

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

**R.A No. 108 of 2013**

Applicants : Dr. Allah Bux through L.Rs through  
Mr. Parkash Kumar, Advocate

Respondents : Ghulam Mustafa and others through  
Mr. Muhammad Sachal R. Awan, Advocate

Date of hearing : 17.04.2023

Date of Judgment : 26.05.2023

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J.** Through instant civil revision application, the applicants have challenged the legality of judgment and decree dated 02.04.2013 passed by learned 1<sup>st</sup> Additional District Judge, Badin in Civil Appeal No.36 of 2012, whereby the learned Judge while allowing the Appeal set-aside the judgment and decree dated 27.02.2012 passed by the trial Court in F.C. Suit No.36 of 2008. The applicants being aggrieved by and dissatisfied with the decision of Appellate Court have now filed the instant Civil Revision Application under Section 115 CPC.

2. Brief facts of the case are that on 14.05.2008, plaintiffs / respondents 1 to 4 filed suit for declaration, cancellation of sale deed, and permanent injunction against defendants 1 to 6 / respondents 5 to 10 and defendant No.7 through defendants 7(i) to (v) / Applicants (i) to (v). The case of the plaintiffs was/is that sikni plot admeasuring 61080 sq.ft. part of S.No.92 Deh Badin Tapa Badin Taluka and District Badin was purchased by the plaintiff to the extent of their respective shares for total consideration of Rs.25,970/- through registered sale deed No.43, registration No.73 dated 15.1.1975 from defendant No.6. It is avered that the mutation entry No.109 was made in favour of plaintiffs in Deh Form-II on 12.03.1979; that the suit plot purchased by the plaintiff was an open plot in two portions i.e. A-First Portion and B-Second Portion and the possession as per its measurement was handed over to the plaintiffs, who constructed a residential house on A-First Portion, some portion was used for cattle pen and larger portion of the said plot was vacant and open. It is submitted that legal representatives of defendant No.7 had also claimed to have purchased some area of suit plot from the defendant; therefore, plaintiffs made inquiries from Revenue Department and came to know that there was no entry in favour of legal representatives of defendant No.7. The plaintiffs also made

inquiry from defendant No5 Sub-Registrar, Badin, who informed that the sale deed was executed by defendant No.6 through his special attorney Muhammad Siddique son of Bacho Khan Bhurgri for an area of 8100 sq.ft. out of S.No.92 for consideration of Rs.50,000/- vide registered sale deed No.484 registration No.572 dated 21.09.1988 and since 1988 neither sale transaction between defendants 6 and 7 was disclosed nor the same was produced to defendant No.4 which showed that it was fraudulent transaction. The plaintiffs, therefore, filed suit for declaration, cancellation of sale deed, and permanent injunction against defendants 1 to 6 / respondents 5 to 10 and defendant No.7.

3. Defendant No.6 filed written statement claiming that he was co-owner of plot S.No.92 admeasuring 61080 sq.ft.; the same was sold out to plaintiff through registered sale deed; that he had neither sold out the suit plot to Dr.Allah Bux Bhurgri or his agent or attorney nor had received any sale consideration.

4. Defendants 7(i) to (iv) in their written statement besides raising legal pleas of the suit being time-barred and undervalued contended that S.No.92 of Deh Badin admeasuring 8-04 acres was lying vacant and open plot. The boundaries shown by the plaintiffs were denied; defendant No.7 purchased the plot through valid registered sale deed and defendant No.7 was in peaceful, undisturbed possession of the plot purchased by him.

5. The trial court from the pleadings of the parties, framed following issues:-

1. Whether after purchase of an area of 61080 sq-feet out of S. No. 92 Deh Badin, any piece remain in balance in the name of defendant No. 6? If no, whether sale of 8100 sq-feet by defendant No. 6 in favour of defendant No. 7 vide registered sale deed No. 484/572 dated 21/9/88 as disclosed in Para No. 17 of plaint is legal, valid and binding on the plaintiffs?
2. Whether defendants No.7(i) to (v) have acquired any lawful and legal title over 8100 sq-feet out of S. No. 92 of Deh Badin on the basis of sale deed No. 484/572?
3. Who is in physical possession of the suit plot?
4. Whether the suit is not maintainable at law?
5. Whether the suit is time barred?
6. Whether plaintiffs have no cause of action for filing the suit?
7. Whether plaintiffs are not entitled to any relief?
8. What should the decree be?

6. To prove his case, PW-1 Ghulam Mustafa, the plaintiff examined as Ex.30. He produced sale deed dated 15/1/75 as Ex. 31, entry No.109 of deh Form-II of deh Badin as Ex.32, certified true copy of deed claimed by the legal heirs of defendant No.7 as Ex.33. PW-2 Ali Muhammad examined as Ex. 34. Thereafter, advocate for plaintiffs closed his side, vide statement as Ex.37.

7. In rebuttal, DW-1 Dr. Arif examined as Ex.46. DW-2 Lutuf-ur-Rehman Patoli Sub-Registrar examined as Ex.48. He produced an attested copy of sale deed of plot S.No.572 Register No.484 additional Book Volume No.23 dated 21.9.1988 and power of attorney as Ex.49 and 50 respectively. DW-3 Muhammad Ismail, the Tapedar examined was examined as Ex.54. He produced entry No.68 of Form-A dated nil as Ex.55. He also produced entry Nos.109 to 118 as Ex.56. DW-4 Jhamandas Mukhtiarkar, Badin was examined as Ex.68. He produced notice of this Court as Ex.69 and report as Ex.70. Thereafter, advocate for legal heirs of defendant No.7 closed side vide statement as Ex.71.

