

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Rev. Application No.S-31 of 2018

Applicants : Executive Engineer, Irrigation and others,
through Mr. Ahmed Ali Shahani,
Assistant Advocate General

Respondent : Gul Muhammad, through
Mr. Abdul Qadir Shaikh, Advocate

Date of hearing : 16.02.2024

Date of Decision : 03.05.2024

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("**C.P.C**"), the applicants have impugned Judgment dated 23.12.2017 and Decree dated 26.12.2017, passed by the learned III-Additional District Judge, Naushahro Feroze ("**appellate Court**") in Civil Appeal No.27 of 2011, whereby, the Judgment dated 11.3.2011 and Decree dated 12.3.2011, passed by Senior Civil Judge, Naushahro Feroze ("**trial Court**") in F.C. Suit No.171 of 2008, through which the suit of the plaintiff/respondent was decreed has been maintained by dismissing the Appeal.

2. The succinct facts leading to the captioned Civil Revision Application are that the respondent/plaintiff filed a Suit for Declaration, Possession, and Permanent Injunction against the applicants/defendants. He claimed that the property, bearing Survey No.22 measuring 8-39 Acres, situated in Deh Phul ("**the suit property**"), was owned by the deceased Alam, son of Muhammad Haroon. As Alam died without issue, the suit property was inherited by his legal heirs, namely Mir Muhammad and Faiz Muhammad, both sons of Khaliq Dino, who was Alam's brother. Mir Muhammad passed away, leaving behind three sons: Khaliq Dino, Muhammad Ibrahim,

Alam (Junior), and one daughter, Mst.Fatima. Mst. Fatima also passed away without issue. Faiz Muhammad also passed away, leaving behind two sons, Muhammad Haroon and Muhammad Ilyas, and one daughter, Mst.Hajran. The respondent/plaintiff, a son of Muhammad Ibrahim, was a co-sharer in the suit property along with other co-sharers. It was averred that the suit property was illegally and unlawfully occupied by the Irrigation Department/applicants without due process of law. It was also asserted that, as per the record of rights, the suit property has been owned by the respondent/plaintiff since his forefathers, and the names of their grandfathers are entered in the record of rights in Deh Form-VII.The respondent/plaintiff and other co-sharers approached the applicants to hand over peaceful possession of the suit property to them, but they refused.Hence, the suit was filed.

3. The applicant/defendant No.4 contested the suit and filed a written statement, which the rest of the applicants/defendants adopted through a statement filed via DDA. In the written statement, it was claimed that the suit property is owned by the Irrigation Department. A 1st Class Inspection Bungalow has been constructed on 1-39 Acres of the suit property, while the remaining area, measuring 07-00 Acres, is vacant and used for greenery and orchards. A separate pipe outlet from the Phul distry exists and has been in place for a long time. It was also alleged that during the construction of the Rohri Canal, the suit property was acquired for canal rights from Sukkur to its sail, as well as for a Bungalow, among other things, at different places. Compensation was paid for this acquisition, and no complaints regarding non-payment of compensation have ever been made by anyone.They denied that the suit property was owned by the deceased Alam, son of Muhammad Haroon Phul and that it was not inherited by the respondent.

4. From the divergent pleadings of the parties, the trial court framed the following issues: -

- i- Whether Alam s/o Haroon Phul was owner of suit property S. No.22 and the same is inherited to plaintiff?*
- ii- Whether Alam was uncle of grandfather of plaintiff namely Mir Muhammad and was died issueless and property inherited to legal heirs of Alam namely Mir Muhammad and Faiz Muhammad?*
- iii- Whether the suit property is belongs to Irrigation Department?*
- iv- Whether the suit of plaintiff is not maintainable?*
- v- Whether plaintiff is entitled for any relief?*
- vi- What should the decree be?*

5. In support of their claim, the respondent/plaintiff examined himself and produced relevant documents. He also examined two other witnesses, PW-2 Khair Muhammad and PW-3 Muhammad Yousif. In rebuttal, the applicant/defendant No.4 examined himself and produced a copy of the Sketch of the suit property.

6. On completion of the case, the trial court, vide Judgment dated 11.3.2011 and Decree dated 12.3.2011, decreed the suit filed by the respondent, which the applicants challenged through Civil Appeal No.27 of 2011; the appellate Court dismissed the Appeal vide Judgment dated 23.12.2017 and Decree dated 26.12.2017 and maintained the Judgment and Decree of the trial Court.

