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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Appln. No. S- 11 of 2009.

Abdul Rehman Mahar.Applicant

Versus

Province of Sindh & others.Respondents

Syed Aijaz Ali Shah, Advocate for the applicant.

Messrs Prem Chand and Safdar Ali Ghouri, Advocates for respondents No. 6 to 8.

Mr. Ali Akbar Kalhor, State Counsel.

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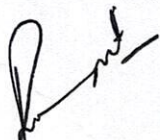
Date of hearing: 10.11.2015

Date of Judgment: 10.11.2015

J U D G M E N T

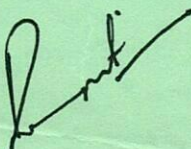
ZAFAR AHMED RAJPUT, J- This civil revision under Section 115 C.P.C., is directed against the judgment and decree dated 30.03.2009 and 07.04.2009, respectively whereby the learned 1st Additional District Judge, Shikarpur, while allowing Civil Appeal No.13/2005 (Re: Dr. Iqbal Nabi and others vs. Province of Sindh and others), modified the judgment and decree dated 24.12.2004 and 01.01.2005, respectively passed by the learned 1st Senior Civil Judge, Shikarpur, in F.C. Suit No.15/1995.

2. Precisely stated, the facts of the case are that the respondents No.6 to 8/ plaintiffs filed a civil suit bearing No.15/1995 before the Court of 1st Senior Civil Judge, Shikarpur against the applicant/ defendant No.5 and respondents No.1 to 5/ defendant Ns. 1 to 4 and 6, alleging therein that, one Mian Abdul Ghafoor owned agricultural



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land bearing S. No. 516 (3-24) acres, situated in Deh Rais Wah, Tapo Baid, Taluka and District Shikarpur ("the Suit Land"), which he sold out to their predecessor, namely, late Nabi Bux Soomro, along with land bearing S. No.130 (3-04) acres, under registered sale deed dated 31.5.1967 for the consideration of Rs.2000/- and handed over its possession to him; later after completing the requisite formalities the revenue record of the suit land was mutated in his favour, vide Dakhal Kharij entry No.17466, dated 19.4.1977. It has further been averred that Waheed Ahmed Jhullan, the respondent No.6/ defendant No.5 fraudulently and with connivance of revenue staff got above mentioned both the survey numbers mutated in his favour on showing that late Nabi Bux Soomro had sold out the land to him through statement of sale dated 16.2.1984 before the Mukhtiarkar Shikarpur and; thereafter, he sold out the suit land to Abdul Ghaffar and others illegally under a registered sale deed, and on the basis thereof the record of rights was mutated in their names. Being aggrieved by the illegal mutation entries, late Nabi Bux Soomro moved an application to the respondent/ defendant No.3 (Deputy Commissioner, Shikarpur) for the cancellation of mutation and ultimately mutation made in favour of Abdul Ghaffar and others was cancelled and the suit land was restored in the name of late Nabi Bux Soomro. It is the case of the respondents No.6 to 8 that during the pendency of the application of late Nabi Bux Soomro before respondent No.3, the applicant/ defendant No.5 moved an application to the respondent No.3 challenging the sale of suit land and the mutation entry dated 19.4.1977



in favour of late Nabi Bux Soomro, which was allowed by him vide order dated 17.10.1991. Against that order, late Nabi Bux Soomro preferred an appeal to the respondent/ defendant No.2 (Additional Commissioner, Larkana), who vide order dated 19.10.1994 advised him to seek his remedy before the competent Civil Court. Hence, the respondents No.6 to 8/ plaintiffs filed the suit for declaration, permanent and mandatory injunction with the following prayers:

- (i) *To declare that the order dated 17.10.1991 passed by the defendant No.3 and the order dated 19.10.1994 passed by the defendant No.2 are absolutely illegal, void, ultra vires, mala fide against the principles of natural justice without legal force and nullity in law;*
- (ii) *To restrain the defendant No.4 permanently from implementing the order dated 17.10.1991 of the defendant No.3 and the defendant No.5 be restrained from interfering with the lawful possession of the plaintiffs over the suit land;*
- (iii) *To direct the defendant No.4, Mukhtiarkar, to mutate the record of rights of the suit land in the name of plaintiffs;*
- (iv) *To award the costs of suit*
- (v) *To grant any other equitable relief, which the Court deems fit and necessary in circumstances of the case.*

