

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Rev. Application No.S-15 of 2014

Applicants : Allah Bux and others, through
Mr. Mian Abdus Salam Arain, advocate

Respondents : Ali Muhammad and others, through
Mr. Manoj Kumar Tejwani, advocate

Province of Sindh : Mr. Ahmed Ali Shahani, AAG

Date of hearing : 16.02.2024 & 01.04.2024

Date of Decision : 14.05.2024

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115 of the Civil Procedure Code 1908 (“C.P.C.”), the applicants/Plaintiffs challenge the Judgment and Decree dated November 20, 2013, rendered by the Additional District Judge, Ubauro (“the **Appellate Court**”) in Civil Appeal No.06 of 2013. The said Judgment and Decree upheld the Judgment dated December 11, 2012, and the Decree dated December 17, 2012, passed by the Senior Civil Judge, Ubauro (“the **Trial Court**”) in F.C. Suit No. 18 of 2004, thereby dismissing the Applicants’ Suit.

2. The relevant facts of the case are that the applicants/plaintiffs filed a suit seeking Declaration, Cancellation, Possession, Mesne Profit, and Permanent Injunction. They claimed that the land bearing Survey Nos.1675, 1674, 1648, 1649, 1650, 1651, 1681, 1682 from U.A Nos.383 corresponding to B. No.367/1 (03-00) acres, 367/2 (02-30) acres, 367/3 (02-00) acres, 367/4 (01-00) acre, 368/1 (02-10) acres, 368/2 (01-20) acre, 368/3(02-00) acres, 368/4 (4-00) acres, 375/1 (3-24) acres, 375/2 (01-00) acre, 375/3 (01-32) acres, 375/4 (02-32) acres, 402 (1-26) acres, 418 (02-26) acres, total admeasuring 32-00 acres situated in Deh Kotlo, Taluka Daharki District Ghotki (“the suit

land”), was granted to their predecessor Mir Muhammad son of Badaruddin by the Guddu Barrage Authorities in the year, 1968. Mir Muhammad died in 1982, leaving behind the plaintiffs as his legal heirs, who are his sons, daughter, and widow. Due to good relations between them, they were cultivating the suit land through harries/letting out on lease to different persons, including the family members of defendants/respondents No.1 to 17. It is asserted that about ten years ago, the applicants leased out the suit land to defendant No.1, who paid the lease amount to the applicants regularly until the end of the cotton season 2002, after which he stopped payment for various reasons. The applicants also averred that after payment of all instalments and other formalities, the T.O Form was issued, and entry No.419 dated 07.6.2003 was kept in the Revenue record in the name of their predecessor. Thereafter, they approached the Revenue Authorities for a change of Foti Khata and submitted an application to the Mukhtiarkar (Rev.) Daharki, but to no avail. Then, in December 2003, they approached defendant No.1 and demanded the outstanding lease money and vacant physical possession of the suit land, but he refused and claimed that defendants No.1 to 17 are the owners of the suit land. After that, applicant No.1 approached the office of the concerned Sub-Registrar and discovered a false, fraudulent, collusive, managed, and without consideration Sale Deed bearing registration No. 2958 dated 23.12.2003, purportedly executed by defendant No.1 in favour of defendants No.2 to 17, on the basis of a false, fictitious, fake, fraudulent, and managed General Power of Attorney bearing registration No.673 dated 11.10.1999, registered with Sub-Registrar Mirpur (AJK) allegedly executed by the predecessor of the plaintiffs, even though he had died in the year, 1982. Therefore, the applicants filed the suit.

3. The defendants/respondents No.1 to 17 submitted their written statement and refuted the claim made by the applicants by

stating that they are in possession of suit land by virtue of purchase in the year 1973 by their ancestors, namely Jalal Khan, Muhammad Murad, Punhoon and Muhammad Essa from the predecessor of applicants/grantee Mir Muhammad for consideration of Rs.5,000/- through Agreement to Sell dated 24.02.1973. The predecessor of the applicants appointed Jalal Khan as General Attorney through a General Power of Attorney dated 25.02.1973, duly registered with Sub-Registrar Mirpur (AJK). In pursuance of said Agreement to Sell, the defendants paid the instalments. Then, they obtained the T.O Form at their own cost and mutated the record of rights in the name of the predecessor of applicants/grantee Mir Muhammad. They further submitted that the applicants were in knowledge about the purchase and possession of the suit land handed over by the ancestors of the defendants since the beginning. They claimed that the heirship Certificate of Mir Muhammad and entry No.29 dated 06.11.2003 in the Death Register of Union Council Dad Laghari are false, fabricated and are maneuvered in order to file the present suit.

