

Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Rev. Application No.S-194 of 2023

Applicants : Rev. Munawar Masih and others
through Mr. Khan Muhammad Sangi, Advocate

Respondents : Bishop of the Diocese (Church of
Pakistan) and others through Mr.
Muhammad Imran Khan, Advocate

Date of hearing : 19.01.2024 & 02.02.2024

Date of Decision : 08.03.2024

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("**the Code**"), the applicants have impugned Judgment dated 25.8.2023 and Decree dated 30.8.2023, passed by the learned Additional District Judge-II(MCAC), Sukkur ("**appellate Court**") in Civil Appeal No.35 of 2022, whereby, the Judgment and Decree dated 08.12.2021, passed by III-Senior Civil Judge, Sukkur ("**trial Court**") in F.C. Suit No.64 of 2018, through which the suit of the plaintiff/respondent No.1 was decreed has been maintained by dismissing the Appeal.

2. The succinct facts leading to the captioned Civil Revision Application are that respondent No.1 filed a Suit for Declaration, Cancellation, Possession, Damages, and Permanent Injunction against the applicants and official respondents. Respondent No.1 claimed to be the elected body, spiritual leader, and noble head of the Diocese of Hyderabad (Church of Pakistan), with its head office in Hyderabad. He was In-charge and had the authority to deal with the lands and properties belonging to the Diocese of Hyderabad, situated all over Sindh province, excluding Karachi. It was pleaded that no one, including respondent No.1, was authorized to sell or execute a surrender deed regarding the lands/ properties belonging to the

Diocese of Hyderabad except by adopting the proper relevant procedure and law. Respondent No.1 purchased/acquired land measuring 00-20 Ghunta from Survey Nos.77 and 82, situated in Deh Miani Baghat, Tapo & Taluka Rohri District Sukkur ("**suit property**"), through attorney applicant No.1 from one Mashooq Ali Bhutto. The same was registered in the name of respondent No.1 on 10.12.2012. Respondent No.1 took possession of the suit property and, after spending a significant amount, built a school for the welfare of the locality named "THE RIVERSIDE SLUM CHILDREN PROJECT SUKKUR" at Mission Road, Sukkur, Sindh. In the aforementioned school, applicant No.1 was working as a Project Manager under the supervision of respondent No.1. However, applicant No.1 became dishonest and involved in malpractices, leading to his suspension by respondent No.1 on 08.5.2014 and subsequent termination from service on 21.5.2014. Applicant No.1, in collusion with the official respondents Mukhtiarkar and Sub-Registrar, managed a registered Surrender Deed dated 04.6.2014 in respect of the suit property when he was not authorized to do so based on an illegal Sale Certificate. It was claimed that the alleged registered Surrender Deed was illegal, without authority, and that the transfer of the suit property in favour of M/S Riverside Development (Trust) Organization Sukkur was illegal. There is a ban on the sale or transfer of minority lands/properties, as they cannot be transferred without obtaining an N.O.C. from the Federal Government. Hence, the suit was filed.

3. Applicant No.1, for themselves and being the attorney of applicants No.2 & 3, contested the suit and filed a written statement wherein he denied the contents and claim of respondent No.1. Applicant No.4 also filed his written statement, which denied the averments contained in the plaint. While the official respondents/defendants proceeded to *ex parte*.

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

- i- Whether the suit of plaintiff is not maintainable under the law?*
- ii- Whether the suit property/land admeasuring (00-20) twenty Ghunta bearing Survey No.77 and 82, in Deh Miani Baghat Taluka Rohri District Sukkur has been purchased by the plaintiff through registered Sale Deed?*
- iii- Whether the suit property/land belongs to plaintiff?*
- iv- Whether the defendant No.5 authorized by the plaintiff to execute the Surrender Deed on 04.6.2014 in favour of M/S Riverside Development Organization, same is legal and according to law?*
- v- Whether the defendant No.5 to 7 caused damages to the plaintiff?*
- vi- Whether the plaintiff is entitled for the reliefs claimed?*
- vii- What should the Decree be?*
- 8(i) Whether the suit property has been purchased from the funds of defendant No.8?*
- 8(ii) Whether the plaintiff got termination letter of agreement of suit land from defendant No.8?*
- 8(iii) Whether the plaintiff caused damages the interests of defendant No.8?*

5. In support of their claim, the attorney of respondent No.1 examined and produced relevant documents, so he also examined two other witnesses in their support. In rebuttal, the applicant No.1 examined himself and produced relevant documents and two other witnesses in support of his claim. Defendant No.8 also examined himself.

