

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.54 of 2021

DATE ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection
2. For orders on CMA-504/2022
3. For orders on CMA-868/2021
4. For orders on CMA-869/2021
5. For hearing of main case.

30.10.2023

Mr. Muhammad Akhtar Shoro, advocate for applicants.

1 to 5. The applicants, claiming inherited rights to property, filed F.C. Suit No.70 of 2019 before Senior Civil Judge-II, Kotri for possession, partition, mandatory and permanent injunction in respect of the said property. The suit was dismissed vide judgment dated 20th February, 2020 on the grounds *inter alia* that the plaintiffs could neither prove title, succession and/ or transference. The operative part of the judgment is reproduced herein below:

11. *The burden of this issue was upon the plaintiffs, in order to prove the same, the plaintiff No.1 and his witnesses categorically deposed that originally the suit land was in the name of his forefathers. The Three brothers died un-married hence they were issueless. The Balocha had contracted marriage out of which the children were born and the present plaintiffs are third generation of the deceased late Balocha as such now the present legal heirs are the co-sharers of the entire suit land of 16 acres and 28 ghuntas. In the entire evidence the plaintiff has failed to produce the mother entries and the allotment/land grant order/ lease if any issued in the name of deceased Ahmed Lal Bux, Balocha Lal Bux. Raheem Lal Bux and Photo. The plaintiff No.1 had failed to prove that how his forefathers had obtained the suit land. To claim the suit land the plaintiff No.1 has relied upon the revenue entry No.5 of Deh Form VII. It is settled law that mere entries in the revenue record or mutation record is not the title documents as such the forefather of the plaintiffs cannot be declared as lawful owners of the suit property, hence this issue is answered as negative.*

12. *The burden of this issue was upon the plaintiff. On this issue the plaintiff NO.1 has produced only the oral statements and no document has been produced in support thereof. The plaintiff No.1 and his witnesses have categorically deposed that the plaintiffs at present are residing at Badin and their ancestors are buried there. No certificate of the concerned Union Council or Mukhtiarkar concerned or any other of the competent authority has been produced as such mere on oral statement it cannot be held that the deceased Lal Bux, Rahim Lal Bux and Photo had expired unmarried. This issue is answered accordingly.*

13. *The burden of this issue was upon the plaintiffs. On this issue also the plaintiff No.1 has only produced oral statements and oral statement of his witnesses and no NIC or family registration certificate or any other cogent evidence has been produced before this court to show link chain legal heirs, as such it cannot be held that the present legal heirs are only surviving legal heirs of the plaintiffs. Hence this issue is answered as negative.*

14. *The burden of this issue was upon the plaintiffs and in order to prove the same, the plaintiff No.1 has relied upon the written statement of defendant No.4 in which they have stated that at present the said Gul Muhammad Son of Rustam and others are in possession of the suit land the same is also admitted by the representative of defendant No.4 in his evidence and also admitted that in support of his possession no document has been produced. In the first instance the said Gul Muhammad, who has not been made as party, but if it has not been done so, the mis joinder and non joinder is not fatal, however no document in support of his possession is available in the office of defendant No.4, as such his occupation on the suit property cannot be held as lawful, hence this issues answered in affirmative.*

15. *In view of the discussion made from issues No.1 to 5, it appears that the plaintiff has failed to prove the ownership of their forefathers and failed to bring on record any cogent evidence to show the chain of legal heirs, hence it is hereby held that the plaintiff is not entitled for any relief.*

16. *In view of the discussion made on the issues from S. No.1 to 6, it is ordered that the suit of the plaintiff is dismissed with no order as to costs. It is also hereby held that the suit land belongs to Government as such the Deputy Commissioner is directed to take over the possession of the suit land, under intimation to this court. If any of the party creates the law and order situation then the SSP concerned and SHO are at liberty to take action against them as per chapter VIII of Code of Criminal Procedure, under intimation to this court. Let such decree be prepared accordingly."*

Civil Appeal No.35 of 2020 was then filed before the Court of Additional District Judge-II, Jamshoro and the same was also dismissed vide judgment

dated 14.12.2020. The operative part of the judgment is reproduced herein below.

“The burden to prove the issue No.2 laid upon the appellants/plaintiffs to prove that deceased Ahmed Lal Bux, Balocha Lal Bux, Raheem Lal Bux and Photo were lawful owners of the land 16 acres and 28 ghuntas situated in Deh Sonwalhar Tapo Bolhari, Taluka Kotri, district Jamshoro. The appellant/plaintiff Lal Bux examined himself and his witnesses and deposed that the suit land was in the name of their forefathers. Three brothers died unmarried and issueless. Balocha had contracted marriage out of which, the children were born and the present appellants/plaintiffs are third generation of deceased late Balocha as such now the present legal-heirs are co-sharers of entire suit land 16 acres and 28 ghuntas. The perusal of the evidence shows that appellants/plaintiffs had failed to produce any mother entries allotment orders/land grant orders issued in favor of deceased Ahmed Lal Bux, Balocha Lal Bux, Raheem Lal Bux and Photo to prove that plaintiff No.1 acquired the suit land. The plaintiff No.1 had relied on the entry No.5 of Deh Form VII. The honorable superior Courts have held in plethora of judgments that sole mutation entry in revenue record is not a title document but same is kept only for fiscal purposes. The learned trial Court has rightly decided issue No.2 that the appellants/plaintiffs failed to prove their lawful ownership and status over the same property. I find no illegality in findings of learned trial Court on issue No.2.

So far as the issue No.3 is concerned, the burden laid upon the plaintiffs to prove that deceased Lal Bux, Raheem Lal Bux and Photo had expired unmarried. The record reveals that no documentary evidence was produced in evidence that deceased Lal Bux, Raheem Lal Bux and Photo had expired unmarried. I find no illegality in findings of learned trial Court on issue No.3.

So far as the issue No.4 is concerned, the burden laid upon the appellants/plaintiffs to prove the chain of legal-heirs through the documents but they had failed to produce any document in the evidence before learned trial Court or their CNICs or family registration certificate that present legal-heirs are only surviving legal-heirs of the plaintiffs. Therefore, I find no illegality in findings of learned trial Court on issue No.4.

In the light of above discussed circumstances and appraisal of the evidence, I find no illegality or misreading and non-reading of evidence in impugned judgment and decree dated 20-02-2020 passed by learned trial Court. Therefore, this instant appeal calls for no interference by this Court. I find no merits in the instant appeal which is hereby dismissed with no orders as to costs. Let the decree be prepared by concerned Clerk within 07 days accordingly.”

The office raised serious objections of maintainability *inter alia* as to how this revision could be entertained when the remedy of a second appeal was available. This matter has remained pending since 2021 with no progress and even today this objection has not been addressed.

At the very onset learned counsel was confronted as to how the impugned order merited interference per section 115 C.P.C. A query was also put as to whether the order impugned was subject to appeal. Learned counsel did not articulate any cogent response on either count.

The narration and chronology stated in the impugned orders has not been disputed and no case is made out to suggest that the conclusion drawn could not be rested upon the rationale relied upon. The prayer herein is to set aside the impugned appellate judgment and remand the matter with directions *to the appellants to withdraw from the suit* before the trial court. Learned counsel also remained unable to satisfy the court as to how such directions could be granted.

Even otherwise, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned order is 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 law¹ 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 order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum.

¹ 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.

In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine*, along with listed applications.

Judge

Ahmed/Pa,