7. At the very outset, learned AAG representing the Applicants argued that both the Courts below have erroneously hastily passed impugned judgments and decrees without considering essential aspects of the case; that the respondent filed two suits, and in one suit, he claimed the right of lessee; however, in another suit right of ownership and possession was sought; that earlier suit was dismissed but the respondent filed another suit by concealing the facts, hence it is barred by resjudicata; that suit was barred under Section 11 CPC as well as Order II Rule 2 CPC but learned trial Court, as well as Appellate, ignored such legal aspect without delivering any finding on

it; that learned Appellate Court had to remand the case without deciding finally; however, learned Appellate Court did not consider such legal aspect. In the end, learned AAG submits that instant revision application may be allowed by setting aside impugned judgments and decrees passed by both Courts below. In support of his contention, learned AAG has placed reliance on the case law reported as **2000 MLD 1537, 2000 CLC 1107 & 2012 YLR 156.**

8. On the other hand, learned counsel for the respondent argued that both Courts below have rightly passed impugned judgments and decrees by taking into consideration all the evidence available on record; that instant revision application is not maintainable as no prior permission was sought to file instant application; that there is the narrow scope of revision as in revisional jurisdiction, the Court only to examine any gross illegality or irregularity appears in the decisions; that oral assertion is not sufficient to rebut documentary evidence; that there is no plea of resjudicata has been raised thus no issue was required to be framed; that there is no misreading of non-reading of evidence by both Courts below. In the end, he argued that instant revision is not maintainable and is liable to be dismissed. He placed reliance on the case law reported as **2010 SCMR 17(3), 2015 CLC 393, 2005 YLR 2608, 1999 SCMR 2167, PLD 2009 Karachi 373, 2002 YLR 989, 1992 SCMR 786, 2020 CLC 583, 2011 SCMR 837, 1986 CLC 770, 2003 SCMR 501, 2021 SCMR 305, 2020 CLC 1219 & 2016 CLC 1090.**

9. The arguments have been heard at quite great length, and the available record has been carefully perused with the invaluable assistance of the learned counsel for the parties. I also satisfied myself with the correctness and propriety of both the judgments and decrees of the lower Courts, being complete and correct, and thus giving a fair chance for the learned counsel for the applicants to persuade me of any illegal actions or material irregularities done by the Courts below in the exercise of their jurisdiction.

10. On examination of the record, it appears that two F.C Suits No.118/2008 and 171/2008 indeed present a complex legal scenario. The same plaintiff filed them but offered two different narratives of the ownership and possession of the same property.

11. In F.C Suit No.118/2008, the plaintiff's claim is premised on the idea that the suit property was initially handed over by his predecessor to the British Government, which constructed an official Bungalow. After the property was abandoned, it was leased to the plaintiff in 2004, and he was put into possession along with the rest of the suit property. After the lease period expired, the plaintiff approached the Irrigation Department/defendants for its renewal/further lease, which was extended to him for the Kharif-Rabi-2008 seasons. The plaintiff cultivated crops over the suit property during this period. However, on 24.8.2008, the plaintiff received a notice for the grant of lease papers, which he objected to and subsequently filed the suit.

12. On the other hand, in F.C Suit No.171/2008, the plaintiff presents an entirely different narrative. He claims that the suit property was inherited from his forefathers, implying a long-standing ownership. In this version, the Irrigation Department is accused of illegally occupying the suit property, which contradicts the narrative in F.C Suit No.118/2008, where the plaintiff acknowledges the lease from the Irrigation Department.

13. The conflicting narratives in F.C Suits No.118/2008 and 171/2008 raise several legal questions about the actual ownership and possession of the suit property. The plaintiff's contradictory stance, as reflected in these two suits, can undermine his credibility and the bona fides of his claims. In F.C Suit No.118/2008, the plaintiff acknowledges a lease from the Irrigation Department, suggesting that the property was initially under the control of the British

Government and later leased to him. However, in F.C Suit No.171/2008, the plaintiff presents a different narrative, claiming that the property was inherited from his forefathers, which implies long-standing ownership. This contradiction could potentially weaken the plaintiff's position in the eyes of the Court. The trial court would need to take judicial notice of both suits. Judicial notice is a rule in the law of evidence that allows a fact to be introduced into evidence if the truth of that fact is so notorious or well known or so authoritatively attested that it cannot reasonably be doubted. This is particularly relevant in this case, where the plaintiff has filed two suits with conflicting narratives about the same property against the same defendants. The fact that the trial court dismissed F.C Suit No.118/2008, while F.C Suit No.171/2008 was decreed, adds another layer of complexity to the case. The dismissal of the first suit could potentially influence the Court's view of the plaintiff's credibility in the second suit.