6. On completion of the case, the trial court vide Judgment dated and Decree dated 08.12.2021 decreed the suit filed by respondent No.1, which the applicants challenged through Civil Appeal No.35 of 2022; the appellate Court dismissed the Appeal vide Judgment dated 25.8.2023 and Decree dated 30.8.2023 and maintained the Judgment and Decree of trial Court.

7. At the outset, the counsel for the applicants argued that the suit was filed by an unauthorized person. The evidence shows that the Power of Attorney produced by respondent No.1 pertains to F.C. Suit No.94/2014, filed by Akram Masih against Rev. Kaleem John and others, and not to the current F.C. Suit No.64/2018. counsel contends that both the lower courts failed to consider the contents

of the registered Sale Deed dated 10.12.2012 and the Surrender Deed dated 04.6.2014. He argues that the power of authorization is conferred in the registered Sale Deed and that the courts erroneously observed an admission on the part of the applicants. Counsel maintains that the applicants are in possession of the suit property as per the Surrender Deed. However, he argues that the lower courts failed to consider and appreciate the documentary and oral evidence on record and illegally exercised their jurisdiction by decreeing the suit. He further contends that mere registration of a sale deed does not establish entitlement to ownership or any other relief. Finally, he requests that the Revision Application be allowed by setting aside the impugned Judgment and dismissing the suit of respondent No.1. In support of his arguments, the counsel for the applicants cites case law reported in **2007 YLR 138, 2019 C.L.C. Note 4, 2018 YLR 2118, 2022 M.L.D. 46, 2019 CLC 1291, 2003 CLC 1156, and 2010 MLD 1714.**

8. On the other hand, learned counsel for Respondent No. 1 controverted this submission. His argument is that Applicant No.1 has admitted that Respondent No. 1/Plaintiff did not authorize him for the execution of the said Surrender Deed. Further, he contends that the revision application is not maintainable in law. Facts are concurrent in the present case, and once the facts are recorded by the lower courts, finally in the Revisional Court. Therefore, it would not be maintainable in Revision, i.e., before this Court. He has placed reliance on the case law reported as **PLD 2009 Karachi 373 and 2018 Y.L.R. 82** in support of his contentions.

9. Learned AAG, while adopting the arguments of learned counsel for Respondent No.1, supported the impugned judgement and decree passed by both courts below. He placed reliance on the case law reported as **PLD 2022 Balochistan 36.**

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. In the beginning, it is apt to emphasize that the Revisional jurisdiction of this Court is inherently confined, especially when there are concurrent findings of both the trial and the appellate courts. The ambit for reassessment under the Revisional jurisdiction is not to re-look at the evidence or re-interpret the law; instead, it is limited only to the extent of ascertaining whether the proceedings have been conducted in conformity with the principles of natural justice or not and whether the decision suffers from any patent illegality or material irregularity. In its Revisional jurisdiction, the High Court does not usually disturb the concurrent findings of the trial court and the lower appellate Court unless it can be shown that such findings are perverse or have led to a gross miscarriage of justice.

