

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

R.A No.S-13 of 2019
R.A No.S-14 of 2019
R.A No.S-15 of 2019
R.A No.S-16 of 2019

Applicant in all : Syed Nadir Ali Shah, through
revision applications : Mr. Safdar Ali Bhatti, Advocate

Respondents : Nemo

Date of hearing : 22.01.2024 & 26.01.2024

Date of Decision : 08.03.2024

J U D G M E N T

ARBAB ALI HAKRO, J.- Through the above captioned Revision Applications under Section 115 of the Civil Procedure Code 1908 ("**the Code**"), the applicant has called into question the Judgments dated 04.10.2018 and Decrees dated 09.10.2018, passed by the Court of Additional District Judge-II, Khairpur ("**the appellate Court**") whereby, Civil Appeals No.93, 94, 95 and 96 of 2017, preferred by the applicant were dismissed, consequently, the Judgments and Decrees dated 15.8.2017, passed in Civil Suits No.33, 190, 191 and 192 of 2009 by Civil Judge, Khairpur ("**the trial Court**") dismissing the suits were maintained.

2. The applicant, being the plaintiff in all the above suits filed against the different defendants/respondents, is seeking the same relief in each suit. However, the only difference is the property involved. The questions of law and facts involved in all the suits are the same. Therefore, it would be appropriate to decide all of the Revision Applications together.

3. In brief, the facts are that the applicant has filed the aforementioned suits for Declaration, Possession, Mesne Profit, and Injunction. He claims to have purchased a Sikni plot measuring 14448

sq. Feet situated located in the village of Sanwalo Khan Jamali, Taluka, and District Khairpur ("suit plot"). This purchase was made by the property's owner through a registered Sale Deed. The boundaries of the property are as on the eastern side is the land of Allah Wassayo Bhutto, on the western side is a street, on the northern side is the land of Ghulam Shah, and on the southern side is the house of Sultan Ali Shah. The applicant asserts that he is the lawful owner of the suit plot and that the entry in the record of rights was mutated in his name. He is an employee of the Police Department in District Khairpur, which often requires him to be away from the village due to his employment. However, on or about 01.01.2002, upon his return to the village, he discovered that the defendant, Nawab, had illegally occupied a portion of the suit plot, measuring about 1200 sq. Feet. This was done after breaking the western wall and starting a running hotel. On the same day, the defendants, Hidayatullah and Rehmatullah, illegally occupied two makeshift rooms measuring 1000 sq. Feet, on the western side of the suit plot. Additionally, the defendant, Ghulam Hussain, encroached on an area measuring 3000 Sq. Feet from the northeastern corner of the suit plot and erected makeshift construction thereon. The applicant requested the defendants to vacate the suit plot, asserting his ownership and their lack of rights to encroach upon it. However, despite initially giving him false hopes, they ultimately refused, leading him to file the suits.

4. Upon receiving the summons, the defendants filed their written statements in all the suits, wherein they denied the applicant's claim. They stated that the village of Sanwalo Khan Jamali spans an area of 12-05 Acres, as per Deh Form-II issued by the Survey Department. Syed Mithal Shah was the original owner of a 00-50 Paisa share, measuring 7600 Sq. Feet. The defendants asserted that the suit plot does not belong to the applicant but is part and parcel of the village Sanwalo Jamali, which consists of a Government Primary School, the house of Ghulam Hussain @ Niazo Jamali, and the Otaq of the

defendants. They further claimed that the applicant fraudulently managed the sale deed and that there are 250 houses in the village, occupied by villagers since the time of their ancestors. Defendant Nawab stated in his written statement that the suit plot is on the eastern side of the village and that the applicant had managed to enter it in the Deh Form on the basis of a forged sale deed.

5. From the divergent pleadings of the parties, the trial court framed as many as 20 (twenty) issues on which both parties led their respective evidence. Upon the conclusion of the trial, initially on 17.10.2006, the trial Court dismissed the suit of the applicant on the ground of non-impleading necessary parties. In response, the applicant preferred an appeal, which was allowed on 19.11.2008, vide consolidated judgment, and the suit was remanded back to the trial Court with directions to decide afresh after bringing in the legal heirs of defendant Nawabuddin. After the remand, the applicant filed an amended title and re-examined himself to produce true copies of the documents. In addition to that, he also examined witnesses Raza Hussain (Assistant Mukhtiarkar), who produced Deh Form-II; Syed Fayaz Hussain Shah (Sub-Registrar), who produced an attested Photostat copy of the registered Sale Deed, Deh Form-II, and ownership certificate; and Faiz Muhammad (Excise Inspector), who produced a copy of PT-I. On the other hand, Muhammad Ibrahim (legal heir of Nawabuddin and attorney of the remaining L.R.s) was examined.

