

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Rev. Application No.S-81 of 2023

Applicants : Ghulam Hyder and others, through
Mr. Sarfraz A. Akhund, Advocate

Respondent No. 1& 2: Mst. Jamal Khatoon & Mrs. Aanhwar
Through Mr.Shakeel Ahmed Kamboh,
Advocate

Respondents No.4 : Ali Abbas (deceased) through his LRs
Through Mr. Shafiq Ahmed Laghari,
Advocate

Respondents 5 to 6 : Province of Sindh and others
Through Mr. Ghulam Abbas Kubar
Assistant Advocate General

Date of hearing : 06.05.2024

Date of Decision : 24.05.2024

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 and Decree dated 21.02.2023, passed by the learned Additional District Judge-II, Ghotki ("**appellate Court**") in Civil Appeal No.53 of 2020, whereby, the Judgment dated 22.9.2020 and Preliminary Decree dated 28.9.2020, passed by Senior Civil Judge, Ghotki ("**trial Court**") in F.C. Suit No.105 of 2013, through which the suit of the plaintiffs/respondent No.1 & 2 was decreed has been maintained by dismissing the Appeal.

2. The essential facts leading to the current Civil Revision Application are that the Plaintiffs/respondents No.1 and 2 filed a Suit for Declaration, Cancellation of Documents, and Mandatory and Permanent Injunction against the applicants and respondents No.4 to 7. They asserted that their late father, Abdul Wahid son of Abdul Raheem Kalwar, was granted land (Survey No.502(03-23) piece of B(4-00) from U.A No.598 and piece D(10-00) from U.A No.278, totalling (17-23) Acres) situated in Deh Chunglani, Tapo Mathelo Taluka & District Ghotki (the "**suit land**") on Harap rights in the year, 1963-64 by the Colonization

Officer Guddu Barrage, Sukkur. A Form-A bearing No.378 was issued, with instalments to be paid within 20 years. It was alleged that before the issuance of the T.O Form, the grantee violated the Land Grant Policy by illegally mutating the record of rights in his name in the Dakhil Kharij register (Book No.8348 Page No.13 bearing No.270 dated 10.4.1978) through Mukhtiarkar Ghotki on 22.10.1978. This was based on a certificate from the Assistant Colonization Officer, Guddu Barrage Ghotki, but no entry number was shown thereon. On 30.10.1978, Abdul Wahid allegedly sold 50 paise each from S. No.502 and S. No.598 (totalling 6-31 ½ Acres) to the applicants illegally vide a registered Sale Deed dated 18.02.1979. The applicants obtained entry No.88, but no mutation date was mentioned. On the same day, Abdul Wahid allegedly sold 0.25 paise from S. No.502, 0.25 paise share from S. No.598 and 3-20 Acres from S. No.278 (totalling 5-15 ¾ Acres) with malafide intention to his son Ali Abbas (respondent No.4) via registered Sale Deed No.231 dated 18.02.1979. He mutated the record of rights in his favour vide entry No.109 dated 12.02.1992. Abdul Wahid also allegedly sold 0.25 paise from S. No.502 and 0.25 paise share from S. No.598, and 3-20 Acres from S. No.278 (totalling 5-15 ¾ Acres) with malafide intention to his other son Ghous Bux (respondent No.3) through registered Sale Deed No.230 dated 18.02.1979. The record of rights was mutated in his name vide entry No.110 dated 12.02.1992. It was claimed that the entire suit land granted to Abdul Wahid was sold, which was against the terms and conditions of the grant. After the stipulated time passed, a revised sanction was accorded via C.O.G.B Sukkur's Order bearing No.LG/G-5381 dated 23.4.1989 as noted on Form-A. The grant/suit land was converted into Block Survey numbers and an excess area of 00-09 Ghuntas was paid for (Rs.102/- on 11.5.1989 under receipt) to the Colonization Department, with an entry also made on Form-A. After the revised sanction and completion of the usual formalities, the T.O. Form was issued on 12.5.1989 by the Colonization Authorities. The plaintiffs claimed that according to law, the suit land could not be sold by the allottee/deceased Abdul Wahid until the issuance of the T.O Form in his favor. However, he allegedly transferred the entire suit land before issuing the T.O Form, which is against the provision of the Land Grant Policy and Rules, solely to deprive the plaintiffs of their legal rights. Hence, the suit was filed.

