

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No. 256 of 2021

Applicants : Muhammad Aslam and others,
Through Mr. Kashif Ali Lakho, Advocate who is called
absent today

Respondents : Mst. Nargis and others through
Nemo.

Date of Hearing & Order: 22.09.2023

ORDER

ARSHAD HUSSAIN KHAN, J.-Through instant revision application, the applicants have assailed the Order dated 14.10.2021 passed by learned 3rd Additional District Judge, Hyderabad in Civil Appeal No. 196 of 2021, whereby while deciding the limitation application dismissed the appeal being time barred and the judgment dated 27.01.2021 and decree dated 29.01.2021 passed by the trial court in F.C Suit No. 1038 of 2017 whereby the suit of respondent No.1 was decreed.

2. None present for applicants and no intimation is received. The record reflects that after filing this Civil Revision Application in the year 2021 neither the applicants nor their counsel turned up to proceed or pursue this Revision Application, therefore, I have gone through the record as available before me.

3. From the record it appears that trial Court on the basis of divergent pleadings framed the issues and recorded the evidence of the parties and after hearing learned counsel for the parties decreed the suit filed by the private respondent as prayed vide judgment dated 27.01.2021 and decree dated 29.01.2021. However, the present applicant filed Civil Appeal against the said judgment and decree after a delay of more than eight months. The lower appellate Court while considering the record has rightly dismissed the appeal being hopefully time barred.

4. It has now been settled that question of limitation is not a mere technicality rather it goes to the roots of litigation until it is proved that cause of action was agitated within a time prescribed by law¹.

5. From the perusal of record, it appears that the applicant has now attempted to re-open the case through this revision application under Section 115 CPC, inter-alia on the ground that the impugned judgment passed by the Courts below are illegal, void, malafide, and liable to be set aside; that learned trial Court while passing the impugned judgment failed to consider that while decreeing the suit the defence plea could not be appreciated and considered and this fact has also been overlooked by lower appellate court; that learned trial court committed illegality while decreeing the suit whereas lower appellate Court summarily dismissed the appeal on the technical ground of limitation.

6. The provision of section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a Court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when the Court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. Mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For the applicant to succeed under Section 115, C.P.C, he has to show that there is some material defect in procedure or disregard of some rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine the matter and erroneous action of a Court in exercise of such jurisdiction. It is settled Principal of law that erroneous conclusion of law or fact can be corrected in appeal and not by way of revision, which primarily deals with the question of jurisdiction of a Court i.e. whether a Court has exercised the jurisdiction not vested in it or has not exercised the jurisdiction vested in it or has exercised the jurisdiction vested in it illegally or material irregularity.

¹ ***Muhammad Islam v. Inspector General of Police Islamabad and others; [2008 1CMR 8]***

7. No any illegality and infirmity has been mentioned in the application to call for interference in the impugned decisions by this Court. It is well settled that if no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two Courts below are not to be interfered in revisional jurisdiction, unless extra ordinary circumstances are demonstrated by the applicant. It is also trite law that a revisional Court does not sit in reappraisal of evidence and it distinguishable from the Court of appellate jurisdiction².

8. The upshot of the above discussion is that there appears no illegality, irregularity or jurisdictional error in the findings of the Courts below warranting interference of this Court. Hence, this Revision Application is found to be meritless and is accordingly dismissed along with pending application(s).

JUDGE

Ahmed/Pa,

² ***Abdul Hakeem v. Habibullah and 11 others [1997 JCMR 1139], Anwar Zaman and 5 others v. Bahadur Sher and others [2000 JCMR 431] and Abdullah and others v. Fateh Muhammad and others [2002 CLC 1295].***