6. Once again, after hearing the parties, the trial court dismissed the applicant's suits on 14.11.2011. The applicant then preferred an appeal before the appellate Court, which was again allowed on 18.8.2016, vide a consolidated judgment, and the suit was remanded back to the trial court with directions to provide an opportunity for the parties to lead their further evidence. After that, the defendants did not appear despite issuing a Court motion notice, while the applicant did not provide further evidence. Consequently, after

hearing the learned counsel for the applicant, the trial court dismissed the suits via judgments and decrees dated 15.8.2017. The applicant challenged these through the civil appeals mentioned above. The appellate Court dismissed the appeals vide judgment and decree dated 04.10.2018 and 09.10.2018, respectively, and maintained the judgment and decree of the trial court.

7. At the very outset, the learned counsel representing the applicants contended that the impugned judgments and decrees of the courts below contradict the law and facts on record and suffer from misreading and non-reading of evidence. Therefore, they are liable to be set aside. He contended that applicant procured the suit plot from his father, Syed Sultan Ali Shah, vide a registered Sale Deed dated 26.9.2000; however, both the subordinate courts have unanimously concluded that the seller, who is the applicant's father, lacked the legal capacity or ownership rights to transfer the suit plot. He next contended that the Respondents did not challenge such registered sale deed before any competent forum of law, hence learned lower Courts below committed patent illegalities and irregularities in passing the impugned judgments and decrees.

8. Notices against the Respondents were issued through all modes including publication in daily Kawish; however despite service, none of the Respondent or any of their representative(s) had come forward to contest the matter.

9. The contentions have been fastidiously scrutinised, and the accessible record has been carefully assessed. To ascertain whether an adequate and comprehensive dispensation of justice was achieved, it is imperative to analyse the findings concurrently documented by the Courts below.

10. Upon meticulous examination of the records, it is discerned that the applicant asserts to have procured the suit plot from his father, Syed Sultan Ali Shah, vide a registered Sale Deed dated 26.9.2000. However,

both the subordinate courts have unanimously concluded that the seller, who is the applicant's father, lacked the legal capacity or ownership rights to transfer the suit plot. This conclusion was drawn on the basis that no 'mother entry' is a term referring to the original or preceding entries in the land records, either before or after the transaction, indicating the disputed plot in the name of the applicant's father or the person from whom the applicant's father purportedly purchased the plot, has been produced by the applicant or recorded in the Court. In light of these circumstances, it is deemed appropriate to first replicate the pertinent findings of the trial Court here under: -

“After going through the evidence lead by both parties and also going through the record of the case, it appears to me that the plea of the plaintiff is that he had purchased the suit property measuring 14448 Sq. Ft from his father Sultan Shah in the year, 2000 in consideration of Rs.50,000/- and sale deed was duly registered before the Sub-Registrar and such entry was kept in Deh Form 2 at Sr # 755 in the year, 2002 and P.T.O. certificate was also issued. On the other hand defendants have raised plea that the village is declared as Sikni since last 40/50 years from the Khairpur state and no any villager had any registered sale deed except the plaintiff which is forged and managed by him.

*Now the question which needs to be answered in the light of above evidence purchased the suit property from his father Sultan Shah in consideration of Rs.500000/- by virtue of sale deed duly registered before the Sub-Registrar and what was the legal status of the seller Sultan Shah at the time of selling the suit plot to the plaintiff? It is settled principle of law that an owner cannot transfer a better title to a transferee than he himself possess as has inter alia been observed by the Honourable Supreme Court in **Muhammad vs., Administrator Karachi, Metropolitan Corporation, K.B.C.A (K.M.C.) Karachi and 5 others 2000 SCMR 1748** and law does not entitle a person to transfer a right in a property which he himself does not possess though the property may be in his name as laid down in case of **Muhammad Nawaz Magsi vs. Nisar Ahmed (2010 SBLR 207)**. It is pointed that the plaintiff had failed to the legal status of the transferor/Sultan Shah in the suit plot as the title to suit plot is under the shades of clouds and in this situation the subsequent transferee/plaintiff cannot even be conferred with any lawful title in the disputed property and even cannot claim to be bonafide purchaser. On the contrary the plaintiff by producing the original sale deed of the suit property had himself supported the defendants plea as the heading of original sale deed dated 26.9.2000 is SALE OF SIKNI RESIDENTIAL PLOT IN WORTH OF RS.50,000,000. Now the word Sikni means “**unregistered**” so any land or property*

