

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

**Civil Revision Application No.18 of 2000**

*[Muhammad Bachal & others v. Banhoon & others]*

Applicant(s) : Muhammad Bachal son of Bhaledino & others, through Mr. Muhammad Arshad S. Pathan, Advocate alongwith his Associate Mr. Safdar Hussain Laghari.

Private Respondent(s) : Banhoon son of Loung and others  
None present.

Federation of Pakistan : Through Ms. Shamim Mughal,  
Assistant Attorney General.

Government of Sindh : Through Mr. Allah Bachayo Soomro,  
Additional A.G.

Dates of Hearing : 03.11.2023 & 16.11.2023.  
Date of Judgment : 16.11.2023.

**JUDGMENT**

**MUHAMMAD FAISAL KAMAL ALAM, J.--** The Applicant has challenged the Judgment dated 11<sup>th</sup> December 1999 [Decree dated 24<sup>th</sup> December 1999], passed by the learned Appellate Court, allowing the Civil Appeal No.83 of 1997, preferred by the private Respondents [now represented through the Legal Heirs], whereby, the Judgment of 30.05.1997 and Decree dated 14<sup>th</sup> May 1997, passed by the learned Trial Court was overturned, which had dismissed the Suit No.283 of 1981 [*the Lis*], filed by private Respondents No.1 to 3.

2. The subject matter of this proceeding is an agricultural land in Survey Numbers 424 and 425, measuring 11 acres 32 guntas, in Deh Norai Jagir, Taluka Hyderabad.

3. It is the case of private Respondents as Plaintiffs that the above land was allotted to their Late Father [Loung] by the official Respondent No.8, treating it to be a surrendered land to the Government, but, it was later cancelled by the Respondent No.4 [Deputy Land Commissioner, Hyderabad] on the Application of the Applicant [Bachal] since deceased, now represented through his Legal Heirs. This cancellation was challenged by the Deceased Father [Loung] of private Respondents before the official Respondents up to the level of Federal Land Commission, but unsuccessfully, resulting in the filing of the above *Lis*, which was only contested by the predecessor-in-interest [above] of present Applicants. Issues were framed and the evidence was led.

4. The leaned Trial Court after appraisal of the evidence had come to the conclusion that private Respondents failed to prove their claim, and consequently the above *Lis* was dismissed, which Decision was set aside in the Civil Appeal [*ibid*], hence, the present revision proceeding. The private Respondents in their Objection to the present Revision has supported the impugned Appellate Judgment and reiterated their stance that the subject land was validly allotted to their above deceased Father [Loung]; but, none appeared on their behalf.

5. Mr. Muhammad Arshad Pathan, Advocate, has argued the matter at length; crux of which is that the impugned Appellate Judgment has not evaluated the evidence, while overturning the

Decision of the Trial Court, which is mandatory and hence, the jurisdiction was not properly exercised, as required, under Rule 31 of Order XLI of Civil Procedure Code; points for determination were not framed, nor the Decision is given accordingly.

6. The Advocates appearing on behalf of Federation and Provincial Governments state that it is the dispute between private Parties.

7. In order to appreciate that whether the Appellate Court has correctly overruled the Decision of Trial Court, record and the evidence has been considered.

8. There are two sets of facts; one leading to the contest between the Predecessor-in-interest of Applicants and private Respondents before the official Respondents and the second set of facts is the above *Lis* from which the present Revision proceeding has arisen.

9. To appreciate the controversy, first the Decisions given by the official Respondents are perused, which were produced in the evidence, available at Pages 107 till 127 of R&P.

10. In the Order dated 04.12.1972, both Muhammad Bachal and Loung were heard and after going through the official Record, the official Respondents came to the conclusion that the land in question was excluded from the pool of resumed lands and restored to the Applicant [Muhammad Bachal / Predecessor-in-interest of

present Applicants] and his two Brothers. It is further observed that the above two Survey Numbers were erroneously shown as resumed area in the present scheme in the Record of Mukhtiarkar in 'A' Register, which error was corrected in the above First Order, by cancelling the grant in favour of private Respondents. The same was challenged in Appeal before the Federal Land Commissioner [Official Respondent in the present Revision], but, without any success and finally before the Member, Federal Land Commissioner who passed the Revisional Order dated 01.09.1980. It is necessary to point out that Order of Federal Land Commissioner is not in Record, but the Applicant's Counsel has read the subsequent Order dated 01.09.1980 passed by the Respondent No.4, in which the fate of the Decision of Federal Land Commissioner is mentioned, who again decided the matter in favour of the present Applicants. The Order dated 01.09.1980 passed by the Member Federal Land Commissioner is perused. It has discussed the official Record. The conclusion of the Decision is that the Revision Petition of [present] private Respondents was dismissed in favour of the Applicants.

