlords and started selling out the rented portions, the applicants filed the above suits.

3. Before the trial court, upon notice of the aforesaid suits, the respondents/defendants filed their respective written statements denying the claim of the applicants / plaintiffs. In the written statements preliminary legal objections were raised disputing the very maintainability of the aforesaid suits and sought dismissal of the same. The learned trial court after recording of the evidence and hearing of the arguments of learned counsel for the parties dismissed the suits of the applicants/plaintiffs, vide its judgments dated 3.7.2002. The said judgments were subsequently challenged by the applicants/plaintiffs in the civil appeals, which were also dismissed by the District Judge, Karachi [South], vide its judgments dated 7.7.2010. Thereafter, the applicants have assailed the concurrent findings of facts arrived at by both the courts below by filing instant civil revisions.

4. Learned counsel for the applicants during the course of arguments has contended that the judgments and decrees impugned in the present proceedings are contrary to law and facts, as such, untenable in law. The learned courts below have acted illegally and failed to exercise jurisdiction by not reading evidence available on the record in its true perspective, which caused great injustice to the applicants. The impugned judgments and decrees of both the courts below are not in accordance with law inasmuch as learned judges failed to discuss the evidence issue-wise and gave findings, as such, committed material illegality and irregularity. It has been argued that the learned courts below failed to give findings on the basis of the documents and the evidence on record and ignored the documents particularly relating to the property allotted in the year 1947 to the

father of the applicants. It is also argued that learned courts below while dismissing the suits on the point of maintainability have failed to consider that the provisions of 42 of the Specific Relief Act under which the right claimed in the suit property by the applicants were perfectly within the ambit of the definition of the provisions as such the suits were maintainable. It has been argued that the impugned judgments are not in conformity with the provisions of law and that the courts below while passing the impugned judgments have exercised the jurisdiction not vested in law and have acted illegally with material irregularity and without jurisdiction, as such, the same are liable to be set aside by this Court. Learned counsel in support of his contention has relied upon the cases of *Muhammad and 9 others v. Hasham Ali* [PLD 2003 SC 271], *Ali Muhammad v. Muhammad Hayat and others* [1982 SCMR 816], *Syed Hassan Shah v. Malook Shah and another* [1987 CLC 2281], *Abdul Aziz Tayeb v. Jawaid Garments Industries* [1987 CLC 2282], *Mst. Sikandar Jahan and 4 others v. Mst. Ghulam Zainab and 10 others* [2013 CLC 228], *Mukhtar Baig and others v. Sardar Baig and others* [2000 SCMR 45], *Muhammad Ovais and another v. Federation of Pakistan* [SBLR 2007 SC 100], *Syed Iftikhar-ud-Din Haider Gardezi and 9 others v. Central Bank of India Ltd., Lahore and 2 others* [1996 SCMR 669].

5. On the other hand, learned counsel for the respondents while supporting the impugned judgments and decrees has controverted the stance of the applicants in the present civil revisions. Learned counsel has argued that the impugned judgments and decrees are well reasoned and within the four corners of law and equity, hence do not warrant any interference by this Court. It is also argued that the facts of the present case have been discussed and evaluated by the learned trial court and after framing the issues, on the basis of documentary evidences, available on the record, dismissed the suits. He has further argued that the alleged tenancy agreement dated 16.10.1962 is fabricated, forged and fraudulent and no any portion of the subject property was let out to the respondents by the deceased Moulana Abdul Quddus Behari nor the alleged tenancy agreement was executed by respondent No.1. He has further argued that the applicants had no cause of action to file the said suits against the respondents, which were also barred by Specific Relief

Act. Learned counsel for the respondents while vehemently opposing instant revisions also urged that there are concurrent findings of the two courts below, therefore, the same cannot be upset in these proceedings, as such, the present revisions being devoid of any merit are liable to be dismissed.

6. Heard the arguments of learned counsel for the parties and perused the record as well as the case law cited at the Bar.

The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgments dated 3.7.2002 passed by the trial court and as such the same are not required to be reproduced here so as to avoid unnecessary repetition.

7. Precisely the case of the applicants is that KMC plot No.46, Al-Falah Road, Bihar Colony, Masan Road, Karachi, measuring 960 Sq. Yds. [subject property] was originally allotted to the applicants' father namely; Moulana Abdul Quddus Bihari, the then Minister for local government, by virtue of letter dated 25.7.1947, when he migrated to Pakistan from India. Perusal of the record shows that the entire case of the applicants rests on the above mentioned letter of Pir Illahi Bux but the original letter was not produced and only the photocopy was placed on the record. Even no evidence was put before the trial court regarding destruction of the original letter, therefore, being secondary evidence the same could not be relied upon. The applicants in support of their ownership of the subject property though produced letter dated 30.9.1986 issued by Excise & Taxation Officer, as well as Agreement of Tenancy dated 16.10.1962, and PT-1 / PT-4 Forms before the learned trial court, however, the respondents /defendants have disputed all the above documents being bogus and false, and it appears that the applicants have failed to rebut the said allegations through evidence in support of their stance in the case and to prove the said documents as genuine. Hence, the applicants remained fail to produce best evidence in support of their contention before the learned trial court.

8. From perusal of the record, it also appears that the applicants/plaintiffs initially filed rent cases against the respondents however, when ownership of the applicants over the subject property was denied, the applicants withdrew the rent cases and filed the above

suits for declaration to the effect that the applicants are landlords of respondent/defendants and further they may be restrained from disposing of the properties/portions under their occupation, without seeking any declaration of their ownership in respect of the subject property or cancellation of the registered lease of the portion of the subject property issued in favour of the respondents/defendants.

