

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No.D-784 of 2023

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Arbab Ali Hakro

Petitioners : Ali Muhammad Khan Jatoi and another
Through Mr. Muhammad Tariq S. Khan
Yousufi, advocates

Respondent No.6 : Aijaz Ali s/o Ali Nawaz
Through Muhammad Javed Ahmed
Maitlo, advocate

Respondents No.1 to 5 : Province of Sindh and others
through Mr. Ahmed Ali Shahani,
Assistant Advocate General

Date of hearing : **14.03.2024**

Date of Decision : **27.03.2024**

O R D E R

ARBAB ALI HAKRO, J.- Through this petition, the Petitioners have sought the following relief(s):-

a) This Court may be pleased to set aside the impugned Order dated 14.02.2023, passed by the learned Court of 2nd Additional District Judge, Sukkur, in Civil Revision No.Nil/2022 in limine and the impugned Order dated 10.8.2022, passed by 1st Senior Civil Judge Pano Aakil, in F.C Suit No.23/2022 and allowing the application u/o VII Rule 11 CPC r/w Section 151 CPC by rejecting/dismissing the suit of plaintiff/respondent No.6.

b) To suspend the operation of orders dated 10.8.2022 and 14.2.2023, passed by 1st Senior Civil Judge Pano Aakil in F.C Suit No.23/2022 and 2nd Additional District Judge Sukkur in R.A.No.Nil/2022, respectively, during the pendency of the instant petition until the final disposal of the same.

2. The relevant facts of the case are that respondent No.6 filed F.C Suit No.23/2022 for Declaration, Demarcation, Possession and Permanent Injunction against the Petitioners and others before the

Court of 1st Senior Civil Judge, Pano Aakil (**“the trial Court”**). Upon notice, the Petitioners appeared and filed an application under Order VII Rule 11 CPC (**“the Code”**), plaintiff/respondent No.6 replied the same by filing objections. The plaintiff/respondent No.6 subsequently filed an application for withdrawal of the suit with permission to file a fresh. Upon which, the trial Court disposed of the suit as withdrawn with permission to file a fresh one vide Order dated 10.8.2022, with further directions to the D.C District Sukkur, Mukhtiarkar/Assistant Commissioner Pano-Akil for demarcation of the land of plaintiff/respondent No.6 and of private defendants/Petitioners to determine how much area was lying with them, to verify record of rights of both parties and to ensure actual occupancy of the land by them. The Petitioners, being aggrieved with the above Order, filed a Revision Application, which was dismissed by the 2nd Additional District Judge (MCAC), Sukkur (the **“Revisional Court”**) being time-barred vide impugned Order dated 14.02.2023. As a result, the petitioners have impugned both these orders before this Court through the present writ petition.

3. At the very outset, learned counsel representing the petitioners contends that the learned trial Court has committed gross irregularity as while deciding the application under Order VII Rule 11 CPC disposed of the suit as withdrawn and directed the revenue officials for demarcation of land; when both the parties were not under agreement for disposal of the case; miscarriage of justice has been done as the appellate Court also maintained the said order, which on the face of it, appears to be without jurisdiction and not warranted under the law; that the trial Court has not considered the fact that it is a matter of record that before filing the above suit, Respondent No.6 filed C.P No.D-746 of 2021 before this Court with a prayer for demarcation and this Court had dismissed the petition vide order dated 25.08.2021, leaving the plaintiff/petitioner at liberty to file suit

for possession or declaration. In the last, he prayed that instant petitions may be allowed and impugned orders set aside.

4. The learned counsel representing Respondents has supported the impugned orders passed by both Courts below and submits that learned both lower Courts have rightly passed the impugned orders. Hence, no interference is required to disturb the concurrent findings. He prayed for the dismissal of the instant petition.

5. The learned AAG, while adopting the arguments advanced by learned counsel for the Respondents, supports the impugned orders; however, he could not controvert the fact that the learned trial Court exceeded its jurisdiction by issuing directions for demarcation; and the learned Appellate Court also erred by dismissing the revision application on the point of limitation.

6. We have heard counsel for the parties, perused the record with their assistance, and have taken guidance from case law submitted by them.

