

Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Rev. Application No.S-05 of 2020

Applicant : Mir Nisar Ali through Miss. Rizwana Jabeen Siddiqui, Advocate

Respondent No.1 : Abdul Rasheed through LRs through Mr. Noor Hassan Malik, Advocate

Respondents No.2 to7 : Beat Tapedar Deh Mohabbat Dero and others through Mr. Zulfiqar Ali Naich, AAG

Date of hearing : 12.02.2024

Date of Decision : 29.03.2024

JUDGMENT

ARBAB ALI HAKRO, J: Through this Civil Revision Application under Section 115 of the Civil Procedure Code 1908 ("**the Code**"), the applicant has impugned Judgment and Decree dated 12.12.2019, passed by the learned Additional District Judge(MCAC), Kandiaro ("**the appellate Court**") in Civil Appeal No.87 of 2019, whereby; the Judgment dated 31.01.2019 and Decree dated 06.02.2019, passed by Senior Civil Judge-II, Kandiaro ("**the trial Court**") in old F.C. Suit No.77 of 2017 (New No.20 of 2018), whereby the suit of applicant/plaintiff was decreed has been set-aside by dismissing his suit.

2. The case of the applicant/plaintiff before the trial Court was that an agricultural land (lemon garden) bearing Survey No.209, admeasuring 01-02 Acres, situated in Deh Muhabat Dero Jagir ("**suit land**"), was inherited from Mir Jam Nino to Mir Khair Muhammad. After his death, the same was inherited by Mir Ghulam Ali; after Mir Ghulam Ali's death, it was inherited by Mir Hassan Ali. After Mir Hassan Ali's death, the applicant/plaintiff inherited the suit land, which was entered into the record of rights. It was asserted that the suit land remained in the plaintiff's possession through a registered

sale deed and by inheritance from his forefathers. It was claimed that the plaintiff was a Government Servant and retired on 14.01.2014. The plaintiff learned through his Kamdar/manager, Imtiaz Ali Bhutto, and his son, Irshad Ali Bhutto, that respondent/defendant No.1 was trying to dispossess them from the suit land. Therefore, on 25.02.2014 at 11:00 a.m., the plaintiff and his sons Mir Waqar & Irshad Ali and Kamdar/Manager Imtiaz Ali Bhutto visited the suit land. There, they saw that respondent No.1, along with some unknown persons, was present, and they forcibly and illegally dispossessed and occupied the suit land at gunpoint. It was averred that the plaintiff approached the defendants several times for handing over possession, but all attempts were in vain. Hence, he filed the suit seeking a declaration that he owns the suit land, which was inherited from his father and possession, and a permanent injunction restraining defendant No.1 from selling, alienating, mortgaging, and leasing to a third party.

3. Upon receiving the summons, respondent No.1 contested the suit and submitted his written statement. He refuted the plaintiff's claim, asserting that the plaintiff had harassed him by making false allegations to seize possession of the suit land through undue influence, given his status as a retired Government servant.

4. From the divergent pleadings of the parties, the trial Court formulated the following issues:-

- i. *Whether the suit is not maintainable and barred by any provision of law?*
- ii. *Whether the plaintiff is lawful owner of suit property by way of inheritance?*
- iii. *Whether the plaintiff had declared the suit property to be owned by him in Schedule of assets at the time of joining the Government service?*
- iv. *Whether the defendant No.1, who is admitted to be in possession of suit property, is not its lawful owner under Article 126 of Qanoon-e-Shahadat Order, 1984?*

- v. *Whether the plaintiff remained in possession of suit property and he was dispossessed by illegally by force and show of weapons by defendant No.1 on dated 25.02.2014?*
- vi. *Whether the defendant No.1 is liable to pay Mesne profits? If yes, for what quantum?*
- vii. *Whether plaintiff is entitled for relief as claimed?*
- viii. *What should the decree be?*

5. Both parties examined themselves and produced relevant documents supporting their claims. Besides the plaintiff examining himself, he examined his son, Mir Waqar Ali Talpur and two official witnesses, Mukhtiarkar and A.S.I., posted at Police Station Muhabatdero). On the other hand, the legal heirs of defendant No. 1 examined their attorney, Muneer Begum Dehraj and three other witnesses. After examining the evidence produced by the parties and hearing their respective submissions, the suit of the plaintiff was decreed by the trial Court vide Judgment dated 31.01.2019 and Decree dated 06.02.2019.

6. The L.R.s of respondent No.1 then impugned the above Judgment and decree of the trial Court through an Appeal, resulting in the trial Court's judgment being set aside, the appeal being allowed, and the applicant's suit being dismissed.

