

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No. 128 of 2021

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

Riaz Hassan Khoso

..... **Appellant**

through Mr. Muhammad Mansoor Mir
Advocate

Versus

Haseeb Hassan Khoso & 2 others..... Respondents

through M/s. Ravi Kumar & Asif Ali Jokhio,
Advocates

Date of hearing: 31.01.2024

Date of Judgment: 14.02.2024

JUDGMENT

OMAR SIAL, J.: A learned Single Judge of this Court on 24.05.2021 passed a common judgment in three suits he had heard. One of the suits he decided was Suit No. 1435 of 2015, which was filed by Riaz Hassan Khoso (the appellant in these proceedings) against his step-siblings, Haseeb Hassan, Asma Hassan and Eiman Hassan (the respondents in this appeal). This appeal has been filed only to the extent of the mesne profits generated from 56.18 acres of land, which was the subject matter of Suit No. 1435 of 2015.

2. Mir Hassan Khoso had two wives, Ms. Yasmeen and Ms. Aliya. From Yasmeen, he had five children (Riaz Hassan, Rashid Hassan, Seema Hassan and Saima Hassan). From Aliya, he had three children (Haseeb Hassan, Asma Hassan and Eman Hassan). Yasmeen died on 21.04.2013, while the senior Khoso himself died on 27.06.2015. On 03.08.2015, Riaz Hassan filed Suit No. 1435 of 2015, claiming specific performance of an agreement to sell ostensibly entered between the senior Khoso and himself on 06.12.2014. According to the record, the claim was over land, which the

senior Khoso had transferred in the name of Haseeb Hassan in 2009. In reply, the three children made a counterclaim alleging that for three years before the death of the senior Khoso, effectively since 2012, the land in question was forcibly occupied by Riaz Hassan (the son of senior Khoso's first wife, who is also the appellant in these proceedings). They claimed that they were entitled to the mesne profits for those three years as well as the period that Riaz Hassan remained in possession of the land till the Nazir took over possession.

3. We have heard the counsels and perused the record. The learned counsel for the appellant has restricted his argument to the period for which mesne profits were awarded to the respondents (i.e. from 2012 till possession taken by the Nazir). Our observations and findings are as follows.

4. Aliya Hassan testified at trial that to save his land from the Martial Law Regulations (in essence, the land acquisition laws), family arrangements to distribute the land owned by the senior Khoso were made in 1984-1985 between the senior Khoso and his brothers and legal heirs. In 2009, it was agreed that 500 acres of agricultural land would be divided, following Shariat entitlement, between the two wives of the senior Khoso and their children. The record of rights on 11.10.2009 reflected that the suit land was mutated in the name of Haseeb Hassan (respondent no. 1 in these proceedings). There seems to be little dispute about these dates between the parties. It is also admitted that none of the legal heirs of the senior Khoso ever complained or objected to the division of land between the various legal heirs of the senior Khoso (mother and attorney of her children, the respondents).

5. It is essential to point out that Aliya Hassan, at trial, testified that *"it is correct that the land was managed by Mir Hassan as the head of the family. The income used to come to Mir Hassan. He distributed the same to the owners."* She, however, claimed that Riaz Hassan had taken possession of the land in 2013. Simultaneously, she also acknowledged that on

06.12.2014, the senior Khoso was living with her and that he was “active and moved freely”.

6. The position that emerges from the evidence recorded at trial is that the suit land was transferred and mutated in the name of respondent no. 1 under a family settlement, which settlement and distribution were admittedly not objected to by any of the legal heirs of the senior Khoso. Even though the land had been transferred, the senior Khoso continued to control the land and the income which it generated. None of the legal heirs of the senior Khoso ever objected to this arrangement. On the contrary, they consented to such an arrangement. The respondents also acknowledged that at least until 06.12.2014, the senior Khoso was mobile and reasonably healthy. While Aliya Hassan claimed that the suit land had been controlled by Riaz Hassan since 2012 and that the respondents would be entitled to mesne profits from that date, with much respect, we cannot agree with this contention in light of the evidence led at trial. No evidence was produced to show that Riaz Hassan had been in possession since 2012. On the contrary, Aliya Hassan had acknowledged, as mentioned above, that the senior Khoso was himself running the affairs of the land and the distribution of the income generated till at least 06.12.2014. In fact, no evidence was led at trial to show that till the death of the senior Khoso on 27.06.2015 as to the quantum of income generated from the suit land or that it all went into the pockets of Riaz Hassan. While it may very well be true that during the six months that lapsed till the death of the senior Khoso, income from the land all went to Riaz Khoso, no evidence was produced to prove the same. In view of the foregoing, it would be fair, just and equitable if Riaz Hassan is made liable to pay mesne profit from 27.06.2015 (i.e. the date the senior Khoso died) till the date Nazir took possession of the property.

7. During the pendency of the suit, the Nazir of this court was appointed as receiver vide order dated 02.06.2017. Nazir, in his report dated 20.05.2019, reported that the highest bid received to lease out the land was Rs. 21,000 per acre, which the appellant himself gave. The

respondents had withdrawn their bid and had given their no-objection for the land to be leased out to the appellant for a year. The Court accepted the bid vide order dated 22.05.2019. The lease was extended for another year at Rs. 22,000 per acre. The respondents did not object to the rate. Considering the rate at which the land was leased out for the previous years, the rate of Rs. 20,000 per acre with a 10 per cent annual increase from 27.06.2015 till the date possession is handed over to the respondent is equitable. As also directed by the learned Single Judge, the amount of the lease money/mukata already deposited with the Nazarat may be adjusted against the amount to be paid to the respondents.

8. Subject to the modification in the period that the respondents are entitled to the lease money, as given in the preceding paragraph, the appeal is dismissed.

JUDGE

JUDGE