

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Civil Revision Application No. 27 of 2004

Applicants : Mst. Batool & others through
Mr. Shamsuddin Memon, Advocate

Private Respondents : None present for respondents.

Respondents No.10 & 11 : Through Mr. Allah Bachayo Soomro, Addl.
A.G Sindh.

Date of hearing : 27.03.2023

Date of Judgment : 27.03.2023

JUDGMENT

Muhammad Junaid Ghaffar, J:- Through this Civil Revision, the Applicants have impugned judgment dated 21.11.2003 passed in Civil Appeal No.122 of 2000 by the Additional District Judge, Hyderabad, whereby the judgment dated 26.04.2000 passed in F.C Suit No.288 of 1991 by the Senior Civil Judge, Hyderabad, through which the suit of the present respondents was dismissed has been set-aside and the Appeal stands allowed.

2. Heard learned counsel for the Applicants. Insofar as Respondents are concerned, they after being served have not been pursuing the matter diligently. On 12.10.2018 Respondent No.1(ii) and 2(viii) were present and sought time to engage another Counsel, but it appears that no one has been engaged. Subsequently, on 12.12.2022, the Applicants Counsel made an offer to purchase the disputed share being claimed by Respondents and on that once again a fresh notice was issued and as per bailiff report most of the Respondents stand served; however, no one has affected appearance on their behalf. Matter pertains to the year 2004; hence, cannot be adjourned or kept pending, and therefore, it is being decided on the basis of available record and with the assistance of the Applicants Counsel.

3. It appears that the predecessor in interest of the present respondents filed F.C Suit No.288 of 1991 for declaration, possession and cancellation along with injunction wherein they sought the following reliefs:

- a) *“That this Honourable court may be pleased to declare that after the death of Abdul Rashid the father of defendant No.1, his share in the property to the extent of 50 paisas, devolved upon the plaintiffs father and defendant No.1 to the extent of 25 paisa each and after the death of plaintiffs father the said 25 paisa along with his 50 paisas devolved upon the plaintiffs and the orders of city survey officer Hyderabad dated 10.05.90 in respect of mutation to the extent of 50 paisas share in property bearing CS No.E/1278 in the name of defendant No.1 is illegal wrong and void.*
- b) *That this Honourable court may be pleased to declare that the plaintiffs are entitled for possession of the suit property to the extent of 25 paisas out of 50 paisas share of Abdul Rashid the father of defendant No.1 and the defendant No.1 be directed to put the plaintiffs in possession of suit property to the above extent.*
- c) *That this Honourable court may be pleased to declare that the registered sale deed bearing No.1631 dated 9.6.90 executed by defendant No.1 in favour of defendants No.2 and 3 is illegal and void and the said sale deed be cancelled.*
- d) *That this Honourable court may be pleased to restrain the defendant No.2 and 3 permanently from selling, alienating, gifting, transferring, mortgaging the above said property i.e. E/1278 by themselves, or through their agents, attornies, servants, assigns etc.*
- e) *Costs of the suit be saddled on the defendants.*
- f) *Any other relief which this Honourable Court may deem fit and proper be granted to the plaintiffs”.*

4. The learned trial Court framed following issues including additional issues for adjudication:

1. *Whether the plaintiffs are entitled to the share of 25 paisa of Abdul Rashid out of 50 paisa share in the property bearing CS No.E/1278?*
2. *Whether the father of the plaintiffs has executed surrender deed to the extent of 25 paisa in favour of defendant No.1?*
3. *Whether the sale deed bearing registered No.1631 dated 09.06.1990 is void, illegal and ultra vires and is liable to be cancelled?*
4. *Whether the plaintiffs are entitled for possession to the extent of 25 paisa share awarded by Abdul Rasheed?*
5. *What should the decree be?*

ADDITIONAL ISSUES

1. *Whether the defendants No.2 and 3 have renovated and got the repaired the shop and affixed fittings and fixtures in the shop in question and the market value of the property has gone more than 4 lacs of rupees?*
2. *Whether the suit is undervalued and ought to be Rs.4 lacs?*

5. After recording of evidence, the learned trial Court came to the conclusion that the respondents had failed to make out a case and accordingly the suit was dismissed. Being aggrieved, the present respondents preferred Civil Appeal and through impugned order, the findings of the trial Court to the extent of issues Nos.1, 2 and 3 have been reversed. Such findings are relevant for the present purposes and read as under:

ISSUES NO.1 AND 2

It is admitted position that suit property was jointly owned by two brothers namely Abdul Rashid and Abdul Ghafoor to the extent of 50 paisas share. Abdul Rashid left only one daughter namely Mst. Razia the defendant No.1. The case of appellant in that after death of Abdul Rasheed, Mst. Razia has only 25 paisas share left by her father and remaining 75 paisa share devolving upon Abdul Ghafoor, brother of her father. On the other hand the defendant No.1 has admitted that she has inherited 25 paisa share from her father Abdul Rashid while remaining 25 paisas share was inherited by Abdul Ghafoor who has surrendered 25 share inherited by hi Abdul Rashid in favour of defendant No.1 Mst. Razia. In this respect additional issues were framed and burden of these issues lies upon defendant No.1, from the perusal of Ex.136 which is certified true copy of property who shows that 50 paisas share of Abdul Rashid in the suit property was mutated in the name of Mst. Razia on the basis of Heirship certificate. The document does not show that Abdul Ghafoor has surrendered 25 paisas share in favour of Mst. Razia as stated by her inheritance of 25 paisa share by Abdul Ghafoor from 50 paisa share of Abdul Rashid is not disputed by defendant No.1. This entry on the city survey record in which name of mst. Razia to the extent of entire 50 paisa share appears to be illegal and unlawful and it is admitted position that she is entitled to inherit only 25 paisas share from her father Abdul Rashid. On the other hand Abdul Ghafoor to inherit 25 paisa share from the share of Abdul Rashid in the suit property. the learned trial court has not given proper finings on issue No.1 and 2 which are hereby reversed.

