

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Present:

Mr. Justice Muhammad Saleem Jessar
Mr. Justice Jawad Akbar Sarwana

C.P.No.D-119 of 2022

Khalid Ahmed Tanwri, through his legal heirs

v.

District & Sessions Judge, Shikarpur and Seven (7) others

Petitioner : Khalid Ahmed Tanwri son of Late Gul Muhammad Tanwri through his legal heirs (i) Mst Neelofar Khalid, (ii) Fawad Ahmed Tanwri, (iii) Mrs Sana Qaiser, (iv) Ummad Ahmed Tanwri, (v) Mrs Sofia Junaid, and (vi) Fahad Ahmed Tanwri through Mr Fawad Ahmed Tanwri, Advocate

Respondent No.1 : District & Sessions Judge, Shikarpur

Respondent No.2 : Ist Senior Civil Judge, Shikarpur

Respondent Nos.3 to 5, 7 and 8 : Muhammad Hafeez Tanwri s/o (Late) Muhammad Khan Tanwri (Respondent No.3)

: Mushtaq Ali Shaikh s/o Mushtaq Ali Shaikh (Respondent No.4)

: Hidayatullah Shaikh s/o Nawab Ali Shaikh (Respondent No.5)

: Muhammad Suhail Tanwri s/o Bahram Khan Tanwri (Respondent No.7)

: Muhammad Saleem Tanwri s/o Bahram Khan Tanwri (Respondent No.8)

through Mr Shakeel Ahmed Ansari, Advocate for Respondents No.3 to 5, 7 and 8.

Respondent No.6 : The Mukhtiarkar (Revenue),
Taluka Khanpur, District Shikarpur
Mr Munwar Ali Abbasi, Assistant
Advocate General, Sindh.

Date of Hearing : 16.01.2024

Date of Judgment : 07.02.2024

J U D G M E N T

JAWAD AKBAR SARWANA, J.: The legal heirs of Khalid Ahmed Tanwri (hereinafter referred to as “Khalid Ahmed Tanwri”) have filed this Constitution Petition aggrieved by the Order dated 23.02.2022 passed by the learned District Judge, Shikarpur (Respondent No.1) in Civil Revision Application No.21/2021 wherein the learned District Judge upheld the Order dated 06.11.2021 passed by the 1st Senior Civil Judge Shikarpur (Respondent No.2)(“trial court”) in FC Suit No.32/2020 allowing the application filed by their uncle/taaya, Bahram Khan Tanwri’s two sons, namely, Muhammad Suhail Tanwri (Respondent No.7) and Engr. Muhammad Saleem Tanwri (Respondent No.8), impleading them as Defendant nos.5 and 6, respectively, in the said FC Suit No.32/2020.

2. The brief facts which emerge from the documents filed with the Petition and recorded in the two impugned Orders dated 23.02.2022 and 06.11.2021 are that the Petitioner/Khalid Ahmed Tanwri, Late Mohammad Khan Tanwri and Late Bahram Khan Tanwri were real blood brothers (children/sons of Late Gul Mohammad Tanwri).¹ In 2020, Petitioner/Khalid Ahmed Tanwri filed Suit FC No.32/2020, against his brother, Mohammad Khan Tanwri’s son (Petitioner’s paternal nephew/Petitioner’s brother’s son), Mohammad Hafeez Tanwri, Mushtaq Ali Shaikh, Hidayatullah Shaikh and the Mukhtiarkar

¹ According to the pleadings Petitioner/Khalid Ahmed Tawri also has/had sisters.

Taluka Khanpur, seeking declaration that the Plaintiff is the lawful owner of Agricultural Land admeasuring 9 Acres 26 Ghuntas situated in Deh & Tappo Mian Sahib, Taluka Khanpur District Shikarpur, Sindh (hereinafter referred to as the "Suit Lands") and possession as well as mesne profit, etc. Khalid Ahmed Tanwri did not implead his brother, Late Bahram Khan Tanwri's legal heirs in the said suit. When Mohammad Hafiz Tanwri (Petitioner's nephew/Petitioner's brother's son) filed his Written Statement on 10.10.2020, he claimed that the Late Bahram Khan Tanwri, elder brother of Petitioner, also had an interest in the Suit Lands, and as Bahram Khan was deceased, his legal heirs also had an interest in the Suit Lands. Subsequently, on 21.08.2021, the Petitioner's eldest brother's sons) the legal heirs of Bahram Khan filed an application under Order 1 Rule 10 CPC seeking to be made a party in FC Suit No.32/2020. After hearing the Counsels, the trial court allowed the said Application vide Order dated 06.11.2021, which Order the learned District Judge subsequently upheld on 23.02.2022. The trial court and the District Court found that the two legal heirs of Late Bahram Khan were proper and necessary parties to be joined in the matter and that without joining them, the Court would not be able to reach a just and fair conclusion. The trial court also noted that the possession of the Suit Lands was allegedly with the Applicants/Defendants as per available record and observed that only after providing an opportunity to all the parties to lead evidence it would be possible to determine who were the legal, lawful owner(s) of the Suit Lands: Petitioner/Khalid Ahmed Tanwri (and now after his death his legal heirs) or Petitioner was benamidar of the Late Bahram Khan; and whether the Applicants/Defendants are/were in legal possession of the Suit Lands or otherwise, occupied it and are liable to restore possession to the Petitioner/Khalid Ahmed Tanwri's legal heirs. Therefore, the trial court and the District court concluded that the presence of Respondent Nos. 7 and 8 were necessary for proper and final adjudication of the dispute.

