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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Civil Revision No.77 of 2003

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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For Hearing of main case.

Applicant: Aijaz Ali S/o Nasrullah & Others

Respondents: Abdul Rauf S/o Abdul Qadir & Others

Mr. Gulab Rai C. Jessrani, Advocate for the applicant.

Mr. Abdul Hameed Khan, Advocate for R.No.1 to 24.

Mr. Ali Akbar Kalhorro, State Counsel.

Date of hearings: 02.10.2017
Date of Judgment: 02.10.2017

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Civil Revision, the applicant has impugned judgment dated 17.5.2003 passed by VII-Additional District Judge, Larkana in Civil Appeal No.62 of 2002, whereby, the appeal has been allowed and Suit of Respondents has been decreed by setting aside judgment and decree dated 27.2.2002 passed by IInd Senior Civil Judge, Larkana in F.C Suit No.153 of 1988.

2. Precisely, the facts as stated are that, the respondents filed a Suit for declaration and permanent injunction by claiming ownership and possession of agricultural land bearing S.Nos.362, 274, 612, 601/2 and 263 having a total area of 9-16 acres situated in Deh Wah Nabi Bux, Taluka Larkana, which according to the respondents is their ancestral property left by deceased Abdullah Qureshi, who had purchased the same through registered sale deed dated 24.07.1944 from one Nasrullah (since deceased) and deceased Lal Bux and Mst. Hurmat Khatoon where-after the entry was also mutated in the record of rights. It is their precise case that they remained in possession through the lifetime of deceased Abdullah and also thereafter when a fortnight before filing of Suit in the year 1988, the applicants claimed ownership in the property to the extent of 41 paisa share on the basis of some entry in the record of rights and they also claimed possession. The respondents then approached the concerned Mukhtiarkar and tried to obtain certified copies of such purported entry in favour of the

applicants, and upon refusal, instant Suit was filed. It is their claim that the entire share in the Suit property was sold out by the predecessor-in-interest of applicants in favour of their deceased father long time ago through registered sale deed in the year 1944. Written statement was filed wherein the applicants denied the assertion of the respondents and contended that it was only the share of Lal Bux and Mst. Hurmat Khatoon to the extent of 44 paisa which was sold out to the respondents and according to them Nasrullah had no share in the said Survey Number, and, therefore, could not have sold out the remaining 56 paisa share to Abdullah. Upon filing of the written statement the learned trial Court settled the following issues:

01. Whether plaintiffs are exclusive owners of land bearing S.Nos.362, 274, 612, 601/2 and 263 total area 9-16 acres situated in deh Wah Nabi Bux taluka Larkana ?
02. Whether plaintiffs are in exclusive possession and enjoyment of Suit land ?
03. Whether subsequent entries of transfer Suit land are illegal, Malafide and have no effect ?
04. Whether defendants have no any right in Suit land ?
05. Whether plaintiffs are entitled for relief claimed ?
06. Whether Suit is not maintainable at law ?
07. What should the order be ?

3. The respective evidence was led by the parties and the respondents examined their attorney Hakim Ali, who produced General Power of attorney Ex: 130, true copy of registered sale deed Ex: 131 and plaintiff No.4 / respondent No.4 Abdul Jabbar as Ex:13. The defendants/respondents examined Irshad Ali Ex: 134, who produced true copies of Record of Rights Ex: 135, 136, 137, 138, 140, registered sale deed Ex: 139 and orders of Assistant Commissioner Larkana as Ex: 141 and 142). The trial Court after appraisal of the evidence came to the conclusion that the Suit was filed on the basis of a defective power of attorney and, therefore, the evidence led on behalf of the respondents is not admissible in law and accordingly the Suit was dismissed. The respondents preferred Civil Appeal No.62 of 2002 and the learned appellant Court framed the following points for determination:

01. Whether the evidence led by plaintiff/appellants through their attorney Hakim Ali can be brushed aside on the reason in given by the learned trial Court ?

02. What was the legal effect of the sale deed dated 24.07.1944 ?
03. Whether the sale deed dated 24.07.1944 was executed by the vendors, thereof, when the other LRs of late Gul Hassan were alive and had inherited his property ?
04. Suit land were dispossessed of part of it in 1992 ?
05. Whether the defendants/respondents No.1 to 3 were in possession of part of Suit land since Bhai Khan, Latif Khatoon and Khanzadi inherited their shares ?
06. What should the Judgment be ?