which is unregistered is deemed and presumed to be Government property. This it is crystal clear that the transferor Sultan Shah had not title or right in the suit property at the time of the alleged sale which originally belongs to Government and a transfer or sale of such property by him to the plaintiff/purchaser is void and illegal, so much so the “SANAD” DATED 16.01.1990 ISSUED BY Deputy Collector/Assistant Commissioner, Khairpur produced by defendant Mubarak in his father’s name had not been challenged by the plaintiff during his evidence, hence the issue No.2 is answered in negative.”

11. Correspondingly, the findings of the appellate Court are also reproduced below for reference: -

“According to the appellant/plaintiff, he has purchased the suit plot measuring 14448 square feet from his father Sultan Shah through registered sale deed dated 26.11.2000, produced by the appellant/plaintiff at Exh.36/A, wherein it is mentioned that the vendor Sultan Ali Shah is owner of the property by virtue of Deh/Taluka Form-II, issued by Taluka Mukhtiarkar (Revenue) Khairpur attached with the sale deed. Whereas, no such Deh/Taluka Form-II is attached with the original registered sale deed produced by appellant/plaintiff. Although, the appellant/plaintiff has filed duplicate entry No.755 of Deh Form-II in his own name but the said entry shows that it was kept in the record on the basis of the said registered sale deed. Whereas, the learned trial Court in impugned judgment has held that vendor of the sale deed was not competent or owner of the suit property to sale out the same, therefore, burden to prove that vendor/father of the appellant/plaintiff was the actual owner/competent to sale the suit property and to execute the said registered sale deed in favour of the appellant/plaintiff lies upon shoulders of the appellant/plaintiff. Although, according to the appellant/plaintiff, the physical vacant possession of the suit property was handed over to him by the vendor at the time of execution of sale deed in 2000, but the respondents/defendants have claimed that they are in possession of the suit property since many years prior to the execution of alleged sale deed. The appellant/plaintiff in his cross-examination has also admitted that the village SanwloJamali is declared as Sikni as per Deh Form. The appellant/plaintiff has said that Syed Mithal Shah had purchased 50% plot from Syed Pinyal Shah and he inherited the same. Therefore, how the father of appellant/plaintiff sold the entiresuit plot to the appellant/plaintiff through the alleged sale deed. The record shows that the advocate Ghulam Rasool Rind was appointed as “Commissioner” to visit the suit property, who after visiting the property, submitted his report dated 29.11.2005, showing that there are

- 1. Government Primary School Sanwlo Khan Jamali with Pakka construction and boundary wall running since, 1985.*
- 2. One open plot area about 3000 square feet. 3 four rooms of 1000 square feet each constructed with Katcha bricks said to*

be the otaque of respondent/defendant Hidayatullah Jamali and Nawab Khan Jamali and 4. Houses of respondents/defendants Ghulam Hussain and Mubarak Jamali, who are residing there since 1986/87 and in 1990 Pakka certificates were issued to them by Gothabad Scheme and 5. Drainage disposal and water pit. The sale deed produced by the appellant/plaintiff shows that it was executed on the basis of Deh Form-II and such entry No.67 is produced by the Sub-Registrar at Exh.39/B, which reveals that the same was entered on the basis of certificate issued by Union Council Shadi Shaheed, which is admitted by the Sub-Registrar in his cross-examination. Whereas, the said certificate of Union Council does not show any outward number to prove that it was genuine particularly when the appellant/plaintiff failed to examine Secretary, Union Council Shadi Shaheed. Further, appellant/plaintiff did not examine his father/vendor Sultan Shah in this case though he was alive during the trial. Moreover, the respondent/defendant Nawabuddin has produced certified true copy of written statement filed by Secretary Union Council Shadi Shaheed Taluka Khairpur (defendant No.3 in Civil Suit No.45/2003, Re-Haji Hidayatullah and another vs. Syed Nadir Ali Shah and others) before the learned Senior Judge-I, Khairpur for cancellation of sale deed wherein the said Secretary Union Council has stated that the property is Sikni property vested to the Government and certificate purporting to be issued by Union Council is poor specimen of fraud/forgery committed by appellant/plaintiff Syed Nadir Ali Shah and his father Syed Sultan Ali Shah. In these circumstances and in view that the appellant/plaintiff has no valid title document showing the vendor Sultan Ali Shah as lawful owner of the suit property, it is clear that the sale deed executed by the vendor Sultan Ali Shah, who is father of the appellant/plaintiff cannot be said a valid document. Since the vendor Syed Sultan Ali, father of the appellant/plaintiff was not owner or competent to sale the suit property to his son appellant/plaintiff, therefore, subsequent entry kept in the record in favour of the appellant/plaintiff on the basis of said sale deed can also not be said as valid.”