12. To begin with, the learned counsel for the applicants has objected to the suit being filed by an unauthorized person. This assertion is based on the fact that the Power of Attorney produced by the attorney of respondent No.1 pertains to F.C. Suit No.94/2014, which was filed by Akram Masih against Rev. Kaleem John and others, and not to the current F.C. Suit No.64/2018. Upon careful examination of the Special Power of Attorney, it is revealed that it is indeed with respect to the suit property. Furthermore, the attorney was empowered to appear in F.C. Suit No.94 of 2014 and authorized to file a fresh suit against the parties concerned with regard to the suit property. It is important to note that when the above-mentioned

Special Power of Attorney was produced in evidence, the applicants' side has not raised objections or questions. Therefore, the applicants' objection that the suit was filed by an unauthorized person holds no merit. This is because the attorney was duly authorized to file the fresh suit, as clearly stated in the Special Power of Attorney. Hence, the objection raised by the applicants is declined as it is without any basis. Moreover, non-appearance of a party/Plaintiff in person but through his attorney is not fatal. In the case of **Mir Ajam Khan Mst. Quresha Sultana and others (2006 SCMR 1927)**, it was held by the Supreme Court of Pakistan that:-

“Non-appearance of the Plaintiff in this case was also not fatal. Respondent No.2 was the general attorney of the vendor from whom respondent No.1 had purchased the land and therefore, he was fully in knowledge of the relevant facts. The judgment in the case of K.S. Agha Mir Ahmad Shah and others v. K.S. Agha Mir Yaqub Shah and others (supra) proceeds on its own facts. Non-appearance of the party as a witness came under consideration of the superior Courts at a number of occasions. The first important judgment to be found is Sardar Gurbakhsh Singh v. Gurddial Singh and another AIR 1927 PC 230”. It has further been observed by the Supreme Court of Pakistan that “The ratio of the aforesaid judgments is that if there are certain facts and circumstances specially in the knowledge of the party, an adverse inference could be drawn from its non-appearance. There cannot, however, be any cast iron mould for the aforesaid principle. It will depend on the facts of each case. In case the circumstances on which a party relies are proved by evidence on record, then non-appearance of the party would not be fatal. It may be observed that a presumption (drawn from the conduct of a party) could not nullify proof of a fact by the evidence produced in the case”.

Similarly, in Case of **Messrs Muhammad Amin Muhammad Bashir Limited and another Pakistan through Secretary, Ministry of Communications, Rawalpindi and 5 others (2000 CLC 1559)**, it has been held by this Court that

“Plaintiff's failure to appear in witness box in support of his case is fatal when the burden to prove any particular issue lies upon him and where the facts are within his knowledge but in case where a witness other than Plaintiff is fully aware of the facts and has brought all relevant facts successfully before the Court, the Defendant cannot compel the Plaintiff to appear in the witness box and to depose”.

13. Now, reverting to the merits of the case, a perusal of the verdicts from both the lower courts reveals that the suit of respondent No.1 was decreed based on the admission of applicant No.1, who stated that he was not authorized by respondent No.1 to execute the surrender deed in respect of the suit property. Furthermore, the applicants did not produce documentary proof to show that the suit property was purchased with their own funds. Therefore, it would be imperative first to reproduce the relevant findings of the trial court on issues No.4 and 8(i) as follows: -

“Issue No.4

17. *Burden to prove this issue lies upon the shoulders of defendants No.5 to 8. In order to prove this issue defendant No.5 Munawar Masih recorded his evidence at Ex.06 on his own behalf and on behalf of defendant No.6 and 7 where he deposed that on 04.6.2012, suit property was transferred to RDO through surrender deed and he produced such surrender deed at Ex.6/C. He was cross-examined by learned counsel for plaintiff wherein he deposed that it is incorrect to suggest that on 14.6.2014 surrender deed was falsely prepared by him in collusion with defendant No.3, 4, 6 and 7. It is true that I was not authorized by plaintiff for execution of surrender deed.*

18. *From the above evidence, it is revealed that defendant No.5 has admitted in cross-examination that he was not authorized by plaintiff for execution of surrender deed. It is admitted position that suit property was owned by plaintiff on the basis of registered sale deed and subsequently defendant No.5 executed surrender deed dated 04.6.2014 produced at Ex.6/C in favour of defendant No.6 and 7 without any legal authority, therefore, I am of the opinion that said surrender deed in favour of defendants 6 and 7 executed by defendant No.5/Munawar Masih is illegal without lawful authority, hence instance issue is answered in negative.*