The learned appellate Court after appraisal of the evidence was pleased to set aside the findings of the learned trial Court and through impugned judgment dated 17.05.2003, appeal has been allowed by decreeing the Suit, hence instant Civil Revision Application.

4. Learned Counsel for the applicant has contended that the Appellate Court was not justified in setting aside the judgment and decree of the trial Court as the same was passed on the basis of proper appreciation of evidence; that the Suit was filed on the basis of a defective power of attorney whereas the witness of the plaintiffs while confronted in this regard was not able to discharge the burden; that the trial Court came to a just and fair conclusion that evidence of attorney on the basis of a defective and invalid power of attorney cannot be admitted for decreeing the Suit; that Sale deed of the plaintiffs has not been fully proved; that only 44 paisa share could have been sold to them; that applicants are owners and the same is justified by entries in the Revenue Records which has gone unchallenged. In support of his contention, he has relied upon the cases reported as *Nasir Abbas v Manzoor Haider Shah (PLD 1989 SC 568)*.

5. On the other hand learned Counsel for the respondents has contended that the Appellate Court was fully justified in setting aside the trial Courts findings as cogent reasons were available; that Suit could not have been dismissed on the premise that the power of Attorney was defective as one of the Plaintiffs namely Abdul Jabbar also led the evidence; that the respondents have never denied and challenged the Sale deed of respondents but belatedly have come up to dispute the same to the extent of certain percentage which itself is an admission of the Sale deed and its existence since 1944; that in view of Article 102 of Qanun-e-Shahadat, 1984, no further evidence was required to be led by the respondents in the given facts; that no positive or oral evidence was led by the applicants so as to get any favorable finding from the Court; that an Entry in the Revenue Record is not a

title to a property; that even otherwise the Sale deed is of the year 1944 whereas, the entries being relied upon are much later in time; that respondents were always in possession until 1992 when the same was taken over unlawfully on the basis of a mutation entry in the Revenue Records. In support of his contention he has relied upon the cases of *Rasta Mal Khan v. Nabi Sarwar Khan (1996 SCMR 78)* and *Muhammad Shamim v. Mst. Nisar Fatma (2010 SCMR 18)*.

6. I have heard both the learned Counsel and perused the record.

7. The facts have already been stated hereinabove and need not be reiterated. It appears that the respondents claim ownership of Suit property i.e. Survey Nos. 362, 274, 612, 601/2, & 263 having a total area of 9-16 Acres situated in Deh Wah Nabi Bux, Taluka, Larkana, being their ancestral property left by deceased Abdullah Qureshi on the basis of registered sale deed dated 24.7.1944 executed in his favor Defendant No.1 (Nasrullah since deceased), Lal Bux and Mst. Hurmat and upon execution of sale deed the mutation was also recorded by the Revenue Authorities. According to them somewhere in 1988 (as per the plaint) applicants demanded their share in the property and also asked them to vacate the same, therefore Suit was filed for declaration and injunction. On the other hand case of applicants is that the respondents are only owners of 44 paisa share which was sold by Lal Bux and Hurmat whereas; the share of Nasrullah was not sold as he never inherited any share. This is the precise dispute between the parties which needs to be resolved on the basis of record available before this Court and to see that whether any case is made out by the applicants to exercise the limited jurisdiction available to this Court under Section 115 CPC or not.

8. Insofar as the issue regarding power of attorney being defective is concerned, it appears that the learned trial Court though framed as many as 7 issues, including the issue of maintainability of the Suit; however, while dilating upon issue No.1 it came to the conclusion that since power of attorney is defective, therefore the Suit is incompetent as well as the evidence led on behalf of the plaintiffs, and as a consequence refused to answer all the issues except Issue No.7 as above and dismissed the Suit. The said finding of the trial Court has been reversed and set aside by the Appellate Court and I am fully in agreement with the said findings of the Appellate Court. Firstly the trial Court had miserably failed to appreciate the evidence led on behalf of the plaintiffs as one of the witnesses was also a plaintiff, and therefore at least to his extent the Suit could not have been dismissed as being