7. At the outset, learned Counsel for the Applicant contended that the applicant owns the suit property through inheritance through a registered sale deed executed in 1895, which is also entered in the revenue record of rights; besides, official respondents corroborated this evidence. Learned Counsel next contends that the learned Appellate Court has committed gross irregularity that the sale deed was unregistered and did not bear the signature/ stamp produced by any official authority. It is further contended that the learned Appellate Court misinterpreted the Registration Act as the registered sale deed predating the Registration Act. Lastly, she prayed that

instant revision application may be allowed by setting aside the impugned judgment and decree passed by the learned Appellate Court. Learned Counsel has relied on the case law reported as **PLD 1990 SC 1 & 1991 SCMR 2063**.

8. Conversely, learned counsel representing Respondent No. 1 submits that the learned Appellate Court has rightly passed the impugned judgment and decree as the alleged sale deed produced by the applicant is unregistered one and does not bear signature of any official authority, which seems to be managed one; it is further contended that the suit was hopelessly time-barred and the learned Appellate Court has rightly reversed the findings of the trial Court and set aside the judgment and decree of the trial Court.

9. On the other hand, Learned A.A.G., while supporting the judgments and decrees passed by both lower Courts, has adopted the arguments advanced by learned Counsel for Respondent No. 1.

10. The arguments have been heard at length, and the available record has been carefully evaluated with the able assistance of the learned counsel for the parties, including case law relied upon by them. To evaluate whether justice has been dispensed, it is imperative to analyze the findings of both the Courts below.

11. It is borne from the record that the trial Court decreed the suit of the applicant, while the appellate Court reversed the findings of the trial Court and dismissed the suit of the applicant. The case in question revolves around a dispute over land ownership; the applicant/plaintiff claims ownership based on revenue records that indicate him as the owner of the suit land through inheritance. The applicant, who testified as PW-1, produced a Sale Deed pertaining to the year 1895 and an entry No.21 mutated in favour of his great grandfather, Mir Jam Nindo. The official witness corroborated this evidence, Mansoor Ali Mukhtiarkar (Rev.), who produced the aforementioned entry from the official record. In contrast, respondent No.1 denied the applicant's

ownership through a verbal assertion in his written statement without providing proof of his possession over the suit land. The attorney of respondent No.1, Mst. Muneer Begum (DW-1) admitted during cross-examination that she had not produced any ownership document of the suit land in the name of the elders of respondent No.1. The appellate Court dismissed the applicant's suit, reversing the decree of the trial Court. The appellate Court held that the Sale Deed produced by the applicant/plaintiff was unregistered and did not bear the signature or stamp of any official authority. However, it failed to appreciate that the Sale Deed (Exh.19/A) pertains to the year 1895, predating the Registration Act of 1908, which came into force on the first day of January 1909, as provided in sub-Section (3) of Section 1 of the said Act. The evidence presented by the applicant/plaintiff, in conjunction with the lack of counter-evidence from respondent No.1, suggests that the applicant may indeed be the rightful owner of the suit land through inheritance. The appellate Court's dismissal of the suit based on the unregistered status of the Sale Deed appears to be a misinterpretation of the Registration Act, 1908, considering the Sale Deed predates the Act.

12. Notwithstanding the established legal principle that revenue records do not conclusively prove ownership, it is noteworthy that the mutation of the suit land is admittedly in the name of the applicant's forefather. Although not a title deed per se, this mutation is sanctioned under Section 42 of the Land Revenue Act, 1967, by the relevant officer in the revenue hierarchy in the discharge of his official duties. As per Section 52 *ibid*, entries in the revenue record carry a presumption of truth until proven otherwise or until a new entry replaces the existing one in accordance with the law. This position is supported by the rulings in the case of Abdul Ahad and others v. Roshan Din and 36 others (PLD 1979 SC 890), The Evacuee Trust Property Board and others v. Haji Ghulam Rasul Khokhar and others (1990 SCMR 725), and Mazooloom Hussain v. Abid Hussain and 4 others (PLD 2008 SC 571). Furthermore,

Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973, mandates that full faith and credit be given throughout Pakistan to public acts and records. The Record of Rights is a public record, and the applicant's production of the revenue record, which carries a presumption of truth, coupled with respondent No.1's failure to dispel such presumption through a preponderance of evidence, leads me to conclude that the applicant has proven his entitlement to possession. The appellate Court's failure to notice this constitutes a misreading and non-reading of the evidence. This fact, when juxtaposed with respondent No.1's failure to produce any entitlement to possession except for the possession itself, reveals that the appellate Court has committed a material irregularity by preferring the respondents, who have no basis for their possession, over the applicant, who has a revenue record supporting his claim to the suit land. It is a settled position of law that in civil cases, facts are to be proven based on the preponderance of evidence adduced by the parties. In this case, the applicant has sufficiently discharged that burden, yet he has been non-suited by the appellate Court due to its failure to appreciate the presumption of truth attached to the record produced in evidence. The appellate Court also erred in not appreciating that the Record of Rights, mutated in the name of the applicant's forefather as owner, makes him the owner of the suit land through inheritance, a fact that has never been challenged by respondent No.1 in their assertion of ownership.