4. On the basis of the parties' divergent pleadings, the learned trial court framed amended and additional issues. In support of their claim, applicant No.1, acting for himself and as the attorney of applicants No.2 to 4, examined himself and produced relevant documents. He also examined six other witnesses. In rebuttal, respondent No.1, acting for himself and as the attorney of the other defendants, examined himself and seven other witnesses, including official ones. Upon completion of the case, the trial court dismissed the applicants' suit vide judgment dated 11.12.2012 and decree dated 17.12.2012. This decision was challenged through Civil Appeal No.06 of 2013. However, the appellate Court dismissed the Appeal vide judgment and decree dated 20.11.2013, thereby upholding the judgment and decree of the trial court.

5. At the very outset, learned Counsel representing the appellant contended that the impugned judgments and decrees passed by both

lower Courts are based on conjectures and surmises; besides, the same suffered from misreading and non-reading of evidence as well as not based on documentary and oral evidence available on record, hence cannot be sustained. It is contended that the General Attorney No.673 dated 11.10.1999 managed and prepared at Ubauro by showing a registered document with Sub-Registrar AJK; however, when confirmed from the office of Sub-Registrar, it came to know that neither it was registered nor its author belongs to AJK; that there is no proof of payment of sale consideration Rs.2,60,000/- as mentioned in Sale Deed, which is bogus one and on that document, Respondent No.1 transferred the suit land in favour of his LRs and relatives. It is further argued that the trial Court and the Appellate Court did not consider the factual and legal aspects of the case and dismissed the suit. Lastly, it is submitted that the judgments and decrees passed by learned lower Courts suffer from gross illegalities and irregularities not sustainable under the law and are liable to be set aside. In support of his contention, learned Counsel for the Applicant has relied on the case law reported as 2005 SCMR 911, 2007 SCMR 1714, PLD 2002 SC 677 & 1993 CLC 1943.

6. Conversely, Learned Counsel for the Respondents argued that both the Courts below have rightly concluded that no right whatsoever has been created by the applicants with regard to showing their ownership; that no iota of evidence has been produced by the Applicants with regard to the genuineness of Agreement to Sale executed by their predecessor in the year, 1973; that the applicants have failed to strengthen their ground regarding previous power of attorney executed in the year, 1973 along with sale agreement in favour of Jalal Khan; that it is a well-settled principle of law that this Court has very narrow jurisdiction to interfere in the concurrent findings of Courts below; that both the judgments and decrees of Courts below are in accordance with law and do not suffer from any gross illegality, irregularity or infirmity which warrant interference by this Court.

7. Learned A.A.G., while refuting the contention, argued that the Revision is not sustainable under the law. It is a case of concurrent findings, and in the Revisional Court, the facts recorded by the inferior Courts cannot be disturbed; therefore, this Revision is not maintainable under the law.

8. I have contemplated the arguments presented by the learned counsel for both parties and have thoroughly reviewed the legality and propriety of the judgments and decrees rendered by the Courts below. Additionally, I have ensured a fair opportunity for the learned counsel representing the Applicants to persuade this Court regarding any potential illegal exercise of jurisdiction or material irregularity by the lower Courts, in light of pertinent case laws.

9. In the present case, the plaintiffs/applicants have alleged that they had entered into an oral lease agreement with respondent No.1 approximately ten years ago, under which they leased out the suit land to respondent No.1. They claim that lease money was regularly paid to them. However, the applicants have failed to provide substantial evidence to support their claim regarding the lease of the suit land. There is no proof of the lease money being paid, nor is there any record of evidence that would allow the Court to determine the lease terms. The applicants' claim regarding the lease of the suit land has not been substantiated through either documentary or oral evidence. Furthermore, the date of the alleged lease period and the lease amount have not been pleaded in the plaint or provided in evidence. The applicants have not produced any receipts showing that the respondents paid any lease money. In addition, the applicants have not disclosed the lease's terms, conditions, or witnesses in the plaint. Therefore, without concrete evidence, the applicants' claim regarding the lease of the suit land remains unproven and unsubstantiated. In the case of Ashiq Muhammad and others vs. Mst. Suhagan (2023 SCMR 1171), it has been held by the Supreme Court of Pakistan as under: -

“5. Additionally, the respondent has set up a case that she had leased out the subject property to the appellant through an oral lease (mustajri) agreement and the lease money was being paid to her regularly. However, she admitted in her cross-examination that she has no proof or receipt to show that any lease (mustajri) money was ever paid by the appellant. Beside, the evidence produced by the respondent to prove that the subject land was given to appellant on lease (mustajri), does not inspire confidence as the respondent in her deposition very categorically asserted that she herself entered into a lease (mustajri) agreement with the respondent and that there were no witnesses of lease whereas PW-2 in his cross-examination stated that the terms of lease (mustajri) agreement were settled in his as well as his brother Ghulam Shah's presence.”

