

Judgment Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Civil Revision Application No. S-58 of 2011

Applicants : Santosh Kumar and another
Through Mr. Vinod Kumar G. Jessrani, Advocate

Respondent No.1(a) to (h) : Nazir Ahmed (deceased) through LRs
Through Mr. Shakeel Ahmed S. Abro, Advocate

Respondents No.2 to 5 : Through Mr. Abdul Waris Bhutto, Asst. A.G.

Date of hearing : **23.10.2024 and 31.10.2024.**
Date of Decision : **15.11.2024.**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("**C.P.C**"), the applicant has impugned judgment dated 26.5.2011 and decree dated 27.5.2011, passed by learned District Judge, Kamber-Shahdadkot @ Kamber ("**the appellate Court**") in Civil Appeal No.05 of 2005, whereby; the judgment dated 17.12.2009 and decree dated 18.12.2009, passed by learned Senior Civil Judge, Kamber ("**the trial Court**") in F.C Suit No.234 of 2005 (old F.C Suit No.51/2001), through which the suit of plaintiff/respondent No.1 was decreed has been maintained by dismissing the appeal.

2. The succinct facts precipitating the captioned Civil Revision Application are that Respondent No.1 instituted a suit for Declaration and Permanent Injunction against the applicants and Respondents No.2 to 5. The applicant asserts that he is the owner of an area measuring 02-35 acres, equivalent to 13,915 square yards, out of Survey No.39 situated in Deh Kathia Bazaar, Taluka Warrach, District Larkana (hereinafter referred to as the "**suit property**"), which he had acquired to establish a Rice Factory. Respondent No.1 had paid the total consideration for the suit property to the Government and maintained exclusive possession thereof. Respondent No.6 issued an

Order dated 02.02.1984 for the allotment addressed to the Deputy Commissioner. Subsequently, Respondent No.5 issued an Order dated 22.05.1984, whereby the suit property was allotted in favour of Respondent No.1. Furthermore, Respondent No.1 avers that Form-A was issued in his favour by the Barrage authorities in respect of the allotment of the suit property. He has diligently paid all required instalments. Since the allotment, Respondent No.1 has remained in undisturbed possession of the suit property. However, one week before filing the suit, Applicant No.2 approached Respondents No.3 and 4, who, at their instance, falsely declared that the suit property belonged to the Hindu Panchayat, subsequently summoning Respondent No.1 and extending threats of dispossession. Consequently, Respondent No.1 instituted the suit.

3. The Applicants contested the suit and submitted their written statement, asserting that Respondent No.1 had failed to comply with the Order issued by the Deputy Commissioner, Larkana. They contended that they owned a 03-15 acre area adjacent to Survey No.39, designated for Massan (a place of cremation), as recorded in the Revenue records of Form-I Land Register for Deh Kathia Bazaar Naseerabad, per the Mukhtiarkar, Warrah's report dated 25.5.2001. The applicants further alleged that Respondent No.1 attempted to encroach upon the adjacent Massan area. To resolve the matter amicably, the suit property was surveyed by the concerned Tapedar, whose report dated 12.5.2001 invalidated Respondent No.1's claims.

4. The learned trial Court, after framing the issues and recording the pro and contra evidence of the parties, delivered its judgment on 17.12.2009 and decree on 18.12.2009, ruling in favour of Respondent No.1. Dissatisfied with this outcome, the applicants filed an appeal with the appellate Court. After thorough hearings, the appellate Court dismissed the applicants' appeal through its judgment dated 26.5.2011 and decree dated 27.5.2011. This sequence of events has precipitated the present Civil Revision.

5. At the very outset, the learned counsel representing the applicants has asserted that the impugned judgments and decrees of the lower courts are illegal, unlawful, and unwarranted under the law. He further stated that Respondent No.1 failed to produce any document to substantiate the installation of a Rice Mill on the suit property. Furthermore, he argued that Respondent No.1 had illicitly encroached upon the applicants' land, as

evidenced by Tapedar's report dated 12.5.2001 and Mukhtiarkar's letter dated 25.5.2001. Additionally, he contended that the trial court failed to adjudicate the issues properly in accordance with Order XX Rule 5 CPC. Lastly, he asserted that both lower courts committed legal errors and acted beyond their jurisdiction in decreeing the suit in favour of Respondent No.1. In support of his assertions, he has cited case law reported as **2017 MLD 1600, PLD 1959 W.P 348, PLD 1989 S.C 568, and PLD 2007 S.C 609.**

6. Conversely, while refuting the contention, the learned counsel representing Respondent No.1 supported the impugned judgments and decrees. He maintained that the lower courts recorded concurrent findings of fact based on a proper appreciation of the evidence. He argued that no case of misreading or non-reading of evidence has been made out, nor has any legal infirmity been pointed out that would warrant the interference of this Court in its revisional jurisdiction under Section 115 C.P.C.

7. The learned Additional Advocate General (A.A.G.) for the official respondents endorsed and supported the impugned judgments and decrees passed by both lower courts.