ISSUE NO.3.

On the basis of finings on issues No.1 and 2, I have already observed that plaintiff 25 paisa share out of 50 paisa share of his father in the suit property. The defendant No.1 has sold out entire property by way sale deed dated 09.06.1990. In view of above observation, I am of the view that sale deed dated 09.06.1990 is only legal and valid up to 25 paisa share of Mst. Razia in the suit property is illegal and void to the extent of 25/50 paisa, therefore, finding of learned trial Court on this issue is not proper and valid and stands reversed.

6. From perusal of the record it appears that as per record the suit property was jointly owned by two brothers namely Abdul Ghafoor and Abdul Rasheed. Abdul Rasheed expired and his share of 50% was mutated in the name of his only daughter defendant No.1 in the suit i.e. Mst. Razia D/o late Abdul Rasheed (Respondent No.9 herein) on the basis of some heirship certificate. Insofar as the present Applicants are concerned, they had purchased the share of Mst. Razia D/o late Abdul Rasheed, whereas the claim of the present respondents was to the effect that she was only entitled for share to the extent of 25% being devolved from her father and the remaining 25% was claimed by Mst. Razia on the basis of a purported

surrender deed executed by Abdul Ghafoor, the brother of Abdul Rasheed, which according to them was never executed.

7. From perusal of the aforesaid finding of the learned Appellate Court, it appears that the same is based on admission of Mst. Razia that upon death of her father Abdul Rasheed, only 25% share was devolved to her, whereas the remaining 75% share devolved upon his uncle Abdul Ghafoor who was already an owner to the extent of 50% with Abdul Rasheed. As to the claim of Mst. Razia that remaining of 25% share after being inherited by Abdul Ghafoor was surrendered in her favour is not substantiated from the record. The only piece of evidence on record which was relied upon by her and the present Applicants was a heirship certificate which was issued to the extent of 50% share, whereas, this by itself contradicts the stance of Mst. Razia as narrated in her written statement. Para 4 & 5 thereof is relevant and reads as under:

"Para No.4 is admitted to the extent of death of Abdul Rashid and leaving the answering defendant as daughter. The rest of the contents are denied in the present form. It is submitted that Abdul Ghafoor by executing surrender Deed revoked his right to the extent of 25 paisas in the property of Abdul Rashid in favour of answering defendant looking to orphanage of defendants.

Para-5 of the plaint is partly admitted and partly denied/ it is admitted that Abdul Ghafoor died on 26.7.79 leaving behind plaintiff and devolvement of his 50 paisas share on the plaintiff. It is strictly denied that 25 paisa out of 50 paisas share of Abdul Rasheed also devolved on the L.Rs of Abdul Ghafoor. As stated supra the deceased Abdul Ghafoor surrender his share of 25 paisa in the share left by his brother Abdul Rasheed in favor of answering defendant as a sympathy.

8. It reflects that she by herself has stated that she only inherited 25% share from her father, whereas, the remaining 25% was surrendered by way of deed in her favour out of love and affection. When this written statement is read in juxtaposition to the heirship certificate on the basis of which the mutation was recorded in her favour, there appears to be conflict in her stance. As per available record she was the only daughter of Abdul Rasheed and could not have inherited 50% share. While confronted Applicant's counsel has made an effort to refer to the evidence and to claim that Mst. Razia was not even the sole daughter of Abdul Rasheed and she had inherited much less share as against her claim. Perhaps if that aspect is looked into (which has not been attended to by the Courts below), then she would not even be owner to the extent of 25% and the entire case of the present Applicants stands destroyed on this plea alone. Mst. Razia had filed her written statement as above, wherein she had stated that the remaining 25% share was given to her by Abdul Ghafoor by way of a surrender deed; this in and of itself is an admission that at least the entire 50% share in the property

was never devolved to her by way of inheritance; rather 25% came by way of a surrender deed. There is nothing in the evidence to prove this claim of any surrender deed. In that case, the Applicants, who are subsequent purchasers of her share, cannot take an alternative or contradictory stance as they step into her shoes insofar her ownership in the Suit property is concerned. It is settled law that a vendor cannot transfer a better title to a vendee than what he possesses at the time of transfer¹.

9. After going through the record and above findings of the Appellate Court I am of the view that such findings have been correctly recorded after appreciating the available record including the evidence and the written statement of respondent No.1 i.e. Mst. Razia and therefore, no case for indulgence is made. Accordingly, this Civil Revision Application stands ***dismissed***.

JUDGE

****Hafiz Fahad****

¹ Faquir Muhammad v Fida Muhammad (2004 CLC 162); Muhammad Azam Masood v Muhammad Rauf (2020 MLD 1655); The Karachi Parsi Co-operative Housing Society Limited v Maneck M Dastur (2019 CLC 866)