7. Upon examination of the record, it appears that the trial Court, while deciding an application under Order VII Rule 11 of the Code, disposed of the suit as withdrawn with direction to the revenue officials for demarcation of the land of plaintiff/respondent No.6 as well as of Petitioners. It would be conducive for better understanding the said Order; if the relevant Paragraph of the same is reproduced hereunder: -

“10. After the arguments were heard, both parties were required of their attention towards the matter pertaining to demarcation only and offered their willingness if the matter be disposed of by passing direction to the concerned authorities. On this learned counsel for plaintiff was agreed that he can move such statement that the demarcation be made. On the other hand, Id. Counsel for private defendants was also of the same view but he was reluctant to give consent on such statement if moved from plaintiff side. Matter was fixed at 1.00 p.m for Order, before that a statement from plaintiff side was moved stating therein that he is agreed for passing of Order by Court for demarcation but later on Id. Counsel for defendant side failed to appear.

11. After going through the statement filed by plaintiff counsel, it appears that in the statement plaintiff counsel was only agreed for demarcation but was not agreed for disposal of case on the direction passed by Court regarding demarcation/measurement, to the Revenue Authority. Conduct of Ld. Counsel for defendant side was of the view that, application U/O VII Rule 11 CPC be decided on merits.

12. No doubt, version of defendants' counsel, for disposal of application U/O VII Rule 11 CPC was appropriate. But till yet, he has filed to file written statement and his point of view regarding allegation in plaint has not come in Court and he only insists for deciding matter through Order on application U/O VII Rule 11 CPC. Conduct from both parties is not cooperative. Though, defendants' contention is that allegation in plaint is based on presumption. So in this regard my humble view is that until and unless, written statement come on record from defendant side, position regarding allegation of plaintiff remain intact.

13. Although the Ld. Counsel for plaintiff is agreed for demarcation and in this connection he filed statement but wants to continue matter pending before this Court. Even defendants counsel urged for deciding application U/O VII Rule 11 CPC. In any way, matter may be decided, but I am of the considered view that demarcation/measurement by the Revenue Authorities is the only way that can resolve matter between parties. Ld. Counsel for plaintiff shown his willingness for demarcation. Ld. Counsel for defendants also pointed out the matter pertaining to demarcation. Therefore, without passing Order on application U/O VII Rule 11 CPC, it would be most appropriate that the Order be passed for demarcation/measurement. Hence, I hereby direct the Revenue Authorities (Deputy Commissioner, Sukkur, Assistant Commissioner and Mukhtiarkar Revenue) including Settlement Department for conducting demarcation of S.No.73/1 and 74/4, Deh Erazi Saidiki, so as to bring on record the area of land of respective parties in above survey numbers.

14. Plaintiff produced photocopies of application addressed to revenue authority for demarcation purpose but same are found not in the actual name of present plaintiff. So, therefore, I hereby direct D.C District Sukkur, Mukhtiarkar/ Assistant Commissioner Pano-Akil, for demarcation of land of plaintiff and of private defendants, to bring on record how much area lying with them actually and to verify record of rights of both parties and to ensure actual occupancy of the land by them. Both parties including revenue authorities are directed for compliance regarding demarcation with the help of Settlement department and security by police. If any of the party violates direction of the Court, concerned authority may take action against the in accordance with law so as to ensure that the demarcation/ measurement of the respective lands is done and actual area of the land to be handed over to

respective parties for resolving controversy between them. Concerned authorities are directed to carry out demarcation and to submit report. Plaintiff shall bear expenses for demarcation. With this Order, suit is disposed of as withdrawn with permission to be filed if any party is aggrieved so after the demarcation is held and report filed before this Court. The suit stands disposed of with no order as to costs."

8. The legal analysis of the above Order would reveal that the trial court while deciding an application under Order VII Rule 11 of the Code, disposed of the suit as withdrawn. This was done by directing revenue officials to demarcate the land of plaintiff/respondent No.6 and Petitioners. However, it is important to note that both parties were not agreed on the disposal of the case with directions to the land revenue officials for demarcation of the lands. Only the counsel for the plaintiff/respondent No.6 agreed for demarcation but wanted the suit pending before the trial court. On the other hand, the petitioners did not consent for demarcation and insisted on hearing and deciding their application under Order VII Rule 11 of the Code. Despite this, the trial Court proceeded to pass such order in doing that exceeded its jurisdiction and, on its own accord, directed the Revenue Authorities to demarcate both parties' lands and dispose of the suit as withdrawn.