3. The suit was admitted; summons were issued and served upon the defendants but only the respondent No.5/ defendant No.6 contested the suit by filing his written statement wherein he has claimed that he had purchased the suit land from late Nabi Bux Soomro through statement of sale dated 16.2.1994 and such mutation was effected in revenue record not by plying fraud but in accordance with law. He has further claimed that the suit land was transferred in favour of Abdul Ghaffar and others legally. He has also alleged that the order of Deputy Commissioner dated 17.10.1991 was legal. He has also

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raised legal objections with regard to the maintainability of the suit claiming the same barred under sections 42, 54 and 56 of Specific Relief Act; section 11 of Revenue Jurisdiction Act and section 172 of Land Revenue Act and finally he prayed for the dismissal of suit.

4. From the pleadings of the parties, the learned trial Court settled following issues:

1. *Whether the suit is not maintainable under law?*
2. *Whether the suit is barred under Sections 42, 54 and 56 of Specific Relief Act?*
3. *Whether suit is barred under Section 11 of Sindh Revenue Jurisdiction Act and Section 172 of W.P. Land Revenue Act?*
4. *Whether the disputed land bearing S. No. 516 area 3-24 in deh Rais Wah was originally belonged to Mian Abdul Ghafoor son of Mian Abdul Rahim who sold out the same alongwith S. No. 130 (3-04) acres to late Nabi Bux Soomro, under registered sale-deed dated 31.5.1967 and handed over the possession to him/ purchaser and revenue record was mutated in the name of late Nabi Bux?*
5. *Whether Waheed Ahmed Jhullan the defendant No.6 had got mutated both the survey numbers viz. 516 and 130 in his name fraudulently and again transferred in the name of Abdul Ghafoor and others under registered sale deed illegally?*
6. *Whether the order of defendant No.3 dated 17.10.1991 and order dated 19.10.1994 of the defendant No.2 while canceling the entries in the revenue record entered in the name of Nabi Bux the father of plaintiffs are illegal, void, malafide and nullity in law?*
7. *What should the decree be?*

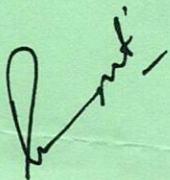
5. At the trial, respondent No.6/plaintiff No.1 Dr. Iqbal Nabi has been examined as Ex.21, who produced the original registered sale deed dated 31.5.1967 as Ex-21/A, record of rights as Ex.21/B, record of rights executed in favour of Waheed Ahmed as Ex.21-C, Form VII executed by Waheed Ahmed in favour of Abdul Ghaffar and others as

Ex.21/D, order of Deputy Commissioner dated 06.8.1991 as Ex.21/E, order of Deputy Commissioner dated 17.10.1991 as Ex.21/F, order of Additional Commissioner Larkana Division dated 19.10.1994 as Ex.21/G.

6. Respondent No.6/ defendant No.6 Waheed Ahmed has been examined as Ex.115, who produced photocopy of statement as Ex.115/A. D.W Ghulam Nabi and D.W Deen Muhammad have been examined as Ex.116 and Ex.117, respectively.

7. After hearing the arguments of the parties, the learned trial Court decided the issues No.1 to 5 in favour of respondents No 6 to 8/ plaintiffs; issue No.6 against them and, while deciding issue No.7, partly decreed the suit of the respondents No. 6 to 8 /plaintiffs to the extent of S. No. 130, vide judgment and decree dated 24.12.2004 and 01.01.2005, respectively. Respondents No. 6 to 8 /plaintiffs preferred Civil Appeal No. 13 of 2005 before the learned District Judge, Shikarpur seeking modification in the said judgment and decree by decreeing the suit in its entirety, which was heard and allowed by the learned 1st Additional District Judge, Shikarpur, vide judgment and decree dated 30.03.2009 and 07.04.2009, respectively, which has been impugned by the applicant/ defendant No.5 in this civil revision application.

8. I have heard Mr. Syed Aijaz Ali Shah, learned counsel for the applicant/ defendant No. 5 and M/s. Prem Chand and Safdar Ali



Ghouri, learned counsel for the respondents No. 6 to 8/ plaintiff and perused the material available on record.