3. The defendants/applicants and respondent No.3 contested the suit and submitted their respective written statements, wherein they denied the

allegations and claims of the plaintiffs. They asserted that the grantee, the late Abdul Wahid and Muhammad Ameen, both sons of Abdul Raheem, were allotted the suit land. However, the name of the late Abdul Wahid, the elder brother, was mentioned in the A-Form. An Iqarnama was executed by the late Abdul Wahid in favour of his younger brother, Muhammad Ameen, on 03.10.1969, clarifying that they both held equal shares in the grant and would pay the instalments towards the purchase price as per their share of 50-Paisa each. Consequently, on the basis of such Iqarnama, the late Abdul Wahid transferred a 50-Paisa share in the name of the applicants, who are the sons of his brother Ameen, through a Sale Deed. They further alleged that the plaintiffs have no inheritance rights or legal standing in the suit land as it was sold by the deceased during his lifetime. They claimed that respondents No.3 and 4 colluded with the plaintiffs and filed the suit with malafide intention, which was time-barred.

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

- i- *Whether the father of the plaintiff's Abdul Wahid alone granted S. No.502 and piece No.B(4-00) from U.A No.598 and piece D U.A No.278 total area 17-23 acres situated in Deh Changulani in the year, 1963-64?*
- ii- *Whether entry No.13 on paying 8348 was fraudulently managed in the revenue record?*
- iii- *Whether the deceased Abdul Wahid sold out 6-31 ½ acres to defendant No.1 to 3 malafidely through sale deed dated 30.10.1979?*
- iv- *Whether on very day viz: 30.10.1978 Abdul Wahid sold out 5-15 ¾ acres malafidely to his son Ali Abbas through registered Sale Deed?*
- v- *Whether an area of 5-15 ¾ acres from S. No.598 and 278 were sold out by Abdul Wahid to his son Ghous Bux, If so what is its effect?*
- vi- *Whether after alleged sale the revise sanction vide letter No.LG/G 5381 dated 23.4.1989 was legal?*
- vii- *Whether any payment regarding illegal Act can rectify the same?*
- viii- *Whether prior to issuance of T.O Form the grantee can sale whole or any part of granted land to any one?*

- ix- Whether the suit is maintainable at law?*
- x- Whether suit is hopelessly time barred?*
- xi- Whether the plaintiffs No.1 and 2 of amended plaint are entitled for the relief claimed?*
- xii- What should the decree be?*

5. In support of their claim, the plaintiffs examined their attorney, Abdul Raheem, who produced relevant documents. They also examined three other witnesses, including an official. In rebuttal, respondent applicant No.2, acting for himself and as the attorney of applicants No.1 & 3, examined himself and produced relevant documents. Upon completion of the case, the trial court decreed the plaintiffs' suit vide Judgment dated 22.9.2020 and Preliminary decree dated 28.9.2020. This decision was challenged through Civil Appeal No.53 of 2020. However, the appellate Court dismissed the Appeal vide Judgment and decree dated 21.02.2023, thereby upholding the Judgment and decree of the trial court.

6. At the very outset, learned counsel for the applicants argued that impugned judgments and decrees passed by both Courts below do not align with law nor based on facts and grounds as averred; that learned Courts below failed to consider that Respondents No.1 to 3 were not the shareholder in the grant of their father; that both Courts below failed to consider the entry and execution of sale deeds, which remained undisputed; however they wrongly held that the sale deeds were managed documents; that learned Courts below failed to appreciate that during his lifetime, Abdul Wahid transferred the land in question by executing an Iqarnama and a registered sale deed, the authenticity of which is not contested. In the end, learned Counsel for the Applicants prayed that instant revision may be allowed by setting aside the impugned judgments and decrees passed by both learned Courts below.