8. The submissions have been exhaustively deliberated upon, and the extant record has been assiduously scrutinized with the invaluable assistance of the learned counsel for the parties. I have further meticulously examined the probity and comprehensiveness of the judgments and decrees rendered by both the lower Courts, thereby affording the learned counsel for the applicants a judicious opportunity to substantiate any alleged jurisdictional infractions or material irregularities perpetrated by the Courts below in the execution of their adjudicative mandates.

9. In the present matter, Respondent No.1 has instituted a suit seeking a declaratory judgment asserting his ownership of the suit property. Respondent No.1 tendered oral and documentary evidence to substantiate his claim, including a Form-A issued by the Barrage Mukhtiarkar, Larkana and another Form-A indicating an extension of the grant for five years. Additionally, a letter dated 02.02.1984 from the Secretary of the Government of Sindh Land Utilization Department confirmed that the suit property was granted to Respondent No.1. The respondent also presented a treasury/bank challan showing that he had deposited the requisite amount for the grant and entry

No.97 dated 12.04.2003, evidencing the mutation of the record of rights in his favour. Collectively, this documentary evidence constitutes prima facie substantial evidence of title.

10. On the contrary, the Applicants alleged that Respondent No.1 encroached upon their land measuring 3-15 acres adjacent to Survey No. 39, designated for "Massan". They further contended that the grant in favour of Respondent No.1 had been annulled. To support their allegations, the applicants relied solely on two reports, one from the Tapedar and another from the Mukhtiarkar (Exh.98/A and 98/B). However, these reports failed to substantiate that Respondent No.1 had encroached upon any portion of the applicants' land. Moreover, the applicants did not produce their title documents for the 3-15 acres. They did not explicitly elucidate the extent of the alleged encroachment or specify what had been constructed on the purportedly encroached area.

11. The oral evidence adduced by the applicants starkly contrasts the documentary evidence from public records produced by Respondent No.1. The entry in the revenue record in favour of Respondent No.1, persisting since 2003, remains unchallenged and warrants consideration. According to Section 52 of the Sindh Land Revenue Act, 1967¹, there is a presumption of the correctness of the record. This section enshrines a legal presumption that entries in the record of rights are deemed accurate until refuted or until a new entry is lawfully substituted. Practically, this implies that the entry inscribed in the official land records is presumed to be correct and accurate. Should an individual challenge the accuracy of an entry, the burden of proof lies with the challenger to demonstrate its inaccuracy. Until such proof is presented, the entry retains its validity and enforceability. Given the applicant's failure to provide compelling evidence to rebut the presumption of the correctness of the official records, Respondent No.1's claim to the property remains unassailable.

12. Notwithstanding, the claim of encroachment made by the applicants concerning their land /property by the adjacent owner/ Respondent No.1, their remedy lies with the Revenue authorities for the demarcation of land under Rule 67-A of the Sindh Land Revenue Rules, 1968. In this respect, the Revenue Officer possesses ample jurisdiction under Section 117 of the same

¹Section 52 of the Sindh Land Revenue Act. **Presumption as to the correctness of the record.**- Any entry in a record of rights shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

statute to define the boundaries of the property. This provision ensures that disputes over land boundaries are resolved through the appropriate administrative channels, thereby providing an orderly mechanism for addressing such issues and preventing unnecessary litigation.

13. I have assiduously scrutinized the records on file and the judgments and decrees passed by the Courts below. Upon my examination, I have discerned no illegality, irregularity, misapprehension, or non-consideration of evidence by the Courts below. Both courts have meticulously perused all the evidentiary material, both testimonial and documentary, adduced before them, and there is no indication that any part of the record was overlooked in their sagacious deliberations. The lower courts' findings on questions of fact and law are predicated upon a thorough and judicious appreciation of the evidence and, as such, are not amenable to review or alteration by this Court. Moreover, the concurrent findings of fact cannot be disturbed unless it is demonstrated that the lower courts either misapprehended the evidence, disregarded any material piece of evidence, or committed a jurisdictional error².

14. The learned counsel for the applicant has been unable to identify any instance of misreading or non-reading of evidence with respect to the concurrent findings of the learned courts below.

15. For the aforementioned reasons, the instant Civil Revision, devoid of merit, is hereby **dismissed**, with no order as to costs.

J U D G E

²Syed Hasnain Naqvi and others v. Mst. Begum Zakara Chatha through LRs and others (2015 SCMR 1081), Noor Muhammad and others v. Mst. Azmat-e-Bibi (2012 SCMR 1373), Muhammad Akbar v. Mst. Manna and 3 others (20014 SCMR 1700), Ghulam Muhammad and 3 others v. Ghulam Ali (2004 SCMR 1001), Abdul Mateen and others v. Mustakia (2006 SCMR 50) and Malik Muhammad Khaqan v. Trustees of the Port of Karachi (KPT) and others (2008 SCMR 428)