3. The learned Counsel for the Petitioner/Khalid Ahmed Tanwri contended that the Late Bahram Khan had nothing to do with the Suit Lands. He argued that since 1959, the Petitioner, along with his brother-in-law, Alla Dino Khan Tanwri, had joint ownership of a larger land area. In 1974, this larger land area was bifurcated between the Petitioner and Alla Dino Khan Tanwri into 9 Acre and 26 Ghuntas mutated in the name of the Petitioner/Khalid Ahmed Tanwri ("the Suit Land"). The remaining 9 Acre 33 Ghuntas were mutated in the name of Petitioner's brother-in-law, Alla Dino Khan Tanwri. Thus, Late Bahram Khan had no interest in the Suit Lands and could not agitate any interest in the said suit belatedly. Finally, he contended that Suhail Tanwri (Respondent No.7) and Saleem Tanwri (Respondent No.8) had omitted to implead all the legal heirs of Bahram Khan Tanwri, which included his son, Late Sajid Tanwri who had left behind a widow, Samina Sajid Tanwri and her son, Hussain Tanwri. The legal heirs of Sajid Tanwri were not impleaded in the Application under Order 1 Rule 10 CPC. Hence the same was liable to have been rejected by the trial court on this score too.

4. The learned Counsel for the Respondents urged that the Petition is liable to be dismissed as no harm will be caused to the Petitioner/legal heirs of Khalid Ahmed Tanwri if the legal heirs of Bahram Khan (eldest brother) are allowed to contest the Petitioner's claim in the Suit Lands along with the other brother, Late Muhammad Khan Tanwri's son, Muhammad Hafeez Tanwri (already impleaded as Defendant No.1).

5. We have heard the arguments of learned Counsels and perused the documents filed with the Petition.

6. The legal heirs of Bahram Khan Tanwri have raised a fit and proper case for them to be impleaded in the FC Suit No.32/2020. No harm will be caused to the Petitioner/legal heirs of Khalid Ahmed Tanwri if they are allowed to be impleaded as Defendants in the said

suit. The Petitioner/Khalid Ahmed Tanwri has set up his claim against his brother, Mohammad Khan Tanwri's son, Muhammad Hafeez (Respondent/Defendant No.1). Mohammad Hafeez, in his Written Statement, has already brought on record the interest of the Late Bahram Khan Tanwri. It would be fit and proper that the legal heirs of the other brother of Petitioner/Khalid Ahmed Tanwri, that is, the Late Bahram Khan Tanwri, defend the matter, particularly as one of the defence raised by Respondent/Defendant No.1 is based on the defence of Late Bahram Khan Tanwri. It would be appropriate that the legal heirs of Bahram Khan Tanwri are made parties and defend the claim in their own right based on their interest in the Suit Land as pleaded by them in their Application under Order 1 Rule 10 CPC. The presence of all the sons of Late Gul Mohammad Tanwri and their legal heirs will be necessary for the determination of the suit for declaration filed by one of the sons, i.e. Khalid Ahmed Tanwri, and to effectually and completely adjudicate upon and settle all the questions involved in Suit No. FC 32/2020.

7. In the present case, the District Judge and the Senior Civil Judge neither exceeded their jurisdiction while granting the Intervener's Application nor the impugned Orders passed were irregular or improper. There is no need to interfere in the impugned Orders.

8. In addition to the above reasons for the dismissal of this Petition, this Petition is also liable to be dismissed in light of the observations of the Supreme Court of Pakistan in Muhammad Zahoor and Another v. Lal Muhammad and Two Others, 1988 SCMR 322. In the said judgment, the Supreme Court has held that the exercise of writ jurisdiction against revisional order has to be exercised in rare and exceptional circumstances only when it could be said that the order passed by the revisional Court has been passed without lawful authority, beyond jurisdiction and vested rights were curtailed.

9. In the present case, a Constitution Petition has been filed against an order passed in revision by the Additional District Judge. Although, in certain situations, a writ petition is competent against a revisional order, the impugned Order cannot be said to have been passed without lawful authority or beyond the jurisdiction or curtailing the vested rights of the Petitioner. No arbitrariness or perversity in passing the impugned Order has been alleged or proved by the Petitioner. We are of the confirmed opinion that neither the Additional District Judge nor the trial court have fallen into any error while passing the impugned Order, which requires interference.

10. The observations made herein are strictly to decide this Constitution Petition and shall not in any way affect the decision of the trial court in deciding Suit No. FC 32/2020, which will be decided solely on merits based on the evidence brought on record and the principles of law applicable to the case.

11. In view of the above, the impugned Order dated 23.02.2022 passed by the Additional District Judge and the trial Court's Order dated 06.11.2021 are proper and based on facts and law. They do not suffer from any illegality that calls for interference in Writ Jurisdiction. Accordingly, this Petition is dismissed along with all listed applications

12. The parties are left to bear their own cost.

J U D G E

J U D G E