10. The applicants have disputed the registered Sale Deed, asserting that their father passed away in 1982. To substantiate their claim, they presented several pieces of evidence, including a Death Certificate and an entry from the office of the Nazim. They also called upon an official death certificate record to testify on their behalf. However, the documents they produced were deemed to be fraudulent and contrived. Both the appellate Court and the trial Court have concurrently examined these allegations in detail. The Court's thorough scrutiny of the evidence does not appear to involve any misreading or non-reading of the evidence.

11. In contrast to the applicants' claims, the respondents have presented a registered Sale Deed that outlines the key elements of Sale, Possession, Offer, and Acceptance as per Section 54 of the Transfer of Property Act. The respondents assert that their predecessor, Jalal Khan, purchased the suit land from Mir Muhammad through a Sale Agreement dated 24.02.1973. As part of this agreement, earnest money was paid, and possession was transferred, indicating the execution of the contract. The respondents' possession over the suit land is not solely based on the registered Sale Deed but also on the aforementioned Sale Agreement. This agreement, which was produced as evidence, shows that possession was handed over to Jalal Khan, the respondents' predecessor, as part performance of the

contract. Even if the document regarding the death of Mir Muhammad is considered, the Power of Attorney in favour of Jalal and Ali Muhammad, coupled with interest for consideration under Sections 199, 200, 201 and 202 of the Contract Act, 1872, remains valid. If Mir Muhammad did indeed pass away in 1982, the Power of Attorney under which the respondents claim the Sale Deed was executed would not be considered revoked, cancelled, terminated, or vanished. Therefore, the attorney would still be competent to alienate the suit land. In the case of Muhammad Yousaf vs Mst.Azra Parveen(2012 SCMR 380), the Supreme Court of Pakistan has held as under: -

“We, therefore, don't agree with the learned counsel for the appellant that no transfer could validly be made by the donee of the power of attorney without obtaining the consent of its donor. It is, quite obviously, a case of authority coupled with an interest falling within the purview of section 202 of the Contract Act, 1872. Though the section itself is clear yet para 868 of Halsbury's Laws of England would be quite illustrative in this behalf, which reads as under:--

"868. Authority coupled with interest.---Where the agency is created by deed, or for valuable consideration, and the authority is given to effectuate a security or to security or to secure the interest of the agent, the authority cannot be revoked. Thus, if an agreement is entered into on a sufficient consideration whereby an authority is given for the purpose of securing some benefit to the donee of the authority, the authority is irrevocable on the ground that it is coupled with an interest. So, an authority to sell in consideration for forbearance to sue for previous advances, an authority to apply for share to be allotted on an underwriting agreement, a commission being paid for the underwriting, and an authority to receive rents until the principal and interest of a loan have been paid of or to receive money for a third party in payment of a debt, have been held to be irrevocable. On the other hand, an authority is not irrevocable merely because the agent has a special property in or a lien upon goods to which the authority relates, the authority not being given for the purpose of securing the claims of the agent.”

12. It is acknowledged that all the documents related to the years 1973 and 1999 are not being executed by the applicants. As per

Section 49 of the Registration Act, a presumption of truth is attached to these documents, and the applicants cannot challenge their execution solely on the basis of oral evidence. The applicants filed the suit in 2004, and the documents concerning the death of Mir Muhammad, which date back to the year 2003, appear to have been obtained specifically for the purpose of filing this suit. In case of Rasool Bukhsh and another v. Muhammad Ramzan (2007 SCMR 85), it was held by the Supreme Court of Pakistan that: *“It is a settled law that the registered document has sanctity attached to it and stronger evidence is required to cast aspersion on its genuineness as law laid down by this Court in Mirza Muhammad Sharif’s case NLR 1993 Civil 148”*. It was further held by the Honourable Supreme Court of Pakistan that: *“It is pertinent to mention here that the registered document is not only binding to the parties in the document but is equally applicable to the 3rd party. See Gosto Beharidas’s case AIR 1956 Kalkata 449”*. Nothing has been brought on record by the Applicants to cast aspersion on the genuineness of the registered Sale Deed and power of attorney in respect of the Suit Property. Moreover, the registered Sale Deed and Power of attorney are not only binding upon the parties to the instruments but is equally applicable to the third party including the Applicants. In Case of Abdul Aziz v. Abdul Hameed (Deceased) through L.Rs. (2022 SCMR 842), it was held by the Supreme Court of Pakistan as under:-