Issue No.8-(i)

20. *Burden to prove this issue lies upon the shoulders of defendant No.8. In order to prove issue Anwar Ahmed got recorded evidence being representative and attorney of defendant No.8. He deposed that he is programmer Co-ordinator (KNH-Pakistan). In yea 2012 for education of children we purchased the suit property near to Rohri Bye-Pass Sukkur for establishing a community school. As we were in partnership with Diocese Hyderabad, therefore, we handed over temporary possession of said purchased property. He produced letters sent to Diocese Hyderabad for termination of projects as Ex.9/A to Ex.9/D. Above defendant*

No.8 was cross-examined by learned counsel for plaintiff where he deposed that suit property was purchased in year, 2012. It is correct to suggest that the suit property is in the name of Diocese Hyderabad. Voluntarily says that same was purchased from funds provided by (K.N.H.- Pakistan). It is incorrect to suggest that I have not produced any proof with regard to providing funds for the purchasing of the suit property.

21. I have gone through the evidence and record produced by defendant No.8 from Ex.9/A to 9/D and from the said evidence it is revealed that defendant No.8 has failed to produce a single document in order to prove that funds for purchasing of suit property were provided by the defendant No.8 to the plaintiff, therefore, instant issue is answered in negative.”

14. Similarly, the conclusions drawn by the appellate Court are also replicated below: -

“The respondent No.1/plaintiff has sought relief of cancellation of surrender deed dated 04.6.2014 executed by appellant No.1/defendant No.5 in favour of appellant No.2 and 3/defendants No.6 and 7. The appellant No.1/defendant No.5 has examined himself and has produced surrender deed at Exh.6-C but in cross-examination he has admitted that he was not authorized by the respondent No.1/plaintiff for execution of surrender deed, therefore, on the basis of his admission it is established that the appellant No.1/defendant No.5 was not authorized to execute surrender deed, therefore, it is illegal and without lawful authority. The appellant No.4/defendant No.8 has claimed that they purchased the suit property from their funds but they have failed to produce single document showing to have purchased the suit property from the funds provided by appellant No.4/defendant No.8, therefore, there is no any illegality committed by the trial Court in passing impugned Judgment and Decree which legal and proper and does not requires interference by this Court.”

15. In legal terms, a person who is not authorized to act on behalf of another party or entity cannot execute a Surrender Deed. A Surrender Deed is a legal document that signifies the voluntary relinquishment of rights or claims over a property. It is typically executed by the person who holds the rights to the property, such as the owner or a legally appointed representative. If a person who is not authorized attempts to execute a Surrender Deed, it would generally be considered invalid and unenforceable. This is because the execution of such a deed requires the legal authority to transfer or

surrender rights to the property. Without this authority, any actions taken would be deemed unauthorized and potentially fraudulent.

16. The aforementioned findings demonstrate that both the lower Courts arrived at a correct conclusion after a thorough, conscientious, and lawful examination of the evidence. The counsel for the applicants has been unable to identify any irregularities or illegalities in the findings of both lower courts. Given these circumstances, the concurrent factual findings recorded by the lower courts do not suffer from any jurisdictional defects. In the case of Haji Wajdad vs Provincial Government Through Secretary Board of Revenue Government of Balochistan, Quetta and others(2020 SCMR 2046), the Supreme Court of Pakistan ruled that:

“There is no cavil to the principle that the Revisional Court while exercising its jurisdiction under section 115 of the Civil Procedure Code, 1908 (“C.P.C.”), as a rule is not to upset the concurrent findings of fact recorded by the two courts below. This principle is essentially premised on the touchstone that the appellate Court is the last Court of deciding disputed questions of facts. However, the above principle is not absolute, and there may be circumstances warranting exception to the above rule, as provided under section 115, C.P.C. gross misreading or non-reading of evidence on the record; or when the courts below had acted in exercise of its jurisdiction illegally or with material irregularity”.

17. For the foregoing reasons, I do not find any infirmity, illegality or misreading and non-reading of evidence in the concurrent findings of the fact contained 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**.

JUDGE