

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision Application No. S-39 of 2022**

*(Zamir Hussain & others Vs. Abdul Khalique & others)*

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.
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1. For hearing of main case.
2. For hearing of CMA No.235/2022.

**Date of hearing: 29-04-2024.**  
**Date of order : 06-05-2024.**

*Mr. Mushtaque Ahmed Shanani, advocate for the applicants.*  
*Mr. Mian Mumtaz Rabbani, advocate for private respondent Nos. 1 to 3.*  
*Mr. Ali Raza Baloch, Assistant Advocate General for respondents No. 4 to 7.*

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**ORDER**

**Adnan-ul-Karim Memon J:-** The Applicants are asking for setting aside the Judgment dated 16.12.2021 and Decree dated 23.12.2021 passed by the learned Additional District Judge, Sukkur in Civil Appeal No.97 of 20215 whereby the learned Presiding Officer while dismissing the said appeal maintained the judgment and decree dated 18.5.2021 passed by learned Senior Civil Judge, Rohri in F.C. Suit No. 47 of 2019.

2. The precise case of the applicants is that the land measuring 18-03 acres situated in Deh Januji Taluka Salehpat was granted to their grandfather, who named his brother Gulsher for such mutation. It is urged that both paid installments regarding suit land and after obtaining the grant, they equally shared suit land. Thereafter respondents No.1 and 2/plaintiffs mortgaged the documents of the suit land at the bank and obtained a loan amount. On demanding the documents of the suit property, the respondent No.1 and 2/plaintiffs kept, the father of the applicants on hollow hopes, but they didn't abide by their promise, meanwhile father of respondent No.1 and 2/plaintiffs passed away. Thereafter respondent No.1 and 2/plaintiffs got the record mutated in their favor and kept the applicants on hollow hope. Thereafter they demanded khata from the brother

of respondent No.1 and 2/plaintiffs namely Aachar, who allowed the subject land to the applicants, being co-sharer. Thereafter they approached Mukhtiarkar Revenue for such mutation, who informed them that khata could not be mutated in the name of the applicants as they were/are not legal heir of deceased who left behind the subject property; and such Sale deed or agreement if any executed between the parties before the death of deceased or any of the legal heirs, has not been brought on revenue record. They being aggrieved by the inaction of the respondents filed a Civil suit for specific performance before the trial court which was satated to be dismissed and an appeal has been preferred which is reported to be pending adjudication.

3. The case of the respondents No. 1 & 2 /plaintiffs is that they inherit suit property i.e from survey No. 1118 to 1124 total admeasuring (18-3) situated in Deh Januji Taluka Salehpat. As per respondent No.1 and 2/plaintiffs, the suit property was granted to their father namely Gulshair in the year 1969 and such record of rights was maintained vide revenue entry No.321 of Deh form VII-B dated: 30-07-1999. It is urged that after the death of their father record of rights was mutated in their favor vide revenue entry No 710 dated: 11-05-2009; thereafter, they privately partitioned the suit property property as per Sharia rule, however in the intervening period, a dispute arose between brothers, and resultantly plaintiff No.1 sold out his share to respondents/defendant No. and 9 in the civil suit. It is stated that the the applicants illegally occupied the whole suit property. Thereafter they approached SSP Sukkur against the illegal act of the applicants/defendants, and they again approached Revenue officers for proper partition of suit property, Thereafter Khata of the suit property in respect of the share of respondent No.1/plaintiff No.1 was mutated in favor of applicant/defendant No.9, however dispute continued to perpetuate resulttely the respondents No.1 & 2/plaintiffs filed suit for Declaration, Possession through Partition, Mandatory and Permanent Injunction with recovery of mesne profit against the applicants/defendants No.9 to 16 seeking declaration that the respondents No.1 & 2/plaintiffs. Mst. Zadi, applicant No.2/defendant No.9 alongwith other persons namely Muhammad Hashim, Hadi Dino, Gulab, Abdul Majeed, Gulbahar, Niaz Muhammad, Sardar Dino, Faiz Muhammad, and Sher Muhammad were/are co-owners/co-sharers in the suit land with further declaration against applicants/defendants except applicant No.2/defendant No.9 that they

were/are not entitled to retain illegal possession upon the shares from the suit land and they may be declared illegal occupants and liable to pay mesne profit at the rate of Rs 50,000/- per acre per year from the year 2014 till the possession is handed over to the respondents No. 1 & 2/plaintiff and Mst. Zadi and further declaration for partition and demarcation of the suit land between the co-owners with consequential relief of possession and permanent injunction. The applicants/defendants No. 9 to 16 had denied the contents of plaint, claiming to be co-owners in the suit land with the respondents No1 & 2/plaintiffs. The subject suit was decreed vide judgment and decree dated 18-05-2021 and the Civil Appeal No. 97 of 2021 was preferred by the applicants before the IInd Additional District Judge Sukkur, which was also dismissed vide judgment dated 16-12-2021 and decree 23-12-2021. An excerpt wherof is reproduced as under:-