9. This was done without deciding the application under Order VII Rule 11 of the Code moved by the Petitioners. It is clear that the Order passed by the trial court is without jurisdiction and not warranted under the law. The trial Court should not have given direction to the Revenue Department on its own thereby in fact decreeing the suit of the plaintiff. No direction of the nature that touches merit and alleged rights of the parties in the suit concerning the demarcation of the land, followed by possession, could have been given by the trial court in summarily manner. Moreover, the trial Court did not bother to see the merits of the suit and grounds of application under Order VII Rule 11 of the Code. In the suit, besides the prayer of demarcation, the plaintiff also sought multiple reliefs. Upon careful consideration of the submissions made and the documents on record, it is evident that the matter at hand

requires a thorough inquiry and the collection of evidence to ascertain the facts and adjudicate upon the rights and obligations of the parties involved. It is a well-established principle that the trial court should refrain from giving directions that may affect the merits of the case or the alleged rights of the parties concerning the subject matter of the suit, such as demarcation of land, followed by possession, without a proper trial and evaluation of evidence. Furthermore, the trial court did not take into account the merits of the suit and the grounds of the application under Order VII Rule 11, C.P.C. It was imperative for the trial court to consider all aspects of the case, including the multiple prayers sought by the plaintiff, before arriving at a decision having consequences on rights of the parties. The trial Court has also not considered the fact that it is a matter of record that before filing the above suit, respondent No.6 filed C.P No.D-746/2021 before this Court with a prayer of demarcation in respect of the same land involved in the suit, which was dismissed by this Court vide Order dated 25.8.2021, leaving the plaintiff/respondent No.6 at liberty to file suit for possession or declaration.

10. The Revision Application, although filed by the petitioners beyond the prescribed ninety-day period as per Section 115 of the Code, should not have been dismissed by the Revisional Court solely on the ground of limitation. The Court's jurisdiction under Section 115 of the Code is typically restricted to matters explicitly outlined in the provision. However, when it becomes evident that the case before the Court is the result of illegalities and material irregularities as envisaged in Section 115 of the Code, the jurisdiction of the Revisional Court expands, and the Court should not turn a blind eye to glaring illegalities and should instead strive to uphold justice, regardless of the limitation period. In such circumstances, the Court's paramount duty is to aid to justice rather than perpetuate injustice. Even the bar of limitation cannot be invoked as an obstacle in such situations. This principle is supported by the precedent set in the case of Haji Rehmdil vs. The Province of Balochistan

and another(1999 SCMR 1060). In this case, the Supreme Court of Pakistan held that:

“The High Court correctly found that the appeal taken by the official functionaries was inexplicably barred by time and so also the revision brought to itself. Now, section 115(1), C.P.C. confers two distinct kinds of jurisdictions: one, the normal, where the revisional powers are invoked by an aggrieved party, and the other, where the Court may act suo motu. These jurisdictions, distinct and independent, were, inter alia, recognized in Manager, Jammu and Kashmir, State Property v. Khuda Yar, PLD 1975 SC 678. Relevantly, the following was observed:--

"The scope of the revisional powers of the High Court though circumscribed by conditions of excess of jurisdiction, failure to exercise jurisdiction, illegal exercise of jurisdiction, is nevertheless very vast and corresponds to a remedy of certiorari and in fact goes beyond that at least in two respects inasmuch as: Firstly, its discretionary jurisdiction may be invoked by the Court suo motu, and secondly, the Court 'may make such order in the case if it thinks fit'.

In Rangrao v. Pandurang and another (AIR 1924 Naq. 154), it was held that under section 115 of the C.P.C., the High Court could and might deal with a case under that section without there being any application by any of the parties and may in the special circumstances pass such orders as it thinks fit. In this case the Small Causes Court passed a decree against defendant No.2 and exonerated defendant No.1 and on revision the High Court exonerated defendant No.2. It was held that despite the fact that the plaintiff had not appeared in revision, he could still be given a decree against defendant No. 1.

In M.H. Saya & Co. v. Wazir Ali Industries Ltd. the view taken by this Court was that it was competent for a stranger to a suit or proceedings to file an appeal, if he was adversely affected by the Order passed in such suit or proceeding."

It seems to us that in cases, involving patent abuse of jurisdiction and injustice, the Court, exercising powers under section 115, C.P.C. even where the revision petition, brought by an aggrieved party, is bared by time, still has a discretion to invoke its own suo motu revisional authority to advance justice and to suppress mischief, albeit only when a jurisdictional error, in contemplation of the section, is encountered. It need hardly be reiterated that technicalities, unless resorted to in aid of justice and fair play, have little room in the wide field occupied by judicial dispensations. Deviating from the earlier rule that where jurisdiction vests in a Tribunal to decide, the Tribunal can decide rightly as well as wrongly, the current view of this Court, as, inter alia, reflected in U.S. Corporation of Pakistan Ltd. v. L.A.T., PLD 1987 SC 447, is that where jurisdiction vests to decide a controversy, such can only be decided rightly and not otherwise. Further, where

a Tribunal goes wrong in law, it also goes outside the jurisdiction conferred on it by law.”