“We also note that registered document carries presumptions attached to it under Sections 35, 47 and 60 of the Registration Act, 1908 and under Article 90 of the Qanun-e-Shahadat Order, 1984 and the court will presume correctness of the registered document in accordance with the presumptions attached unless the same are disputed or rebutted. For this if any authority is needed, reference may be made to "Muhammad Siddique (deceased) v. Mst. Noor Bibi (deceased)" (2020 SCMR 483), "Abdul Razaq v. Abdul Ghaffar" (2020 SCMR 202); "Anjuman-e-Khuddam-ul-Quran, Faisalabad v. Lt. Col (R) Najam Hameed" (PLD 2020 SC 390); "Muhammad Idrees v. Muhammad Pervaiz" (2010 SCMR 5); "Rasool Bukhsh and another v. Muhammad Ramzan" (2007 SCMR 85)”.

13. The burden of proof lies with the applicants to produce evidence demonstrating that the Sale Deed and Power of Attorney are manipulated, forged, and fabricated documents. However, they have failed to meet this burden and have not produced such evidence. Furthermore, the applicants, being the legal heirs and successors in the interest of Mir Muhammad, have not denied the thumb impression and signature on the Sale Agreement and Power of Attorney. In the case of Haji Muhammad Younis (Deceased) through legal heirs and another vs. Mst. Farukh Sultan and others(2022 SCMR 1282), it was held by the Supreme Court of Pakistan that: *“In this regard, we may observe, when a sale transaction of an immovable property is challenged, the ultimate onus to prove the same is on the "beneficiary" thereof. However, this onus is shifted on the "beneficiary", only when the challenger puts forth some evidence to discharge the initial burden to rebut the legal presumption of truth in favour of the disputed long-standing revenue entries or registered sale deed, as the case may be”*.

14. It is a well-established principle that if the owner of a property, despite being aware of transactions involving their property, does not challenge these transactions during their lifetime, the legal heirs are not entitled to challenge the validity of those transactions after the owner's demise. For instance, in the case of Nasir Fahimuddin and others v. Charles Phillips Mills and others (2017 SCMR 468), it was observed that if the party's predecessor-in-interest never challenged the transfer document in favour of the opposite side or sought eviction of the transferee, such conduct indicated that ownership of the property was not being claimed. As a result, the party was estopped under Article 114 of the Qanun-e-Shahadat Order, 1984. Consequently, no valid locus standi would pass on to the legal heirs for claiming ownership or challenging such transfer documents. Further references supporting this principle can be found in the cases of Abdul Haq and another v. Mst. Surraya Begum and others(2002 SCMR 1330) and Muhammad Rustam and another v. Mst. Makhan Jan

and others(2013 SCMR 299). These cases collectively reinforce the principle that legal heirs cannot challenge property transactions that were unchallenged by the original owner during their lifetime.

15. The counsel representing the applicants has not demonstrated any legal impropriety, substantive irregularity, or instances of misinterpretation or oversight of evidence in the challenged judgments and decrees issued by the subordinate courts. Additionally, no jurisdictional flaw has been identified. The concurrent factual determinations are adverse to the applicants and do not justify intervention by this Court in its revisional capacity, in the absence of any legal error or other jurisdictional defect. The precedent set in the case of Mst. Zaitoon Begum vs. Nazar Hussain and another (2014 SCMR 1469) reinforces the stance that judicial interference is unwarranted under the current circumstances.

16. For the reasons articulated herein, the concurrent findings of fact as determined by the subordinate courts are devoid of any material irregularity or oversight of the evidence, and are not tainted by any juridical error or substantial procedural impropriety that would adversely affect the integrity of the adjudication. Accordingly, the instant Civil Revision Application is **dismissed** forthwith. The litigants shall each bear their own litigation expenses.

JUDGE

Faisal Mumtaz/PS