POINT NO.2 Upshot, of above discussion, is that the impugned Judgment and Decree dated 11.05.2021 passed by the learned Senior Civil Judge, Rohri in F C Suit No 47/2019 Re- Abdul Khaliq & another V/s PO Sindh & Others, whereby the suit of the respondents No 1 & 2/plaintiffs was decreed with no order as to costs, is legal and proper which does not requires interference by this Court and the same is hereby maintained and consequently the present appeal is hereby dismissed, with no order as to costs"

4. Learned Counsel for the Applicants has argued that the judgments and decrees passed by the courts below are against the facts, law, and equity; and that the learned appellate Court has committed gross illegality while not framing points for determination in the judgment and erroneously concurred with the view point of the learned trial Court. Learned counsel referred to the memo of plaint of the respondents No. 1 & 2 and submitted that the trial Court erroneously held the plaintiffs entitled for the relief(s) claimed, though the plaintiff's prayer was vague, thus the decision of the learned trial Court is against the law. Learned counsel further submitted that the plaintiffs failed to establish their entitlement through evidence on the premise that the applicants were/are in possession of the suit property since long through sale agreement, as such the suit ought not to have been decreed. He further submitted that the issue No. 4 was erroneously framed and wrongly held that there was no dispute between the parties. He next argued that due to land grant policy, the land was liable to be granted to one person and for that reason their father gave his consent in favour of Gulshair, so land was granted in his name, but lateron same was equally divided between them and after the demise of Gulshair private partition of the suit land amongst his legal heirs

were made at the extent of (0.50) paisas i.e 9.015 acres while remaining 0.50 paisas i.e 0.9.015 acres remained in their possession and Muhammad Achar transferred his share from suit property in his name, which was in their possession through registered sale deed No. 1199 dated 09-12-2014 and he also sold out his entire share to one Sardar Bux; that the land bearing 2.05.5 acres were transferred by in favour of applicant Zamir Hussain in view of the land which was actually belonged to his grandfather and no sale consideration was received by him and they are in possession of the suit land since its private partition made between Gulshair and Muhammad Piniyal as such no cause of action has accrued to the plaintiffs to file the suit, which was/is liable to be dismissed.

5. At this I remind the learned counsel for the applicants that applicant Zamir Hussain admitted in his cross examination that he did not produced any documentary proof which may show that his grandfather paid instalments of suit land, he also admitted that he had not produced any document which may show that his grandfather and Gulshair got allotted suit land jointly. He also admitted that he failed to produce any document which shows that his grandfather and his father in their life time moved an application against Gulshair about not providing Khata of suit land. In absence of the documentary proof, it is difficult to infer against the private respondents as they substantiated their claim through cogent evidence and remained successful in both the Forums and now at this stage the applicants state that they have filed suit for Specific Performance of Contract against the private respondents for that learned counsel representing the private respondent state that the said suit has been dismissed and appeal is stated to be pending. He further submitted that the decree has been executed and only issue of mesne profit in instalment is pending before the Execution Court vide order dated 07-04-2023, as such this Revision Application has become infructuous and is liable to be dismissed. Finally learned Counsel for the private respondents has supported the impugned judgments and decrees passed by the learned courts below.

6. I have heard learned counsel for the parties and gone through the record available before me.

7. It appears from the findings of the trial court on the subject issues that respondents/plaintiffs substantiated their claim on the suit land through documentary evidence by producing revenue entry No 321 of Village Form VII B and entry No.710 wherein Foti Khala had been changed in their name. It is now matter of record the subject land was allotted to the father of respondents No.1 & 2/plaintiffs alongwith Mst. Zadi and respondent No 3/defendant No.8 and they were shown as co-owners/co-sharers of suit property. As per evidence recorded by the trial court, the applicants/defendants in the suit had failed to produce any authentic oral as well as documentary evidence to prove their claim that their grandfather was owner of the suit land alongwith father of respondents No1 & 2/plaintiffs. Besides the applicant Zamir Hussain admitted in his cross-examination that he did not produce any documentary proof which may show that his grandfather paid instalments of suit land, he also admitted that he had not produced any document which may show that his grandfather and Gulshair got allotted suit land jointly. He also admitted that he failed to produce any document which shows that his grandfather and his father in their life time moved an application against Gulshair about not providing Khata of suit land. It appears from the record that the respondent No:3/defendant No.8 has alleged that he transferred his due share from suit land in favour of applicant No. 1 to 6/defendants No.9 to 14 without any sale consideration after considering their legitimate right and shares but his versions have been shown to be contradictory with the contents of registered sale deed in which it is mentioned that he sold out his share to them in consideration of Rs 40,000/- and the trial disbelieved the narration with the findings that the applicant/defendants failed to prove that they were given their due shares by the respondent No. 3/defendant No.8 without any consideration.