11. The second set of facts emanates from the *Lis* proceeding. The Plaintiffs [Private Respondents] and Defendant No.7 [Applicant] examined themselves. In the testimony of Plaintiff [private Respondents] the fact about the above Decisions given by the official Respondents is not disputed. The Witness reiterated his stance that the subject land was validly given to his Father Loung

and it is in their possession. With regard to his long possession, the Witness of private Respondents [Plaintiffs] was disapproved when he stated that land in question is lying barren since decade, due to shortage of water. He has not denied the fact that earlier Predecessor-in-interest of present private Respondents filed Suit No.498 of 1978 against Muhammad Bachal [*ibid*], which was later withdrawn. The Record shows that Plaint of F.C Suit No.498 of 1978 is available, produced in evidence by Applicants' representative and vide Order dated 31.05.1981 [at Page 193 of R&P] the said Suit was withdrawn simplicitor by the Predecessor-in-interest of the present private Respondents. The said Witness has even denied the suggestion that in 1972 any Authority had allotted the subject land to them. This reply is contrary to record, and damages the testimony of the said Witness, because, the Plaint of the above *Lis* itself has stated this fact that in 1972, the official Respondent had allotted the said land to deceased Loung son of Momin Palejo [Predecessor-in-interest of private Respondents]. Whereas, the Defendant No.7 [Muhammad Bachal] in his testimony has given the entire background about the subject land so also his successful litigation before the official Respondents and he produced the official Record that Mutation Entry was corrected in his favour by the Revenue Authority / Respondents No. 8 [Assistant Commissioner Hyderabad]. These Documents are exhibited as 122 and 181. In his cross-examination, he could not be proven wrong on any material

assertion. He was not cross-examined on his assertion that the subject land was by mistake allotted to the late Father of Respondents by the then Deputy Land Commissioner; so also the official Record he produced, besides, he always remained in possession of the subject land. Considering all this, the Trial Court decided the *Lis* against private Respondents.

12. The Judgment of the Appellate Court is also carefully considered. One of the factors for deciding the Appeal against the Applicants by the Appellate Court was the proceeding of Suit No.287 of 1958, which fact has already been considered by the official Respondents in their aforementioned Decisions. The Plaint and the Judgment of Suit No.287 of 1958 [Exhibit 107] is also available in the Record. Although the Plaint was returned [as correctly observed in the impugned Judgment], but the pleadings of the Plaint show that Predecessor-in-interest of present Applicants, namely Bachal and his two Brothers had challenged the Sale Deed in favour of private Defendants of the above Suit, viz. Mir Rasool Bux Khan and others, on the basis of fraud, besides, stating that land in question is ancestral land of Applicants. The finding of the learned Appellate Court that in the above Suit the predecessor-in-interest of present Applicants admitted the ownership of above Defendants, is not correct, because, the Applicants in the above Suit had also challenged the ownership of Defendants [as mentioned in the foregoing Paragraph]; thus, it cannot be considered as an admission,

*inter alia*, as it is an established rule, that admission has to be in unequivocal terms.

13. The impugned Appellate Court Decision has not considered the earlier Orders passed by the Competent Authority / Official Respondents, which is based on the official Record and had attained finality, which were not disputed in the evidence. The impugned Judgment is given without appraisal of the evidence, which was mandatory for the Appellate Court, if it disagreed with the findings of the learned Trial Court, which has handed down the Judgment while discussing the Issues framed, in accordance with Rule 5 of Order XX of Civil Procedure Code. *Secondly*, when the issue-wise discussion is not done by the Appellate Court, then under Rule 31 of Order XLI of Civil Procedure Code, at least Points for Determination should have been framed for giving the Decision accordingly, which was also not done, except a formal Point for Determination was framed that whether the impugned Judgment of learned Trial Court calls for interference or not; thus, the impugned Judgment violated the law laid down through various judicial pronouncements. The Judgment of the Hon'ble Supreme Court with regard to framing of Points for Determination is relevant, viz. 2019 SCMR 1726 [*Pakistan Refinery Ltd., Karachi versus Barrett Hodgson Pakistan (Pvt.) Ltd. and others*]. Violation of the above principle would result in setting aside the Judgment.

14. The upshot of the above discussion is that the Appellate Court has not given the Judgment as required, being the Court of final facts and hence, the same cannot be sustained. Consequently, the impugned Judgment is set aside and that of learned Trial Court is restored, resulting in dismissal of the *Lis* of private Respondents.

JUDGE

Shahid