The Supreme Court of Pakistan further reiterated the same view in the case of Raja Hamayun Sarfraz Khan and others versus Noor Muhammad (2007 SCMR 307) wherein it was held by the Supreme Court of Pakistan that: “It is a settled law that High Court had vast powers under section 115 of C.P.C. as observed by this Court in Muhammad Mian's case 1995 SCMR 69. The relevant observation is as follows:--

“It should not be forgotten that the scope of the revisional powers, though hedged by conditions, is nevertheless vast and corresponds to a remedy of certiorari and the supervisory jurisdiction can be invoked by the Court suo motu and the Court can also make "such order in the case as it thinks fit.”

11. In light of the well-established principles articulated in the aforementioned judgments, the impugned Order of the Revisional Court is untenable. The Revisional Court, endowed with revisional powers, was expected to exercise its jurisdiction to further the cause of justice when it became aware of illegality, substantial irregularity, or the exercise of jurisdiction not vested in the trial Court, all of which fall within the purview of Section 115 of the Code. Constitutional jurisdiction is not intended to perpetuate an injustice but rather to rectify and correct the illegalities committed by the lower Courts, Tribunals, or the Executive in performing their duties. In exercising its Constitutional jurisdiction, this Court must remain a passive observer and recognize legal deficiencies. It is incumbent upon this Court to intervene when it perceives legal anomalies, as the ultimate objective of the judiciary is to uphold the rule of law and ensure justice.

12. In accordance with the principles of jurisprudence and the constitutional provisions of the Islamic Republic of Pakistan, 1973, it is pertinent to note that this Court possesses the competence to intervene in a revisional order if it is conclusively established that the revisional Court has committed an illegality, resulting in a perverse and perfunctory order. This power of intervention is derived from Article 199

of the Constitution, which empowers the Court to exercise its Constitutional jurisdiction. For further elucidation, reference can be made to the case of Muhammad Anwar and others versus Mst. Ilyas Begum and others (PLD 2013 Supreme Court 255) wherein the Supreme Court of Pakistan held as under :-

"12. The argument of the learned counsel for the petitioner that the Order of the Revisional Court could not be interfered in the constitutional jurisdiction, because a Court having the jurisdiction to decide the matter, has the jurisdiction to decide it rightly or wrongly, and reliance having been placed upon the two judgments noted above; suffice it to say that in the noted dicta, the provisions of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 have not been taken into consideration, which reads as:--

"4. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular—

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not required him to do."

Article 4 (ibid) mandates that it is the inalienable right of every citizen to enjoy the protection of law and to be treated in accordance with law and thus where an order has been passed by any forum or Court, including the Revisional Court, which is patently illegal and violative of law, especially the express provisions and the spirit of law, which (Order) if allowed to stay intact tantamounts to, and shall cause serious breach to the legal rights of the litigants and shall cause prejudice to them, the learned High Court in appropriate cases while exercising its constitutional jurisdiction can ratify the illegality and violation of law, and undo the harm caused by the Order of such (revisional) Court....."

13. An exception can be made in circumstances where justice is necessitated. The High Court, in addition to Article 199 of the

Constitution, can exercise its supervisory jurisdiction under Article 203 of the Constitution. This jurisdiction can be invoked to rectify orders that are perverse, without jurisdiction, fraudulent, or erroneous and have been issued either through an explicit violation or ignorance of any legal provision. As the Order of the learned Revisional Court falls into the aforementioned category, we deem it appropriate to correct it within our Constitutional jurisdiction. This aligns with the principle that the exercise of Constitutional jurisdiction is not intended to perpetuate injustice but rather to rectify and correct the illegalities committed by the lower Courts, Tribunals, or the Executive in performing their duties.

14. In light of the preceding discussion, it is clear that the trial Court overstepped its jurisdiction while issuing the contested Order. This leaves no room for any other interpretation. Furthermore, the Revisional Court seemed to be unaware of its revisional powers as prescribed under Section 115 of the Code.

15. In light of the arguments presented and the material examined, this Court **grants** the instant petition. Consequently, the Order passed on February 14, 2023, by the Revisional Court, as well as the Order rendered on August 10, 2022, by the Trial Court, are hereby set aside due to their illegality and substantial procedural irregularities. The matter is thus remanded to the Trial Court with the directive to deliberate upon the application pending under Order VII Rule 11 of the Code, as filed by the Petitioners. The Trial Court is mandated to afford both parties an equitable opportunity to present their cases. It is imperative that the Trial Court's judgment shall be rendered impartially and uninfluenced by any observations that may have been made by this Court in the context of the present petition.

JUDGE