8. The trial Court after hearing the parties and considering the evidence brought on record partly decreed the suit vide judgment and decree dated 27.02.2012 and partly dismissed with the following observation:

“As per the discussion above, the suit of plaintiffs is hereby partly decreed to the extent of ownership of the plaintiffs over the suit plot admeasuring 61080 square feet and partly dismissed to the extent of sale transaction between defendant No.6 and the father of defendants No. 7(i) and (v) which cannot be declared as void, illegal and fraudulent with no order as to costs.

9. The plaintiffs / respondents No.1 to 4 being aggrieved by the said Judgment and decree preferred Civil Appeal No.36 of 2012 which was allowed vide judgment and decree dated 02.4.2013 with the following observation:-

“In view of above facts, I am of the opinion that the learned lower court had not properly appreciated the evidence brought on record. The learned trial court has committed gross illegality and irregularity while dismissing the suit of the appellants/plaintiffs; therefore, the impugned Judgment and Decree passed by the learned lower court is hereby set aside and the F.C. Suit No. 36 of 2008 filed by the appellants/plaintiffs against the respondents/defendants titled Ghulam Mustafa and three others Vs. Government of Sindh and others for Declaration, Cancellation of sale deed, and permanent injunction stands decreed. Consequently, the appeal in hand stands allowed with no order as to costs.

10. The applicants / defendants being aggrieved by the above judgment and decree of appellate court preferred instant Civil Revision Application.

11. Mr. Parkash Kumar counsel for applicants has argued that the judgment and decree passed by the appellate Court are against the facts, law, and equity;

that the appellate Court failed to frame points for determination, and that he exercised the jurisdiction not vested in it in deciding the appeal without discussing the evidence on record. The decision of appellate Court is against the provisions of Order 41 Rule 31 CPC and liable to be set aside; that the decision of appellate Court is slipshod, nonspeaking, and without application of judicious mind; that the appellate Court failed to assign any valid reasons or justification in allowing the appeal; that the suit was filed against dead defendant No.7; therefore, the lower Courts exercised jurisdiction not vested in them in entertaining the suit and decreeing the same; that in pursuance of remand order by the appellate Court dated 12.09.2011 the entire S.No.92 was demarcated through Settlement Survey Department and Mukhtiarkar. The reports along with sketches were submitted by the Director which are part of record but the appellate Court committed illegality in totally ignoring the said documents on record; that the trial Court fully complied with the directions of appellate Court; that not only the entire survey numbers were demarcated but notices were also issued to all the purchasers of the plot; that the decision of appellate Court is a result of misreading and non-reading of evidence on record and is liable to be set aside; that even otherwise if the trial Court had not made compliance with the remand order the appellate Court was not justified in any manner in decreeing the suit of plaintiffs; that the plaintiffs had failed to prove his case set up in the plaint. The sale deed Ex.31 and mutation entry Ex.32 do not in any manner prove the portions of plots of the plaintiffs as mentioned in para-3 of the plaint; that the plaintiffs failed to substantiate his claim of possession of the said portions. The decision of lower courts holding the plaintiffs to be the owners of plots claimed in para-3 of the plaint is without any evidence on record and is liable to be set aside; that the ownership of plot of defendant No.7 is proved through evidence of defendant Dr. Muhammad Arif who was also supported by the evidence of Lutuf-ur-Rehman Sub- Registrar, Muhammad Ismail Tapedar and Jamandas Mukhtiarkar; that the appellate Court committed illegality in totally ignoring the said reliable and consistent evidence on record, the judgment of appellate court is liable to be set aside; that the documentary evidence in the shape of registered sale deed Ex.49, registered power of attorney Ex.50, mutation entries Ex.55, 56 conclusively prove the ownership of suit plot admeasuring 8100 sq.ft of defendant No.7. The decision of appellate court is a result of misreading and non-reading of documentary evidence on record and liable to be set aside; that it was admitted by the plaintiff that an area of S.No.92 was 8-4 acres equal to 3,52,836 sq ft. It was established that the suit plot was different from the plot purchased by the plaintiffs; that the plaintiffs were not owners of entire survey number. The plaintiffs had neither pleaded nor proved any of their rights in the suit plot of defendant No.7; therefore, the trial court had rightly dismissed the suit of

plaintiffs twice; that the appellate Court had no jurisdiction to decree the suit for cancellation of sale deed of defendant No.7; that the suit of plaintiffs was not maintainable and time-barred, plaintiffs neither claimed any right title or interest in the suit plot nor had cause of action to file the suit; therefore, the appellate court exercised the jurisdiction not vested in decreeing the suit. He lastly prayed for allowing the instant Civil Revision Application.

12. Mr. Muhammad Sachal R. Awan counsel for respondent has supported the impugned judgment of appellate Court and prayed for dismissal of the instant civil revision application.

13. The controversy could have been averted if the concerned officials of Survey and settlement department had been examined after proper demarcating the entire S.No.92, however only Mukhtiarkar was examined who admitted in evidence that he was not present at the time of purported demarcation of the suit plot earlier made by him, in such a scenario, judicial propriety demands that the appellate Court should examine the concerned officials of Survey and settlement department and Mukhtiarkar concerned after receiving proper demarcation report from them so that the status of the suit plot become clear; and decide the appeal.

14. In view of the above, this Revision Application is allowed, the Judgment and decree passed by the Appellate Court in Civil Appeal No. 36 of 2012 are set aside, and the matter is remanded to appellate Court to examine the concerned officials of Survey and settlement department and Mukhtiarkar concerned by summoning them with direction to demarcate the entire S.No.92 of Deh Badin Tapa Badin Taluka and District Badin / suit property afresh in presence of the parties strictly in accordance with law and bifurcate the area of suit plot with boundary marks and submit report with the appellate Court and after allowing their cross-examination, appeal shall be decided preferably within three month.

**JUDGE**