13. Indeed, the primary written instrument in question is a more than thirty-year-old document. It is protected under Article 100 of the Qanun-e-Shahdat Order, 1984. This article vests a presumption of truth to the execution of the document, unless the contrary is proven. In the context of this case, the burden of rebutting this presumption fell on respondent No.1. However, during the trial, respondent No.1 failed to provide sufficient evidence to counter this presumption. Therefore, without any rebuttal, the presumption of truth regarding the execution of the document stands. In the case of Muhammad Idrees and others vs

Muhammad Pervaiz and others (2010 SCMR 5), the Supreme Court of Pakistan has held as under: -

“It is also settled fact that sale-deed was executed in the year 1952. Therefore, it is 30 years old document. Under Article 100 of the Qanune-Shahadat Order, presumption is attached to 30 years old documents which is rebuttable presumption. This duty becomes all the more heavily cast when opposite party challenges very genuineness of document. It is proper to mention here that petitioners fail to rebut the same as is evident from the contents of the written statement' filed by the petitioners. Even otherwise there is no substantial question of law arising in the petition. It is also settled principle of law that constitutional jurisdiction is always discretionary in nature.”

[Emphasis is supplied]

14. Indeed, the applicant, having proven his title, is always entitled to rely on this title. There is no legal prohibition against granting a decree for possession in favour of a person who can prove title against a person who has no title to the suit land. On the other hand, the Court must ensure that a person holding a lawful title to the property is granted possession unless an insurmountable obstacle prevents this. This means that if a person occupies a property without any legal title, the Court must ensure that the lawful owner is granted possession. In the case of Mst. Kalsoom Bibi and others vs Muhammad Amin Agha (Deceased) through L.R.s and others (2022 SCMR 929), the Supreme Court of Pakistan has held as under: -

“Even otherwise now the ownership on the basis of adverse possession being contrary to the Islamic Injunctions is not available to the appellants in the light of judgment reported as "Maqbool Ahmad v. Hakoomat-e-Pakistan" (1991 SCMR 2063). Claiming the ownership on the basis of allotment in their favour at one stage and raising the plea of adverse possession at the other are self-destructive. A party could not be allowed to blow hot and cold in the same breath. Reference can be made to "Gerry's International (Pvt.) Ltd. v. Aeroflot Russian International Airlines" (2018 SCMR 662); "Raees-Ud-Din v. Nasreen Anwar" (2011 SCMR 998). When admittedly no title document of the suit property in favour of the appellants is available, their stance disputing that the suit property is not the part of the property allotted to the plaintiffs-respondents does not find support from the record.”

[Emphasis is supplied]

Here, I also rely on the case of Hazratullah and others vs Rahim Gul and others (PLD 2014 Supreme Court 380), wherein it has been held as under: -

“As far as the plea that Mst. Marjan had never challenged the sale deed dated 19-4-1938 in favour of Qudratullah in the suit, but only filed a suit for possession, it may be held that in a suit under section 8 of the Specific Relief Act, 1877, the declaration of the entitlement is an inbuilt relief claimed by the plaintiff of such a case. Once the plaintiff is found to be entitled to the possession, it means that he/she has been declared to be entitled, which includes the declaration of title of the plaintiff qua the property, and this is integrated into the decree for possession; and when Mst. Marjan had attained the decree for possession and found entitled to the possession in terms of section 8 (supra), undoubtedly the sale deed dated 19-4-1938 in favour of Qudratullah irrespective of it not being directly challenged, would render the above sale deed as nugatory and redundant; because the title of Mst. Marjan shall be valued on the basis of the judicial verdict i.e. the decree, and the sale deed shall not be a hindrance in her way.”

15. In the case of Karim Bakhsh through L.R.s. and others v. Jindwadda Shah and others(2005 SCMR 1518), the Supreme Court of Pakistan held that when the findings of two courts below were at variance, the High Court was justified in appreciating the evidence to arrive at the conclusion as to which of the decisions was in accord with the evidence on record. In the case of Abdul Rashid v. Muhammad Yasin and another (2010 SCMR 1871), the Supreme Court of Pakistan held that the two courts below, while giving their findings on a question of law, had committed material irregularity or acted to read the evidence on point which resulted in miscarriage of justice, the High Court had the occasion to re-examine the question and to give its findings on that question in exercise of revisional jurisdiction. The High Court was obliged to interfere in the findings recorded by the courts below while exercising power under Section 115 of the Code.

16. For the foregoing reasons, the appellate Court has acted with material irregularity in the exercise of his jurisdiction by refusing the grant of relief of possession to the applicant. This civil revision is

accordingly **allowed**. The impugned Judgment and decree dated 12.12.2019 of the appellate Court are set aside, while the Judgment dated 31.01.2019 and Decree dated 06.02.2019, passed by the trial Court decreeing the suit of the applicant, is restored. The parties, however, are left to bear their costs.

J U D G E

Faisal Mumtaz/P.S.