9. The learned counsel for the applicant/ defendant No.5 has mainly contended that the judgment of the appellate Court does not fulfill the conditions of Order XX, rule 5 and Order XLI, rule 31, C.P.C; that the appellate Court while reversing the findings on issue No.6 did not apply its judicious mind; that the order dated 17.10,1991 passed by Deputy Commissioner, Shikarpur cancelling the entries kept in favour of late Nabi Bux Soomro in respect of S. No. 516 and restoring it in favour of applicant was comprehensive in nature, thus could not be adjudged illegal and void, but the learned Appellate Court negated the same without considering the evidence on record, thus its judgment, termed as order, and decree is liable to be set aside and that of learned trial Court maintained.

10. Conversely, learned counsel for the respondents No. 6 to 8/ plaintiffs supporting the judgment of appellate Court has maintained that the entry in favour of Nabi Bux Soomro, predecessor of respondents No. 6 to 8, was kept on record of right on 19.4.1977 on the basis of registered sale deed dated 31.5.1967, which was cancelled by the Deputy Commissioner, Shikarpur, on the application of applicant, after 14 years on 17.10.1991, ignoring the settled principle of law that the mutation attested on the basis of a registered sale deed cannot be subsequently cancelled till the existence of such sale deed. He has further contended that the trial Court though decided the material

issue of ownership and possession of the suit land i.e. issue No. 4 in favour of respondents No. 6 to 8 but erroneously decided the issue No.6 against them; therefore, the appellate Court rightly allowed the appeal of respondents No. 6 to 8 and thereby modified the judgment and decree of trial Court.

11. The learned State Counsel has contended that the dispute regarding the title of the suit land pertains to private parties, wherein no interest of government is involved.

12. I have given due consideration to the contentions of learned counsel for the parties.

13. So for the contention of learned counsel for the applicant with regard to the non-fulfilling of the conditions of Order XX, rule 5 and Order XLI, rule 31, C.P.C., is concerned, it may be observed that total seven issues were framed by the trial Court, out of which only one issue i.e. issue No.6 was decided against the respondents No.6 to 8 and against that the civil appeal was preferred by them, which was allowed by the appellate Court through the judgment, impugned by the applicant in this civil revision application. Therefore, the judgment of appellate Court is based on the reappraisal of facts and evidence, and resolution of issue No. 6 only; which cannot be termed to be in violation of said provisions of C.P.C.

14. As regard other contentions of learned counsel for the applicant, it may be seen that the trial Court decided issue No.4 in

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respect of ownership and possession of suit land in favour of respondents No. 6 to 8 holding that the suit land i.e. 3-24 acres in S. No. 516 along with and 3-04 acres land in S. No. 130 was sold out to late Nabi Bux Soomro by virtue of registered sale deed dated 31.05.1967 and possession was handed over to him. But the trial Court decided the issue No.6 against the respondents No. 6 to 8 by observing, without assigning reasons, that the orders dated 17.10.1991 and 19.10.1994 passed by the Deputy Commissioner Shikarpur and Additional Commissioner, Larkana, respectively are not be termed as illegal, void and nullity in the eyes of law. When the trial Court declared the father of the respondents No.6 to 8 as owner of the suit land by virtue of registered sale deed in answering the issue No.4 as "affirmative", the orders of aforementioned revenue officers should have been declared as illegal, void, unlawful by answering the issue No. 6 in "affirmative" too. Therefore, the appellate Court observing this state of facts rightly reversed the finding of the trial Court on issue No.6 and modified the decree.

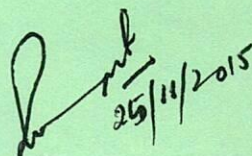
15. It is now well settled principle of law that the presumption of truth is attached to the documents registered under Registration Act, 1908 under Article 85 (5) of Qanun-e-Shahadat Order, 1984 and the mutation in record of rights remains intact till the time the registered document is in existence. The genuineness and authenticity of a registered document can be challenged through a civil suit and it is the Civil Court, not the Revenue Court, which is competent to declare the same as fake, forged, fabricated and invalid etc. The revenue officers

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also have no jurisdiction to cancel the long-standing entries mutated in record of rights on the basis of a registered sale deed.

16. In the light of what has been discussed above, I do not find any justification to interfere with the well-reasoned judgment of learned appellate Court. The instant civil revision application is accordingly dismissed with the listed application.

17. Above are the reasons of my short order dated 10.11.2015, whereby instant civil revision application was dismissed.

Handwritten signature and date: 25/11/2015

JUDGE