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filed on the basis of a defective power of Attorney. Secondly, the trial Court further observed that ***"I have examined the signatures of all the plaintiffs and I found that all the signatures put on this attorney power by one person on different type"***. Now this Court fails to understand as to how such definite finding has been recorded by the trial Court, as even the hand writing experts who are supposed to be specialists in this job do not give such definite findings without a specimen signature for comparison. Here the trial Court on its own has come to this finding which is apparently absurd and cannot be appreciated by this Court as it has no basis in support. Mere presumption cannot be allowed to prevail. After coming to this conclusion, the trial Court has altogether discarded the entire evidence of the plaintiffs as being inadmissible, notwithstanding the fact that one of the plaintiffs namely Abdul Jabbar (Plaintiff No.4) had himself entered into the witness box and was examined. This alone is sufficient to discard the finding of the trial Court on this point, whereas, the learned Appellate Court has additionally recorded cogent reasons to disagree with the trial Court and this Court is fully in agreement with such findings and accordingly it is held that Suit was filed competently on the basis of a valid power of attorney.

9. Coming to the other point for consideration i.e. what is the legal effect of the Sale Deed dated 24.7.1944?. At the very outset it may be observed that it has been admitted that there was a sale deed; and its existence has not been denied. The only denial is to the extent of share sold to the respondents i.e. whether the entire land was sold to the predecessor in interest of the respondents or it was only to the extent of 44 paisa (of Lal Bux and Mst. Hurmat Khatoon) as is being claimed by the applicants. It is not in dispute rather it is the case of the applicants that original owner of the property in question was Gul Hasan whereas; Lal Bux, Nasrullah and Mst. Hurmat Khatoon were his sons and daughter respectively. The applicants admit that insofar as Lal Bux and Mst. Hurmat Khatoon are concerned, they inherited their share in the Suit property, but Nasrullah did not. This stance has gone unexplained and is the root cause of the dispute between the parties. The applicants not only admit this fact but also say that for this very reason only a share of 44 paisa was sold to respondent's father, and to that extent the sale deed is not denied but admitted, whereas, no share of Nasrullah existed and therefore could not have been sold out. This goes without any rationale and or evidence on record. If two siblings are entitled to inherit the share in their fathers property, then how and in what manner the other child can be left out. There is a big question

mark to this and the applicants have miserably failed to satisfactorily respond to this issue. And this leads to an inescapable conclusion that no such stance is tenable and the entire share of the inherited property of Gul Hasan was sold to respondents.

It may also be appreciated that this document is 30 years old and a presumption of its existence is attached to it by virtue of Article 100 of the Qanun-e-Shahadat Order, 1984. Secondly, and admittedly it was never challenged. Not even part of it which is being disputed by the applicants. A very specific question was put to the learned Counsel for the applicants in this regard and he candidly conceded that till date there is no challenge to the existence of the sale deed nor even to the extent of 56 paisa share being claimed by the applicants. Now in this given situation, the onus had shifted to the applicants to prove that no such sale deed existed. Admittedly no such Suit was filed by them for seeking cancellation of the same, even though it came to their knowledge at least through filing of instant Suit. In that case the respondents were not supposed to prove the existence of their sale deed and the extent of share sold to them by the forefathers of applicants. Moreover, the sale deed was registered in 1944, whereas, the claim as set up by the applicants is only based upon the mutation entry. This was not a case wherein the applicants had sought cancellation of the sale deed of respondent's forefathers; rather they chose a remedy which by itself could not have been exercised for the simple reason that there still exists an alleged registered sale deed until a competent Court of law orders for its cancellation. Mere insertion of a mutation entry in their favor subsequently would not confer any title in the applicants.

10. It is by now a settled proposition of law that mere existence of a mutation entry in the revenue record does not confer any title to a party. Moreover, when the adverse party claims its ownership on the basis of a registered document, it has attached to it a presumption of correctness and genuineness. As stated the applicants have never challenged the existence of sale deed by filing any such Suit; though the sale deed was and / or in the knowledge of the applicants. In fact its existence is very much admitted and the only dispute is regarding selling share of Nasrullah. The Appellate Court has properly appreciated the evidence on record and after framing points for determination has come to a conclusion which appears to be correct in law and facts and I do not see any reason to interfere or disagree with such findings.

