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ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
Civil Revision No. S- 38 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection 'A'
2. For Katcha Peshi.

27.10.2015

Mr. Rasool Bux "A" Soomro, advocate for the applicants.
Mrs. Najaf Shah Legal Heir of Respondent No.1 in person.


ORDER.

Salahuddin Panhwar J, Through instant revision application, applicants have challenged legality of judgment dated 30th January 2014; decree dated 06.02.2014 passed by learned 1st Additional District Judge, Larkana whereby judgment dated 22.3.2012 and decree dated 30.3.2012, passed by the learned 3rd Senior Civil Judge, Larkana, decreeing suit of the plaintiff, were stamped.

2. Precisely, relevant facts are that respondent No.1 filed suit for Declaration and Cancellation of registered sale deed in favour of applicants on the plea that she is daughter of late Syed Jeewan Shah hence is entitled to receive her share from the agricultural land left by her deceased father. It is further pleaded that her father was having two properties i.e. one house mutated in City Survey record and the other agricultural land about 32 acres.

3. Respondents No.1 and 2 filed written statements contending therein that they are bona-fide purchasers; in fact respondent No.1 (plaintiff) was adopted daughter of Syed Jeewan Shah and such plea was supported by other legal heirs by filing their separate written statement.

4. Learned counsel for the applicants *inter alia* contends that suit, filed by respondent No.1, was not competent to challenge the mutation wherein she was not shown as legal heir of deceased Syed Jeewan Shah. However, he admits that she is shown as legal heir while changing Foti Khata Badal in City




Survey record. On that account, he has argued that in fact that house was relinquished by other sharers in favour of her mother and respondent No.1. He further contends that suit is highly time barred. In fact, the property was purchased in 1989 but plaintiff shows that respondent No.1 got knowledge in 2002, even then she filed suit in 2006.

5. In contra, respondent No.1 present in person contends that she was approaching to the applicants with regard to her share. She insisted that she has been given her due right by the two courts below. Whereas remaining respondents have chosen to remain absent in spite of service as they were also declared *ex parte* before the trial Court.

6. Heard learned counsel for applicants, respondent No.1 and perused the record.

7. Before going into merits of the case, it is material to mention here that for interference in revisional jurisdiction, mere erroneous findings on question of fact or law is not sufficient unless it is *prima facie* established that such findings suffer from controversial defects, illegality or material irregularity.

8. After careful consideration of respective contentions, raised by learned counsel for applicants, as well as respondent No.1 herself, coupled with meticulous examination available on record it is *prima facie* evident that moot question in the instant matter was that of **status** of plaintiff / respondent no.1 to be one of the legal heirs (daughter) of deceased Syed Jeewan Shah or otherwise? It is matter of record Syed Jeewan Shah left two properties i.e. one agricultural land and a house situated in Larkana city. On his demise, both were devolved upon his legal heirs. The record further spells out that according to Foti Khata Badal of city survey record the respondent No.1 received her share as daughter of Syed Jeewan Shah but in Foti Khata Badal of agricultural land her name was



not shown as legal heir. The applicants were required to establish *prima facie* illegality or material irregularity in judgments of both the courts below.

9. Perusal of impugned judgment reflects that proper issues were framed and trial Court as well appellate Court resolved issues by discussing the evidence. At this juncture, relevant findings in respect of issue No.4 and 5, being relevant, are reproduced herewith.

ISSUE NO.4

'.....'

'The burden to prove this issue lies upon the plaintiff. She has stated, therefore, such sale deed is liable to be cancelled. In support of her version the plaintiff examined PW-1 Mrs. Najaf Shah at Ex.93. She has deposed..... Besides the plaintiff examined PW-3 Ghaus Bux, Mukhtiarkar and City Survey Officer Larkana at Ex.108. This witness in his evidence saw entry No.172 in form VII-B produced at Ex.102/ A and said that it is not bearing any endorsement that *at the time of change of Foti Khata* of deceased Jeevan Shah any *Jalsa-e-Aam was conducted*. He has further deposed that entry No.172 in form VII-B produced at *Ex.102/A is not containing the name of plaintiff Mst. Musrat Jabeen as legal heir of deceased Syed Jeevan Shah*. Besides he saw certified copy of extract from property register card produced at Ex.93/ A and said that it is issued by city survey office Larkana. He is also working as city Survey officer besides Mukhtiarkar Revenue Larkana and by virtue of such assignment the city survey Larkana is under his administrative control. *Extract from property register card Ex.93/A is containing the name of plaintiff Mst. Musrat Jabeen as one of the legal heirs of deceased Syed Jeevan Shah*. He... can include his/her name in the Foti Khata.

