

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision No. S-49 of 2023

*Abdul Latif and Two Others*

v.

*Imtiaz Buriro & 12 Others*

Applicant No.1	:	Abdul Latif s/o Muhammad Bux Siyal (also present in person);
Applicant No.2	:	Abdul Waheed s/o Muhammad Bux Siyal; and
Applicant No.3	:	Saeed Ahmed s/o Muhammad Bux Siyal; through Mr. Saeed Ahmed Panhwar, Advocate
Respondent No.1	:	Imtiaz s/o Mumtaz Ali Buriro;
Respondent No.3	:	Mumtaz s/o Atta Muhammad Buriro Through Qurban Ali N. Agro, Advocate
Respondent No.2	:	Anwar s/o Shahzado. Nemo.
Respondent No.4	:	The Tapedar Deh Rojhan, Taluka Mehar;
Respondent No.5	:	The Supervising Tapedar, Deh Rojhan, Taluka Mehar;
Respondent No.6	:	Mukhtiarkar Land Revenue, Taluka Mehar;
Respondent No.7	:	The Assistant Commissioner, Mehar;
Respondent No.8	:	The Deputy Commissioner, Dadu;
Respondent No.9	:	The Station House Officer, P.S Mehar;
Respondent No.10	:	The Station House Officer, P.S Mehar;
Respondent No.11	:	The Deputy Director Settlement Department, Hyderabad;
Respondent No.12	:	The Director Settlement Department, Hyderabad;
Respondent No.13	:	The Province of Sindh, through Chief Secretary, Government of Sindh, Karachi through Abdul Hamid Bhurgri, A.A.G.
Date of Hearing	:	15.02.2024
Date of Judgment	:	29.03.2024

## J U D G M E N T

**JAWAD AKBAR SARWANA, J.:** The three Applicants, Abdul Latif, Abdul Waheed and Saeed Ahmed, all sons of Muhammad Bux Siyal (hereinafter referred to as the “Siyal Brothers”), have filed the instant Civil Revision No.49/2023 against (i) the Order dated 01.09.2021 passed by the Senior Civil Judge, Mehar (the “trial court”) rejecting the Plaintiff filed in F.C. Suit No.52/2020 under Order 7 Rule 11 CPC<sup>1</sup>; and (ii) the Judgment and Decree dated 27.01.2023 and 01.02.2023, respectively, announced in Civil Appeal No.126/2021 passed by the 1st Additional District Judge, Mehar<sup>2</sup> confirming the trial court’s aforesaid Order rejecting the Plaintiff.

2. A brief background of the case is that on 28.08.2020, the Applicants/Siyal Brothers filed F.C. Suit No.52/2020 for declaration, possession and permanent injunction against Private Respondent Nos.1 to 3 and Official Respondent Nos.4 to 13.<sup>3</sup> They sought a declaration claiming that they were the legal and lawful owners of the “Suit Land”, which they described as 1 Acre 37 Ghuntas in Survey No.95, Deh Rojhan, Tapo A-Ganja Tohra, Taluka Mehar (as per paragraph 4 of the Plaintiff) and a negative declaration that both the Private and the Official Respondents “have no concern whatsoever with the Suit Land.” They sought possession over the entire 1-37 Acres from Respondent Nos.1 to 13. A closer scrutiny of the contents of the Plaintiff and documents filed and relied upon by the Applicants/Siyal Brothers suggested that their total claim was 0-37 Ghuntas and perhaps not 1-37 Acres. Mathematically speaking, from an examination of the Plaintiff (and documents filed with the Civil Revision),<sup>4</sup> it appeared that the Appellants/Siyal Brothers, could only show ownership of 0-37 Acres of Survey No.95. Defendant No.1 filed

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<sup>1</sup> Order dated 01.09.2021 available on pages 51-57 of the Revision File.

<sup>2</sup> Judgment dated 27.01.2023 and Decree dated 01.02.2023, available on pages 77-81 and 83-87 of the Revision File, respectively.

<sup>3</sup> Copy of the Plaintiff in F.C. Suit No.52/2020 is available on pages 19 to 27 of the Revision File.

<sup>4</sup> Copy of Deh Jo Form-VII showing Entry No.137 dated 03.08.1987

his Written Statement on 18.12.2020,<sup>5</sup> and on 27.02.2021, Defendant Nos.1 and 3 filed an Application under Order 7 Rule 11 CPC,<sup>6</sup> to which the Siyal Brothers filed objections on 17.04.2021.<sup>7</sup> After hearing the parties, the trial court concluded vide Order dated 01.09.2021 that the Applicants/Siyal Brothers were seeking declaration and possession over other people's land beyond the 0-37 Ghuntas owned by them, and, therefore, they had no cause of action and locus standi to file F.C. Suit No.52/2020. Accordingly, the trial court rejected the Plaint filed in FC Suit No.52/2020. The Applicants/Siyal Brothers filed Civil Appeal No.126/2021 before the Additional District Judge, Mehar, which the Appellate Court dismissed vide Judgment dated 27.01.2023 and Decree dated 01.02.2023.<sup>8</sup> Hence, the Applicants/Siyal Brothers filed this Civil Revision No.S-49/2023 on 01.01.2023 in the High Court of Sindh, Circuit Court Larkano.