7. On the other hand, learned counsel for respondents No.1 & 2 argued that both Courts below have rightly passed the impugned judgments and decrees, which, on the face of it, appears to be speaking and well-reasoned; that the suit land was granted by the Colonization Officer Guddu Barrage to Abdul Wahid; that collusive sale deed was managed to deprive the female legal heirs; that Section 43 of the Transfer of Property Act is not applicable; that T.O form is a document showing the grant and it is not a title document. In the end, the learned counsel prayed for the dismissal of the instant revision application.

In support of his contention, learned counsel placed reliance on the case law reported as **2022 SCMR 64**.

8. Learned Counsel representing Respondent No.4, while adopting the arguments advanced by learned Counsel for Respondents No.1 & 2, supports the impugned judgments and decrees passed by both Courts below.

9. Learned AAG has also supported the impugned judgments and decrees of both courts below and submits that no material irregularity or gross illegality is found in the concurrent decisions of the Courts below.

10. 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 in the matter of any illegal actions or material irregularities done by the Courts below in the exercise of their jurisdiction.

11. It is imperative to underscore that the Revisional jurisdiction of this Court is intrinsically circumscribed, particularly when concurrent findings of facts exist from both the trial and the appellate courts. The scope for reassessment under the Revisional jurisdiction does not extend to a re-evaluation of the evidence or a reinterpretation of the law; rather, it is strictly limited to determining whether the proceedings have been conducted in accordance with the principles of natural justice and whether the decision is marred by any manifest illegality or substantial irregularity. Within its Revisional jurisdiction, the High Court typically refrains from interfering with the concurrent findings of the trial court and the lower appellate Court unless it can be demonstrated that such findings are fundamentally flawed or have resulted in a gross miscarriage of justice.

12. It is undisputed that the plaintiffs are the lawful heirs of the original grantee, Abdul Wahid. The grant in question was issued in 1963-1964 by the Colonization Officer of Guddu Barrage, Sukkur. The primary argument put forth by the learned counsel for the applicants is that during his lifetime, Abdul Wahid transferred the land in question by executing an Iqarnama and a registered Sale Deed, the authenticity of which is not contested. However, the plaintiffs assert that the grant was restricted, contingent upon fulfilling certain conditions and instalment payments. They allege that the applicants, in collusion with the

Revenue Authorities, altered the record of rights pertaining to the land in question despite the grantee being obligated to make instalments over 20 years. They further contend that the status of the grantee could only be altered after the payment and fulfilment of the conditions stipulated in Section 10 of the Colonization and Disposal of Government Lands Act, 1912 (referred to as "**the Act of 1912**").

13. The plaintiffs argue that the entry, which allegedly led to the execution of the Sale Deed and Iqarnama by the grantee, was made without adhering to the required legal procedures. Notably, even the Transfer of Ownership (T.O) Form was not issued. They further assert that they, being the legal heirs, are entitled to inherit the land as they have paid the remaining instalments after the demise of the grantee, Abdul Wahid. The T.O Form was subsequently issued on May 12th 1989. However, the counsel for the applicants contends that under Section 43 of the Transfer of Property Act, 1882, the applicants' rights are protected as the grantee subsequently acquired an interest in the suit land. They argue that even if the grant has been finalized and the grantee has become the owner per the aforementioned conditions, their rights are protected under Section 43 of the same Act. This provision, they claim, offers protection and prevents the legal heirs from inheriting the land.

14. Indeed, it is undisputed that the grant was subject to restrictions and that the Transfer of Ownership (T.O) Form and the requisite legal procedures were not adhered to. However, an entry was made in the name of the grantee based on a letter, the authenticity of which has not been established by the applicants. Section 11 of the Act of 1912 delineates the legal implications of the conditions stated. Furthermore, Section 15 of the Act of 1912 stipulates that the purchaser shall be considered a tenant until the full payment of the purchase money has been deposited. In light of these assertions, it becomes crucial to reproduce the aforementioned provisions of Sections 11 and 15 of the Act of 1912 herein below:

*“11. Legal effect of statements of conditions. Subject to the provision of this Act, the grant of any tenancy in accordance with any statements of conditions which have been or may hereafter be issued by the [Provincial Government] * * * within the meaning of the [Government] Grants Act, 1895, and shall be Government by the provision of the said Act.*