12. The above findings serve to show that both the Courts below arrived at an important conclusion after a painstaking, conscientious and lawful consideration of the evidence. The counsel for the applicant has not been able to point out any irregularities or illegalities in the findings of the appellate Court. This would, of course, include misinterpretation or omission of evidence.

13. In the context of property transactions, it is a fundamental legal requirement that the seller must be competent to transfer the property. This means that the seller must either hold the title to the property or

possess the authority to transfer it if the property is not his own. A seller must have a clear and marketable title to the property in question to be able to transfer it legally to a buyer. Without such title, the seller lacks the legal capacity to sell the land. This principle is codified in Section 7 of the Transfer of Property Act 1882, which defines a person competent to transfer. The Section states as follows: -

"7. 'Person competent to transfer.' Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force."

14. Upon careful examination of the aforementioned Section, it is evident that the transferor must be "entitled to transferable property." This entitlement can be attributed to an individual who possesses the ownership rights of the property and is duly recorded as such in the record of rights or any other public document where the ownership record is maintained. Such an individual can be deemed entitled to the property subject to the transfer. Interestingly, even a non-owner of the property, if legally authorized by the owner to transfer the same, is competent to transfer such property. However, in this case, the applicant has not been able to produce the entry recorded in the record of rights in favour of his father, from whom he had purchased the suit plot. In Case of **Muhammad Rafique and others v. Sharaf Din and others (2006 SCMR 340)**, it was held by the Supreme Court of Pakistan that *"It is settled principle of law that buyer should be beware. It was the duty of the petitioners' predecessor-in-interest that he should have before buying seen the title of the respondents' predecessor-in-interest Sharaf Din, whether he had a valid legal title to sell the disputed property solely"*. Furthermore, the evidence brought on record, discussed in detail by both the Courts below, reveals the existence of an old village named SanwaloJamali. This village houses a Government Primary School named SanwaloJamali, which boasts of Pacca construction, a boundary wall, and several residential houses.

15. Consequently, the applicant has failed to substantiate the validity and accuracy of the alleged Sale Deed. The case lacks the necessary evidence to demonstrate that the applicant's father had the legal capacity to sell the suit plot to him. Instead, the alleged Sale Deed is subject to suspicion and doubt, undermining its credibility. Furthermore, there are concurrent factual findings recorded by both the Courts below that cannot be overturned under the revisional jurisdiction stipulated in Section 115 of the Code. The Jurisdiction of this Court to interfere with the concurrent findings of the facts arrived at by the Courts below in the exercise of its jurisdiction under Section 115 of the Code is limited and specific. This Court has such powers inherent in its control of supervision and correction so that these are made practical and effective, untouched by technicalities that cannot be invoked against legal or factual conclusions that do not concern the jurisdiction of the Court. These are limited to cases of error of law, including misapprehension or disregard of evidence, error in the making of jurisdiction or some legal absurdity in the decision which could have, if not corrected, a material impact on the result in the case or where the decision is irrational or against law. Therefore, the limits of appellate and revisional jurisdiction are not to be collated or made hazy. Revisional jurisdiction only permits interference when such order or judgment passed by the courts below appears to be illogical, suffers from jurisdictional error, or there is a defect on misinterpretation or neglect of evidence, and the conclusion stands opposed to the law. The reliance is placed on the case of **Khudadad vs. Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others (2022 SCMR 933)**. I have also perused the impugned judgments from all angles and find that almost all the aspects of the case have been considered by both the Courts below. Nothing in the same calls for interference by this Court in the exercise of revisional jurisdiction.

16. For the foregoing reasons, the concurrent findings of the facts recorded by both the courts below are not based on any misreading

or non-reading of evidence, nor are they suffering from any illegality or material irregularity which would affect the merits of the case. As a result, all the Civil Revision applications are **dismissed** with no order as to cost.

Faisal Mumtaz/PS

J U D G E