3. The learned Counsel for the Applicants/Siyal Brothers argued that it was their case to prove legal and lawful ownership of 1-37 Acres of the Suit Land. He further argued that Respondent Nos.1 to 3 had allegedly dispossessed the Applicants/Siyal Brothers from part of the 1-37 Acres, and therefore, they sought possession of the entire Suit Land in FC Suit No.52/2020. He contended that the trial court selected averments from Respondent Nos.1 and 3 Application under Order 7 Rule 11 and Respondent No.1 Written Statement without allowing the Applicant/Siyal Brothers to prove their case and concluding erroneously that the Siyal Brothers had no cause of action. He contended that the impugned Order and Judgment passed by the two Courts below should be set aside, and the trial court decides the lis on merits. He urged that the Applicants/Siyal Brothers should be given the opportunity to lead evidence and to prove their case. Therefore, he submitted that this Court should allow the Civil Revision.

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<sup>5</sup> Available on pages 29-39 of the Revision File.

<sup>6</sup> Available on pages 41-45 of the Revision File.

<sup>7</sup> Available on pages 47-49 of the Revision File.

<sup>8</sup> Copy of Civil Appeal No.126/2021 is available on pages 65-75 of the Revision File.

4. The learned Counsel for Respondent Nos.1 and 3 contended that the Applicants/Siyal Brothers have no case. He contended that they could not claim ownership of the 1-37 Acres when, by their own showing, according to the Complaint, they owned 00-37 Ghuntas only. Thus, the trial and appellate courts rightly rejected the Complaint per the law.

5. The learned AAG contended that according to Deh Jo Form-VII, the Applicant/Siyal Brothers were seeking a declaration, and if not 1-37 Acres, they were within their rights to seek a declaration claiming title over 00-37 Ghuntas of Survey No.95. However, this was yet to be proven by the Applicants/Siyal Brothers as the Complaint stood rejected. Further, if the Private Respondent Nos.1 to 3 had dispossessed the Applicants/Siyal Brothers over 00-37 Ghuntas in Survey 95, then they had to prove their case that their land had been illegally occupied by the Private Respondents and seek possession thereof, but with the Complaint filed in FC Suit No.52/2020 now rejected, the Applicants/Siyal Brothers, were left with no remedy. He submitted that the Order and Judgment passed by the two Courts below were illegal and liable to be set aside.

6. I have heard Counsels for the Applicants and the Respondents as well as the learned AAG, and perused the documents attached to the Revision file.

7. The Applicants/Siyal Brothers filed FC Suit No.52/2020 for declaration, possession and permanent injunction, which was their case to prove. Without giving an opportunity to lead evidence to prove their case, based on a prima facie examination of the pleadings alone, the trial court proceeded to reject the claim of the Applicants/Siyal Brothers for declaration over the entire Suit Land. This was in spite of the trial court acknowledging in the impugned Order that the Applicant/Siyal Brothers had a claim for 00-37 Ghuntas. If the trial court, based on a review of the documents filed along with the Complaint,

believed that the Applicant/Siyal Brothers owned Suit Land to the extent of 00-37 Ghuntas, then they ought not to have rejected the Applicant's claim in its entirety. The Applicants/Siyal Brothers were deprived of seeking a declaration of 00-37 Ghuntas. The issue of whether the Applicant/Siyal Brothers had locus standi and/or legal character in Survey No.95 and, if so, to what extent of the Suit Land, required recording of evidence. The Applicants/Siyal Brothers should have been given the opportunity to prove their claim for declaration as the lawful and legal owners of 00-37 Ghuntas of Survey No.95. Therefore, prime facie, the Applicants/Siyal Brothers had a valid cause of action to seek a declaration of 00-37 Ghuntas if not 1-37 Acres. In the facts and circumstances of the case, the Plaint could not be rejected under Order 7 Rule 11 CPC.

8. Applicants/Siyal Brothers also claimed possession of 01-37 Acres in Survey No.95 in the Plaint, and that Respondent Nos.1 to 3 were wrongfully occupying their Suit Land. Once again, it was the Applicants/Siyal Brothers' case to prove how much area or the location at the site that the Private Respondents occupied the portion of their Suit Land (i.e. of the Applicants/Siyal Brothers), be it either 1-37 Acres or 0-37 Acres in Survey 95. This could have been established only by leading cogent evidence. Yet, with the entire Plaint rejected, the Applicants/Siyal Brothers were also denied the ability to prove their possession case.

9. In view of the above, the impugned Order and Judgment of the two Courts, as the case may be, dismissing the Applicants/Siyal Brother's F.C. Suit No.52/2020, constituted an illegality and material irregularity. Accordingly, the trial court's Order dated 01.09.2021 and the Appellate Court's Judgment and Decree dated 27.01.2023 and 01.02.2023 are hereby set aside. The trial court is directed to decide F.C. Suit No.52/2020 on merits in accordance with law after giving notice to the unserved Defendants, Examination of Parties and Settlement of Issues, etc..

10. The observations made herein are for the purpose of deciding this Revision and may not be relied upon by the trial court or otherwise influence proceedings in FC Suit No.52/2020. The said suit is to be decided exclusively based on evidence recorded and hearing of arguments of the parties in the said suit.

11. The parties are left to bear their own costs.

Abdul Salam/P.A\*

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