On the other hand as discussed above *It has already been determined that the name of plaintiff is shown among the legal heirs of Syed Jeevan Shah in the property register card in respect of C.S No.1711 and her name is not included among the legal heirs in respect of suit land. According to the PW-3 Ghaus Bux Ex. 108, the legal procedure is that if one is shown as legal heir of deceased for any property, he can be included as legal heir of the same deceased in another property.* On this point, the defendants No.1 and 2 have not cross examined the witness.

As mentioned above.... *While deciding issue No.1 it has already been determined that the plaintiff Mst. Musrat Jabeen is admittedly one of the legal heirs of Syed Jeevan Shah, her name has been included among the legal heirs in respect of C.S No.1711, her name is not included in the Revenue record in respect of the suit land and thus she is entitled for her share in the landed property.* It is settled principle of law that *each co-sharer deemed to be interested in every inch of subject matter irrespective of quantity of his interest. One co-sharer cannot be allowed to act in manner which constitutes any invasion on the right of othe co-sharer. Co-sharer in possession of joint property cannot change nature of property in his possession whenever partition takes place by meets and bounds. The reliance is respectfully placed*

on 1989 SCMR 130. It is also settled principle of law that when property is joint and not partitioned then effect of such exclusive possession of vendee cannot be believed. However, co-owner/co-sharer would be considered to be in possession of each inch of unpartitioned land according to his share.

ISSUE NO.5.

""

The burden to prove this issue lies upon plaintiff. She.... The PW-3 Ghaus Bux Mukhtiarkar/city survey officer has also deposed that the name of plaintiff Mst.Musrat Jabeen is mentioned in the extract from property register card Ex.93/A as one of the legal heir of deceased Syed Jeevan Shah.

On the other hand as mentioned above the defendants No.4(c), 6 and 8 after filing their W.S have abandoned the suit, neither they cross examined to the plaintiff witnesses nor they adduced their evidence. So far the contesting defendants No.1 and 2 is concern, they have purchased only the disputed land and their evidence is to that extent and they have also not cross examined to the plaintiff witnesses in rebuttal to the version of the plaintiff in respect of this issue.

10. Besides, appellate Court also discussed this issue elaborately.

Relevant portion is as under:-

"After..... The appellants/ other respondents/defendants did not adduce any oral or documents evidence in order to show that the plaintiff/respondent No.1 was not one of the legal heir and she had also no share in the property involved in the suit even there is no specifically denial of the share of plaintiff/respondent No.1 in the agricultural land which was allegedly sold out on the basis of registered sale deed dated 22.2.1989. It is also an admitted position that neither the plaintiff/respondent No.1 authorized other legal heirs/share holders to sale her share nor her signature/RTI appears on the alleged registered sale deed dated 22.2.1989, therefore, without hesitation it can be easily said that transaction on basis of registered sale deed between appellants and other legal heirs in respect of share of the plaintiff/respondent No.1 was absolutely unlawful as other legal heirs of late Jeevan Shah were not lawful authorized to sale share of the plaintiff/respondent No.1 they were not competent to enter into such transaction on basis of said registered sale deed."

(underlining has been supplied for emphasis)

11. Perusal of impugned judgment recorded by subordinate Courts, reflects that admittedly both courts have not traveled beyond their jurisdiction and it is not a case of misreading and non reading of evidence. Further, a sail through available record *prima facie* makes it clear that status of plaintiff/respondent No.1 as one of the legal heirs (daughter) of Syed Jeevan Shah was not denied as a *whole* by other legal heirs hence her exclusion from

list of legal heirs in *foti-khata badal* proceeding of agricultural land was not legal at all relevant times. Moreover, it is settled principle of law that in case a woman particularly, challenges her rights of inheritance, burden lies upon beneficiary not upon plaintiff; even otherwise, limitation or laches shall not operate as a bar in matter involving question of inheritance as has been in the instant case. Reliance can safely be placed on the case of Gohar Khanum v. Jamila Jan (2014 SCMR 801). Further, it is worth to add here that if a document is void no limitation will be applicable to that document.

12. Learned counsel for the applicant has emphasized on the plea that suit was not competent in its present form as initially mutation was not challenged by the plaintiff. In that regard, it is enough to say that status of an entry is only *fiscal* one in nature and does not create a title or legal character in favour of any party, hence non-challenging of that entry *alone* is not material to disentitle the plaintiff/respondent No.1 from her legitimate right for which she has *otherwise* been found entitled. A plea of relinquishment by '*woman*' shall not be available unless she is *first* given her due right whereby allowing her to decide the fate of such right (property) as '*owner*' as per procedure i.e to *sell, gift and even relinquish*. Needless to add that one cannot legally relinquish for what he/she has not become a legal owner. The applicants have *prima facie* failed in establishing material irregularity, illegality or *even* mis-reading or non-reading resulting in any prejudice to the applicants hence revision petition is not sustainable. Accordingly, this civil revision is dismissed.

Judge

27/10/2015