8. The trial court has also discussed all the issues exhaustively and concurred by the appellate court with certain reasons, with regard that the factum that respondent No. 1/plaintiff No 1 had sold out 3-0 acres and respondent No.3/defendant No.8 sold out 03-01 acres to private person namely Muhammad Hashim, Shahnawaz, Ghazi Dino, Gulab, Abdul Majeed, Gulbahar, Niaz Muhammad, Sardar Dino, Faiz Muhammad and Sher Muhammad but the respondents No. 1 & 2/plaintiffs had not produced any documentary evidence to prove that the respondent No. 3/defendant No.8 and 9 also sold out 03-01 acres

from his due shares in suit land in favour of above private persons and the findings came that this factum could only be considered as co-sharers and co-owners in the suit land to the extent of 3-0 acres which was sold by respondent No 1/plaintiff No 1 from his due shares. It has also come on record with the findings of the trial court that the respondent No 1/plaintiff No 1 had sold 2-0 acres to applicant No 2/defendant No. 9 namely Shahnawaz and it was also admitted that respondent No 3/defendant No. 8 had sold 02-05 5 acres from his due share in suit property to the applicant No 1/defendant No.10 through registered sale deed dated 09. 12 2014, and the trial court held that “therefore the appellant No 2/defendant No.9 is co-sharer of 02-00 acres and appellant No. 1/defendant No. 10 is co-sharer in respect of 02-05.5 acres in suit land, therefore the possession of appellant No,2/defendant No.9, appellant No 1/defendant No 10 and appellants No.3 8/defendants No. 11 to 16 to the extent of their shares 04-05.5 acres is legal and lawful, while their possession over remaining area exceeding from their shares obtained by way of purchase is illegal and they are liable to pay mesne profit of such exceeding land in their possession and the suit land is also liable to be demarcated and partitioned amongst the co-sharers viz Respondents No. 1 & 2/plaintiffs, Mst Zadi, appellant No 2/defendant No.9, appellant No 1/defendant No 10 and private persons Muhammad Hashim, Shahnawaz, Ghazi Dino, Gulab, Abdul Majeed, Gulbahar, Niaz Muhammad, Sardar Dino, Faiz Muhammad and Sher Muhammad”

9. Keeping in view the the evidence brought on record by the trial court and duly concurred by the appellate court, the contentions of the applicants as agitated cannot be appreciated in deep at the revisional stage for the reason that revision is a matter between higher and subordinate Courts, and the right to move an application in this respect by the Applicant is merely a privilege.

10. The provisions of Section 115, C.P.C., have been divided into two parts; the first part enumerates the conditions, under which, the Court can interfere and the second part specifies the type of orders which are susceptible to Revision. In numerous judgments, the Supreme Court has been pleased to hold that the jurisdiction under Section 115 C.P.C. is discretionary.

11. In principle, the applicants throughout the proceedings have lost their case up to the level of the appellate stage, and at the revisional stage, they have agitated the grounds already exhausted by them and properly adjudicated by the competent

forum, thus in my view, no perversity and illegalities have been pointed out in the findings of the competent forums.

12. I have also noted that in the present case, there is no material placed before me by which I can conclude that Impugned judgment and decrees throughout the proceedings have been erroneously ordered by both the Courts below, therefore, no ground existed for re-evaluation of evidence, thus, I maintain the Judgment(s) and Decree(s) passed by the Courts below, having been passed under parameter of law require no further interference of this Court.

13. In the light of above facts and circumstances of the case, I am of the view that this Court in its Revisional Jurisdiction cannot interfere in the concurrent findings recorded by the two competent Courts below and I also do not see any illegality, infirmity, or material irregularity in their Judgments warranting interference of this Court. Hence, the above Revision Application is found to be meritless and is accordingly dismissed along with the pending application(s).

**J U D G E**