9. It may be noted that under provisions of Section 42 of the Specific Relief Act a person entitled to any legal character or to any right to property can institute a suit for declaratory relief in respect of his title to such legal character or right to property. Section 42 of the Specific Relief Act applies only to a case where a person files a suit claiming entitlement to any legal character or any right to property, which entitlement is denied by the defendants or in denying which the defendants are interested. It cannot apply to a case where the plaintiffs do not allege their entitlement to any legal character or any right to property or its denial by the defendants, hence, Section 42 would be attracted to a case in which the plaintiff approaches the court for the safeguard of his right to legal character or property but where right to his own legal character or property is not involved, the suit would not be maintainable. And Section 42 also does not permit an unrestricted right of instituting all kinds of declaratory suits at the will and pleasure of the parties, right is strictly limited and the suit for mere declaration is not permissible under the law, except in the circumstances mentioned in Section 42. Reliance in this regard may be placed on the case of Ilyas Ahmed v. Muhammad Munir and 10 others [PLD 2012 Sindh 92].

10. In the present case the respondents/defendants throughout denied the ownership of the appellants/plaintiffs over the subject property and on the contrary claimed ownership in respect of the subject property on the basis of a registered lease issued by KMC in their favour. In the circumstance, the suit only for declaration of relationship of the plaintiff as landlord and respondents as their tenant in the wake of specific denial regarding ownership or title of the plaintiffs over the subject property and without seeking relief for declaration about their ownership or title, and possession, which too without cancellation of a registered lease issued in favour respondents/defendants, from the face of it, was not maintainable.

Reliance can be placed upon the case of Hassan v. Iqbal Pervaiz and 9 other [2016 YLR 2516].

11. Besides above, in the present case, the plaintiffs in support of their claims of ownership in respect of the suit property did not file any title document and instead their claim of ownership is based on PT-1 Form and some other documents related to excise and taxation department, which admittedly do not confer any title. Moreover, any entry made in the Excise and Taxation record does not prove ownership of a rented premises or relationship of landlord and tenant between the parties. Reliance may be placed on the case of Mst. Jehan Ara and others v. Dad Muhammad and others [1989 ALD 532(2)] and Mst. Parveen Bibi v. Shahan Masih and 2 others [2007 CLC 1106] and Muzaffar Khan v. Sanchi Khan and another [2007 SCMR 181].

12. It may be observed that since the entries of the Excise and Taxation Department Assessment Register are made without notice to the parties concerned and as such no presumption of absolute genuineness can be attached thereto. Moreover, it is also settled that merely on the basis of entries in the Excise and Taxation Register a relationship of landlord cannot be established. Reliance may be placed on the cases of Mian Muhammad Amin and 7 others v. Amanat Ali [1982 CLC 1770] and Haji Mohammad Ramzan v. Mian Jamil Shah [PLD 1967 Peshawar 380].

13. Insofar as the contention of the learned counsel for the applicants that the learned trial court by not giving findings on each and every issue framed in suit No.1037/1992 has committed error, is concerned, from the record it appears that learned trial court framed the issues including the issue of maintainability of the suit. Thereafter, parties lead their respective evidence in the case. Learned trial court after discussing issue of maintainability in detail, keeping in view the legal and factual aspect of the case, reached to the conclusion that the suit was not maintainable under the law and as such did not find necessary to discuss or give findings on other issues being fruitless and purposeless. Learned lower appellate court while dealing with such stance of the applicant has rightly held that the issue of maintainability having a wide scope and if after analyzing the question of

maintainability, the court came to conclusion that the suit in the present form is not maintainable then there is no need to analyze further issues pertaining to points of facts.

14. The provisions of Section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when a court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in the fact and law. The mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For an applicant to succeed under Section 115, C.P.C., he has to show that there is some material or procedural defect in the impugned judgment in disregard of some rule of law. In other words, there must be some distinction between jurisdiction to try and determine a matter and erroneous action of a court in exercise of such jurisdiction. It is a settled principle of law that erroneous conclusion of law or fact can be corrected in appeal and not by way of a revision, which primarily deals with the question of jurisdiction of a court.

15. In the matter in hand, no such infirmity has been shown by learned counsel for the applicants to call for interference in both the impugned judgments by this Court. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered in revisional jurisdiction, unless extra ordinary circumstances are demonstrated by the applicants. It is also trite law that a revisional court does not sit in reappraisal of the evidence and distinguishable from the court of appellate jurisdiction. Reliance in this regard can be placed in the cases of *Abdul Hakeem v. Habibullah and 11 others* [1997 SCMR 1139], *Anwar Zaman and 5 others v. Bahadur Sher and others* [2000 SCMR 431] and *Abdullah and others v. Fateh Muhammad and others* [2002 CLC 1295].

16. The case law cited by learned counsel for the applicants have been perused and considered with due care and caution but are found distinguishable from the facts of the present case and hence the same are not applicable.

17. The upshot of the above discussion is that the findings of both the courts below are on the correct proposition of law hence, I do not find any infirmity or irregularity in both the impugned judgments, which could warrant interference in the revisional jurisdiction of this Court. Accordingly, the present civil revisions, being devoid of any force and merit, are dismissed.

JUDGE