15. Purchaser to be tenant pending payment in full of purchase money. *A purchaser from [Government] of land who has been placed in possession of the land by order of the Collector shall be deemed to be a tenant of such land until the full amount of the purchase money with any interest due thereon has been paid and the other conditions set forth in the statement of the conditions of sale issued by the Collector have been fulfilled.”*

15. Upon meticulous examination of Section 11, it unequivocally articulates that any tenancy granted in strict compliance with the stipulations delineated by the Provincial Government falls squarely within the ambit of the Government Grants Act, 1895. This signifies that any tenancy agreement under these conditions will be unequivocally governed by the provisions encapsulated within the aforementioned Act. It further connotes that the tenancy is deemed legal and valid, contingent upon its adherence to the conditions promulgated by the Provincial Government and the Government Grants Act, 1895. Section 15 implicitly suggests that an individual who procures land from the Government and has been accorded possession of said land by the decree of the Collector is regarded as a tenant of that land. This status of tenancy persists until the complete payment of the purchase price, including any accrued interest, is remitted. Furthermore, the purchaser must also fulfil the additional conditions enumerated in the statement of the conditions of sale disseminated by the Collector.

16. The records unequivocally indicate that after the grantee's demise, the plaintiffs paid the instalments and procured the issuance of the Transfer of Ownership (T.O) Form. This implies that the deceased, during his lifetime, was merely a grantee and had not yet acquired proprietary rights over the land in question. In this context, it would be pertinent to refer to Section 19 of the Act of 1912, which is articulated as follows: -

“19. Transfers of rights to be void. *Except as provided in Section 17, none of the rights or interests vested in a tenant by or under [* * * *] this Act, shall, without the consent in writing of the [Commissioner], or of such officer as [he] may by written order empower in this behalf, be transferred or charged by any sale, exchange, gift, will, mortgage or other private contract, other than a sub-lease for not more than one year in the case of tenant who has not acquired a right of occupancy. Any such transfer or charge made without the right of occupancy. Any such transfer or charge made without such consent in writing shall be void, and if*

(after the commencement of this Act) the transferee has obtained possession, he shall be ejected under the order of the Collectors.

Provided that the right of sub-letting conferred by this Section shall not be release any tenant from a condition requiring him to reside in the estate in which hi tenancy is situated.”

17. The bare reading of the above provision of Section reflects that it primarily deals with transferring rights or interests vested in a tenant under this Act. It states that, except as provided in Section 17, none of the rights or interests of a tenant can be transferred or charged by any private contract (including sale, exchange, gift, will, or mortgage) without the written consent of the Commissioner or an officer empowered by the Commissioner. The only exception to this rule is a sub-lease for not more than one year for a tenant who has not acquired a right of occupancy. This means that a tenant without a right of occupancy can sub-lease the property for up to one year without requiring the Commissioner’s consent. Any transfer or charge made without such written consent is declared void. If a tenant transfers or charges their rights or interests without permission, that transfer or charge has no legal effect. Furthermore, if the transferee (the person to whom the rights or interests were transferred) has obtained possession after the commencement of this Act, they can be ejected under the order of the Collectors. This means that the person who received the rights or interests can be legally removed from the property by the Collectors if they took possession after this Act came into effect. The provision concludes with a clause stating that the right of sub-letting conferred by this Section does not release any tenant from a condition requiring them to reside in the estate where their tenancy is situated. This means that even if a tenant sub-leases the property, they must still live in the estate where the tenancy is located.

