

IN THE HIGH COURT OF SINDH AT HYDERABAD

RA 152 of 2017 : Mst. Sagiran and Others vs.
Muhammad Saleem Siddiqui & Others

For the Applicant/s : Mr. Rafique Ahmed Advocate

For the Respondent/s : Mr. Aqeel Ahmed Siddiqui Advocate.

For Official Respondent/s : Mr. Wali Muhammad Jamari A.A.G.

Date/s of hearing : 24.10.2023

Date of announcement : 24.10.2023

ORDER

Agha Faisal, J. F.C Suit 43 of 2002 was filed before the Court of Ist. Senior Civil Judge, Hyderabad by the present applicants seeking declaration, permanent injunction and possession in respect of immovable property and the same was dismissed vide judgment dated 31.08.2010. The operative findings are reproduced herein below:

“From the perusal of entire evidence adduced by the plaintiff and defendant it is very clear that plaintiffs have not produced any sufficient evidence as well as in quality and quantity in order to discharge burden of prove lies on their shoulders. On the contrary it will suffice to say that the plaintiffs have failed to adduce any positive evidence, either oral or in shape of documents in order to prove that deceased Fazal Ahmed and Sakhi were transferee of the shop No.E/2441 to the extent of ½ share situated at Islam Chowk Hyderabad and left Yaseen as their legal heir and Yaseen had inherited the suit shop in question and who had left the plaintiffs as his only legal heirs. As well as plaintiff No.3 has also failed to prove that Suit shop on ground floor was not transferred to defendant No.4 Anwar-ul-Haq by the settlement Department Hyderabad and Anwar-ul-Haq have no concerned with the Suit shop and entry in the city survey record is only effected regarding the upper house. The evidence produced by the plaintiff No.3 is itself sketchy in nature and self contradictory and not supported by any independent witness. A conjunctive regarding of the case law adequately shows that plaintiffs have failed to prove that after death of Fazal Ahmed and Sakhi left Yaseen as their legal heir and Suit shop in question was inherited to Yaseen and then after the death of Yaseen plaintiffs are the legal owners of Suit shop City Survey No.E/2441 situated at Islam Chowk on ground floor.”

2. Civil Appeal 247 of 2010 was then filed before the Court of VII-Additional District Judge, Hyderabad and the same was also dismissed vide judgment dated 13.03.2017. The operative findings are reproduced herein below:

9- The appellant had filed the Suit of Declaration, Permanent Injunction and Possession against the Respondents and the suit was dismissed by the learned trial court vide impugned judgment and decree.

10- The perusal of record reveals that the suit property was transferred in favor of the Anwar-ul-Haq s/o Barkatullah vide P.T.D issued by the Settlement Department and such document is produced and exhibited at Ex.No.46. The record shows that Anwar-ul-Haq s/o Barkatullah became the exclusive owner of the property in question after making entire payments and by observing due cod, al formalities. The appellant has been unnecessarily agitating past and closed transaction in view of the judgment handed down in F.C No. 38/2000. No application under section 12(2) CPC was preferred by the appellants for challenging the judgment and decree on the ground of fraud and misrepresentation of facts.

11- The bare reading of Section 42 of Specific Relief Act shows that it does not sanction every kind of declaration but only a declaration that the plaintiff is entitled to any legal character or to any property and at the same time in order to enable to plaintiff to seek a declaration it is imperative upon him to

show that he has some legal character or some right to the property and that his opponent is either denying or is interested in denying such legal character or title. The expression "legal character" denotes a status conferred by law on any individual and in the present case the appellant had not only sought a declaration but had also prayed for permanent injunction.

12- The record shows that the appellant wants to usurp the suit property and claiming possession thereof and the appellant has failed to submit any title documents executed in his favor. Neither any allotment had been made in favor of the appellant nor had he been recorded as title owner of the suit property anywhere at any point of time. The appellant has been claiming rights, which even do not exist. The appellant has raised new pleas at the time of arguments and it is trite and settled principle vouched by superior courts that parties are bound by their pleadings and evidence cannot be let beyond the pleadings, reference may be made to PLD 2010 SC 965 & 2012 SCMR 254.

13- Record reveals that the learned trial Court has rightly discussed all the issues in detail on the factual/legal aspects of the case based on evidence. Thus, no illegality, irregularity, infirmity, patent-error or misreading/non-reading of material has been committed by the learned trial Court, which warrants for any interference by this court, therefore in view of above discourse, the impugned judgment and decree is upheld and the instant appeal is hereby dismissed being devoid of merit. There is no order as to costs."

3. The crux of the submissions articulated by the applicants' learned counsel was that the evidence was not appreciated in its perspective by the respective forums, therefore, the exercise be conducted afresh by this Court. Contrarily, learned counsel for the respondents supported the impugned judgments and submitted that no interference was merited in respect thereof.

4. Heard and perused. It is *prima facie* manifest from the impugned judgments that the applicants remained unable to demonstrate their claim / title to property and the conclusions of the respective fora were rested upon demonstrably detailed appreciation of the evidence. A claimant has to discharge the burden of proof to succeed in its claim and failure in such regard leads to dismissal of the claim. The same appears to be the case before the trial court as well as the appellate court and no case has been articulated before this court to warrant any interference in the revisionary jurisdiction.

5. The judgments have clearly appreciated the facts and concluded as noted supra. The original judgment as well as judgment in appeal appear to have considered the record and the law and no infirmity in respect thereof has been identified to this Court. It is settled law that in the presence of concurrent findings, coupled with preponderance of claim supported by evidence, a revisional court ought not to interfere even if another view was possible. Reappraisal of evidence was even otherwise undesirable in revisional proceedings¹. It is imperative to denote that the present proceedings are revisionary and not yet another stage of appeal.

6. This Court has considered the contentions of the applicants and has noted the inability to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of

¹ 2011 SCMR 758; 2007 SCMR 236; 2006 SCMR 5; 2006 SCMR 1304.

Civil Procedure. There is no suggestion that the impugned judgments are either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the judgments impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate fora.

7. It is the considered view of this court that the applicants' counsel has remained unable to demonstrate any infirmity with the impugned judgments, meriting interference in revision under Section 115 C.P.C, therefore, this revision is hereby dismissed.

JUDGE

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² Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.