

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision App. No. S - 131 of 2014

Applicant : Mst. Sodhan, through Ms. Rizwana  
Jabeen Siddiqui, Advocate.

Respondents : Haji Rahim Bux (*deceased*) through  
No.1(a) to 1(f) Legal heirs and others, through  
and 3 to 8 Mr. Tariq G. Hanif Mangi, Advocate.

Respondents : Mukhtiarkar (Revenue), Taluka Kotdiji  
No.9 to 11 and others through Mr. Shahryar Imdad  
Awan, Assistant Advocate General Sindh.

Date of hearing : 07.11.2022.

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

ZAFAR AHMED RAJPUT, J. - Applicant herein filed F.C. Suit No.19 of 2011 for declaration, permanent injunction, correction of revenue record, partition, possession and *mesne* profits in respect of agricultural land bearing Survey No.337 (1-26), 338 (3-19), 339 (3-24), 340 (1-04) and 341 (2-12), totaling 12-05 acres of Deh Shafi Muhammad Ujjan as well as Survey No.116, 117, 260/1, 261, 273/1, 274, 275, 324, 179, 333, 334 and 259 of the same Deh, alleging therein that the same was owned by deceased Janib, who was her and respondent/defendant No.1's father, while the respondents No.2 to 8 are sons of late Bakhat Ali and Wali Muhammad, both sons of Janib (*brothers of the applicant/plaintiff*), who also expired after the death of their father late Janib, who expired in the year 1976. Deceased Janib left behind him the legal heirs including the applicant and his three sons, namely, Haji Rahim Bux, Bakhat Ali and Wali Muhammad, as referred to above. It is also alleged that after the death of Janib, the respondent/defendant No.1 with *mala fide* intention told the applicant that since their father expired due to electricity shock, there was apprehension of their being implicated in his

death case at the hands of police, therefore, he obtained the signatures of the applicant on the white papers as well as on the stamp papers. Thereafter, the applicant approached to respondent No.1 for her share in the properties left by their father Janib, who though admitted her share but avoided the same on one pretext or other. Thereafter, she approached to respondents No.2 to 8, who informed her that she had sold her share to the remaining legal heirs of deceased Janib through a registered sale deed, on which she filed applications to various authorities but finding no response, she filed the subject suit.

2. The respondents/defendants filed their written statement, in which they denied the claim of the applicant and stated that the suit land was initially belonged to late Janib who expired more than 35 years back. They further submitted that after the death of late Janib, *foti khata* of his property was mutated in the names of his legal heirs including the applicant/plaintiff, vide mutation entry No.17 dated 28.07.1976. They further submitted that her five sisters including the applicant and her mother voluntarily transferred their share in the names of their three brothers vide mutation entry No.18 dated 28.07.1976 and the said mutation entry has never been challenged till date. Since the applicant has no share as she had already sold out her share to her brothers, she is not entitled to any relief claimed by her. They further submitted that the suit is not maintainable and time barred; hence, the same is liable to be dismissed.

3. On the divergent pleadings of the parties, learned trial Court framed the following issues:

1. *Whether the suit of the plaintiff is maintainable according to law?*

2. *Whether late Janib left behind three sons and one widow and five daughters at the time of his death?*
3. *Whether after the death of late Janib his foti khata in respect of the suit land was mutated in the names of his legal heirs vide entry No.17 dated. 28.7.1976?*
4. *Whether the defendant No.1 obtained the signature of the plaintiff on blank stamp paper and on white paper?*
5. *Whether the plaintiff and her sisters transferred their share of the said property to their brothers namely Haji Rahim, late Bakhat Ali and late Wali Muhammad vide mutation entry No.18 dated. 28.7.1976?*
6. *Whether entry No.18 dated. 28.7.1976 forged, manipulated by defendants?*
7. *Whether the plaintiff is entitled for possession of the suit land to the extent of her share?*
8. *Whether the plaintiff is entitled for the mesne profits if so at what rate and since when?*
9. *Whether the plaintiff is entitled for the relief prayed for?*
10. *What should the decree be?*

4. To substantiate the claim, the parties led their pro and contra evidence before the learned trial Court.

5. After hearing learned counsel for the parties, learned trial Court (*I<sup>st</sup> Senior Civil Judge, Khairpur*) dismissed the suit of the applicant/plaintiff, vide judgment and decree dated 05.04.2013 and 12.04.2013, respectively. Against that the applicant preferred Civil Appeal No.35 of 2013, which was heard and dismissed by the appellate Court (*II<sup>nd</sup> Additional District Judge, Khairpur*), vide judgment dated 23.09.2014 and decree drawn on 04.10.2014. It is against that concurrent finding of the Courts below that the instant Civil Revision Application has been maintained by the applicant.

6. Heard and record perused.

7. Perusal of the record shows that the applicant in her evidence (*Ex.19*) has admitted that she did not challenge revenue/mutation entry No.18 dated 28.07.1976 in favour of her brothers/respondents under Revenue hierarchy before the Revenue authority concerned. Even witnesses of the applicant, namely, Atta Muhammad and Noor Muhammad have not supported the claim of the applicant. PW-3 Atta Muhammad (*Ex.21*) has categorically stated in his deposition that after the death of Janib, his all five daughters surrendered their share in favour of their brothers before the Mukhtiarkar. He has further stated that he did not know whether the applicant had received any sale consideration amount; however, voluntarily stated that she received cattle. PW-4 Noor Muhammad (*Ex.22*) has also deposed that after the death of Janib, his all five daughters, sons and widow went to the Mukhtiarkar Office; his wife/daughter of late Janib told him about such fact and the applicant, her sisters and her mother had received sale consideration amount. As such, it is a matter of record that the applicant has failed to prove her claim with the support of any cogent piece of evidence.

8. On the contrary, defendants have examined five witnesses including concerned Mukhtiarkar in whose presence the statements of the applicant, her sisters and mother in respect of said land were recorded in favour of sons of late Janib, namely, Rahim Bux, Bakhat Ali and Wali Muhammad, and entry No.18 dated 28.07.1976 was entered in Revenue record of rights, who has fully supported the version of private respondents. After passing of 35 years, the applicant has filed the Civil Suit, which was hopelessly time barred.

9. For the foregoing facts and reasons, applicant has failed to point out any illegality or irregularity in the impugned judgments and decrees passed

by the Courts below requiring any interference by this Court under its revisional jurisdiction under Section 115, C.P.C.; hence, this revision application, being devoid of any merits, is **dismissed** accordingly along with pending application(s), if any.

Above are the reasons of my short order dated 07.11.2022, whereby instant revision application was dismissed.

Abdul Basit

J U D G E