11. It may further be appreciated and as already discussed hereinabove that the respondents derive their title on the basis of a

with the fact that in this matter its existence is not denied and only the share is disputed. The applicants in this matter after expiry of their ancestors have come forward with a claim that they never sold out the property to the extent of Nasrullahs share. It is but surprising that no such claim was made earlier. Moreover, they never came before the Court to seek cancellation of the sale deed and instead approached Revenue department for redressal of their grievance,

14. It is settled law that a Mutation Entry in Revenue Record could neither create nor extinguish title to property as they are only maintained for fiscal purposes. See **Muhammad Ali v Hassan Muhammad (PLD 1994 SC 245)**. Further a right to title or ownership of any property depends entirely on the title i.e. source of acquisition of the right while an Entry in the Record of Rights is not the conclusive evidence of the right to ownership. See **Bahadur Khan v Qabool Ahmed (2005 CLC 1937)**. In the case of **Rasta Mal Khan v Nabi Sarwar Khan (1996 SCMR 78)**, the Hon'ble Supreme Court had the occasion to dilate upon the exercise of jurisdiction by the Civil Court in respect of an entry in the Revenue Record viz a viz Section 172 of the West Pakistan Land Revenue Act, 1967, which bars the jurisdiction of the Civil Court in such matters. The relevant finding is as under;

10. Regarding bar of jurisdiction of the Civil Court under section 172 subsection (2), clause VI of the, -West Pakistan Land Revenue Act, 1967 it may be pointed out that exclusion of jurisdiction of Civil Court relates to the correction of the entries made by the Revenue Officer in performance of his duty without touching the right of the persons in the land, but whenever such entries interferes with the rights of a person in the land record in the Record of Rights, and such person feels aggrieved, for correction of such entries he has to approach Civil Court for declaration under section 53 of the Act or in other words under section 42 of the Specific Relief Act both the relief available being of the same nature and identical. The dispute herein pertained to the nature of the transactions in the Suits for pre-emption based on the impugned mutation. The Suits were therefore rightly held triable by the Civil Court.

15. Reliance may also be placed on the case of **Ghulam Ahmed v Muzafara Begum (2011 YLR 2991)** wherein a somewhat similar situation was before the Court as the dispute between the parties was to the effect that one party was relying upon the Entry in mutation record, whereas, the other party was claiming ownership on the basis of a registered sale deed and it was its case that Mutation Entry has been altered and or amended without there being any proof of ownership. The observation of the learned Division Bench of the Baluchistan High Court is pertinent to the facts of this case and reads as under;

It is settled principle of law that mere mutation does not confer any right in any property on any one and the mutation entry raises a rebuttable presumption in favour of person in whose favour the same is made. The presumption is rebuttable and in the instant case the entry in the Revenue Record has been duly rebutted by the appellant-plaintiff, who is challenging the entry by producing cogent and confidence inspiring evidence contrary to mutation entry. In the instant case the presumption attached with the mutation entry in favour of predecessor of respondents-defendants stands rebutted through registered sale-deed dated 16-6-1920 in view whereof the respondents-defendants or their predecessor cannot be held as exclusive owner of the disputed property rather the appellant-plaintiff and the respondents-defendants/their predecessor are half owners of the disputed property in equal share. The Revenue Record reflects that the entry in the Revenue Record in the name of predecessor of respondents-defendants is a result of fraud and under the law fraud vitiates most solemn proceedings. Reliance in this regard is placed on the case of Muhammad Younus Khan v. Government of N.-W.F.P. reported as 1993 SCMR 618, wherein it was held that,

16. Insofar as the others issues between the parties are concerned, the same have been eloquently dealt with by the learned Appellate Court including the issue of taking over of possession from the respondents during pendency of some litigation between them and I am fully in agreement with such reasoning and the conclusion drawn in that regard and do not feel it necessary to record my own reasoning in support thereof.

17. The upshot of the above discussion is that the trial Court had miserably failed to appreciate the evidence properly and in appeal the Appellate Court has come to a proper and reasoned finding, whereas, this is not a case of misreading and non-reading of evidence led by the parties, nor of exercising any jurisdiction not vested in the Appellate Court, and therefore does not require interference by this Court while exercising its revisional jurisdiction.

18. Accordingly on 2.10.2017 by means of a short order instant Civil Revision Application was dismissed and the judgment dated 17.5.2003 passed by the Appellate Court in Civil Appeal No. 62/2002 was maintained. The above are the reasons thereof.

[Handwritten Signature]
 JUDGE
 5.10.2017