14. Furthermore, the principle of Estoppel could also come into play here. Estoppel is a legal principle that prevents someone from arguing or asserting a right that contradicts what they previously said or agreed to by law. Given that the plaintiff has presented two conflicting narratives, the principle of Estoppel could potentially be invoked to prevent the plaintiff from contradicting his earlier statements or claims.

15. Under Article 111 of the Qanun-e-Shahadat Order, 1984 ("QSO, 1984"), the Court is empowered to take judicial notice of specific facts. These are facts so notorious or well-known that they cannot be disputed and do not require any further proof. They are also mentioned in Article 112 of the QSO, 1984. In addition, Article 113 of the QSO, 1984 refers to facts that are admitted. An admitted fact is accepted by the parties in a suit and does not need to be proven through evidence.

16. Furthermore, the law of Estoppel, as provided under Article 114 of the QSO, 1984, prevents a party from denying the truth of a fact it previously admitted. This principle is based on the premise that a person should not be allowed to contradict his previous statement or action if another person has relied on that statement or action to their detriment. In this case, the plaintiff, by his declaration, act or omission, has caused or permitted the defendants to believe an inevitable fact to be true and to act upon such belief. Therefore, neither he nor his representative shall be allowed to deny the truth of that fact in any suit or proceeding between himself and the defendants. It is a well-established principle of law that a party cannot deviate from its pleadings. Pleadings are the formal statements made by the parties of their respective claims and defences for the purpose of determining the issues to be adjudicated. The Court also cannot set up a different plea for a party and decide the case on that basis. This principle is particularly relevant in this case, given the conflicting narratives presented by the plaintiff in F.C Suits No.118/2008 and 171/2008.

17. The plaintiff is not entitled to take different pleas simultaneously to file more than one suit on the same suit property by taking different pleas/narratives. The plaintiff ought to have challenged the Judgment and Decree passed in the first F.C Suit No.118/2008, but that has not been challenged, which attained finality. The general principle of res-judicata is also applicable in the present case.

18. Upon careful examination of the pleadings in the present F.C Suit No.171 of 2008, it becomes evident that the plaintiff has deliberately obscured the filing of a second F.C Suit No.118/2008 in the aforementioned suit. This deliberate concealment of facts from the Court, specifically the existence of F.C Suit No. 118/2008 concerning the same property and involving the same parties, which

was already under adjudication before the same trial Court, raises serious questions about the plaintiff's intentions and the validity of the second suit. The second suit appears to be in direct violation of Order VI Rule 7 of the Code of Civil Procedure (C.P.C), which stipulates that no pleading shall, except by way of amendment, introduce any new grounds of claim or contain any allegations of fact that are inconsistent with the previous pleadings of the party making the same. Therefore, the present suit is deemed to be incompetent.

19. The concealment of a material fact from the Court is a serious matter that not only amounts to thwarting but also hoodwinking the process of law. Such actions are unacceptable under any circumstances. The Court operates on the principle of transparency and full disclosure, and any deviation from this principle can have severe consequences. In the context of the present case, it is clear that the plaintiff had a duty to disclose the pendency of the first suit while filing the present suit. Failure to do so constitutes a concealment of material fact. This concealment has led to the entire proceedings conducted by the trial Court being tainted with material irregularities and illegalities, rendering them unsustainable.

20. It is crucial to note that while there are concurrent findings of both the lower courts, the judgments and decrees passed by them are not beyond the purview of this Court's interference. This Court can invoke its revisional jurisdiction under Section 115 C.P.C if it is found that the judgments and decrees result from concealment of fact, misreading, or non-reading of the record or if the suit was not filed with clean hands. In the present case, if the judgments and decrees result from concealment of fact, misreading, or non-reading of the record, or if the suit was not filed with clean hands, it would constitute a material irregularity. Such irregularities are precisely the kind of situations that Section 115 of the C.P.C is designed to rectify. Therefore, despite the concurrent findings of the lower

courts, this Court can interfere with their judgments and decrees under its revisional jurisdiction.

21. For the foregoing reasons, the instant Revision Application is **allowed**. Consequently, the judgments and decrees of both courts below are set aside, and the suit filed by the respondent/plaintiff stands dismissed. The parties shall bear their costs.

FaisalMumtaz/P.S

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