18. Sections 19-A, 20, and 21 of Act of 1912 stipulate inheritance rights in the event of the grantee's demise. Therefore, the aforementioned provisions are articulated as follows: -

“19-A. Succession to the tenancy. *When after the coming into force of [this Act], any Muslim tenant dies, succession to the tenancy shall devolve on his heirs in accordance with the Muslim Personal Law (Shariat), and nothing contained in sections 20 to 23 of this Act shall be applicable to his case.*

20. Successions to tenants acquiring otherwise than by succession. *Subject to the proviso to Section 14, when, after the*

commencement of this Act, any original tenant dies, the succession to the tenancy shall devolve in the following order upon-

- (a) the male lineal descendants of the tenant in the male line of descent. (The term 'lineal descendants shall include an adopted son whole adoption has been ratified by a registered deed);*
- (b) the widow of the tenant until she dies, or remarries, or loses her rights under the provisions of this Act;*
- (c) the unmarried daughters of the tenant until they dies or marry, or lose their rights under the provisions of this Act;*
- (d) the successors or successors nominated by the tenant by registered deed from among the following persons, that is to say, his mother [his predeceased son's widow, his pre-deceased grandson's widow] his married daughter, his daughter's son, his sister, his sister's son, and the male agnate members of his family;*
- (e) the successor or successor nominated by the Collector form among the persons enumerated in clause (d) of this Section.]*

21. Succession to tenants acquiring by Succession. *When, after the commencement of this Act, any male tenant, who is not an original tenant, dies, or any female tenant dies, marries or remarries, the succession to tenancy shall devolve –*

- (a) in the case of a female, to whom the tenancy has been first allotted, on the successor nominated by the Collectors from the issue of such female tenant, or form the male agnates of the person, on account of whose services the tenancy was allotted to her;*
- (b) in all other case, on the persons or persons, who would succeed if the tenancy were agricultural land acquired by the original tenant.]*

19. The bare reading of the above provisions, firstly, Section 19-A, states that if a Muslim tenant dies after the enactment of this Act, the succession to the tenancy will be determined according to the Muslim Personal Law (Shariat). This means that the tenant's heirs, as defined by the Shariat, will inherit the tenancy. Notably, the provisions of sections 20 to 23 of this Act will not apply in this case. Secondly, Section 20 outlines the order of succession for a tenancy when the original tenant dies, subject to the proviso to Section 14. The order of

succession is as follows: (a) The male lineal descendants of the tenant in the male line of descent. This includes an adopted son whose adoption has been ratified by a registered deed. (b) The widow of the tenant until she dies, remarries, or loses her rights under the provisions of this Act. (c) The unmarried daughters of the tenant, until they die, marry, or lose their rights under the provisions of this Act. (d) The successors nominated by the tenant by a registered deed from among certain specified persons. (e) The successor nominated by the Collector from among the persons enumerated in clause (d) of this Section. Thirdly, Section 21 deals with the succession of the tenancy when a male tenant who is not an original tenant dies, or any female tenant dies, marries, or remarries. The succession to the tenancy will devolve as follows: (a) In the case of a female to whom the tenancy has been first allotted, on the successor nominated by the Collectors from the issue of such female tenant, or from the male agnates of the person, on account of whose services the tenancy was allotted to her. (b) In all other cases, the persons who would succeed if the tenancy were agricultural land acquired by the original tenant.

20. The argument presented by the applicants' learned counsel is that if a person is not initially authorized to enter into a sale transaction but subsequently acquires ownership rights while the contract is in effect, they can alienate the property in question, and such a sale would be valid. However, the applicants have failed to substantiate the alleged Iqarnama, and there is a Sale Deed, which is contested by the plaintiffs/respondents. Considering the applicants' counsel argument would imply that even if the deceased had passed away as a grantee, his legal heirs could pay the remaining instalments and obtain the T.O Form. The applicants, however, have not provided any evidence regarding the term "contract" used in Section 43 of the Transfer of Property Act. This provision only applies when a contract is in effect, and the executant has acquired ownership rights. In the present case, this provision does not apply. The registered Sale Deeds appear to have been manipulated by some of the legal heirs of the grantee, Abdul Wahid, to deprive the female legal heirs/plaintiffs of their rights. The entry, on the basis of which the applicants and some of the legal heirs have managed the alleged Sale Deeds, is collusive, void, and illegal. If the grantee was indeed the owner, it raises the question of how the Revenue Authorities accepted the remaining instalments and issued the T.O Form.

21. For the forgoing reasons, I do not find any infirmity, illegality or misreading and non-reading of evidence in the impugned judgments and decrees, which do not require any interference by this Court; therefore, the instant Revision application is devoid of merits, which is accordingly **dismissed**.

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