

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 1674 of 2010

(Amir Bux Soomro v. Allah Wadhayo alias Wahid Bux Soomro & others)

Date of hearing : **21.10.2024**

Date of decision : **21.10.2024**

Mr. Abdul Rasheed Kalwar, Advocate for petitioner.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

ORDER

Zulfiqar Ahmad Khan, J. – This petition has been filed challenging the conflicting findings of the Courts below, where learned Senior Civil Judge, Mirpur Mathelo through order dated 23.12.2009, passed in F. C. Suit No.55 of 2009, dismissed the application of respondents (defendants) No.1, 2 and 3 filed under Order VII Rule 11, CPC, and learned Additional District Judge-IV, Mirpur Mathelo by order dated 29.06.2010, passed in Civil Revision No.07 of 2010, reversed the findings of the trial Court by allowing the Civil Revision as well as the application under Order VII Rule 11, CPC, and rejected the plaint of the petitioner (plaintiff).

2. The petitioner (plaintiff) filed a suit for declaration, cancellation and permanent injunction against the respondents (defendants), asserting that respondent (defendant) No.1 is his brother and respondents (defendants) No.2 and 3 are his nephews. He stated that his father, Lal Bux, purchased 50 paisa share of agricultural land bearing Survey Nos.87 (3-22 acres) and 89 (4-19 acres) from Tulsumal (Tursumal) and Mengho Mal, but his entry was cancelled in 1957, when the Sindh Government took custody of Hindu community properties. Respondent No.1, being elder brother of the petitioner, filed Suit No.14 of 1963 regarding the aforesaid property, which was decreed in his favour. Both brothers (petitioner and respondent No.1) cultivated the land together until a private partition took place in 1979,

after which the petitioner received 1-30 acres from Survey No.87 and leased it in 1980 to Saifullah Khalid and Amanullah. After the lease period concluded, the petitioner and his sons began to cultivate the land themselves. Despite repeated requests of the petitioner to transfer the *khata*, respondent No.1 secretly transferred it to his sons on 05.09.2003 under Revenue Entry No.142. The petitioner sought cancelling of this entry before the Deputy District Officer (Revenue), Ghotki, but his application was dismissed with direction to file a Civil Suit, which he challenged before the District Officer (Revenue), Ghotki. Meanwhile, respondent No.2 filed an application under the Illegal Dispossession Act, 2005, which was dismissed. Upon learning of the respondents' intent to sell the land to someone else, the petitioner filed F.C. Suit No.55 of 2009 with the following prayers:

- a) *To declare that the plaintiff is legal owner of the suit land bearing S.No.87 (1-31) acres of deh Mirpur Mathelo and entry No.142 is kept in Revenue record which is kept in Revenue record is null and void and liable to be cancelled.*
- b) *To direct the defendant No.4 and 5 to cancel the entry No.142 dated 05.09.2003.*
- c) *To grant the permanent injunction whereby restraining the defendants No.1 to 3 from dispossessing the plaintiff without due course of law and also restrained to transfer the khata to stranger person or third party and also restrained the defendant No.4 not to issue the sale certificate and also restrained the defendant No.5 not to keep the registry of any person till the disposal of present suit.*
- d) *To award the costs of the suit.*
- e) *Any other equitable relief which this Honourable Court deems fit and proper under the circumstances of the case.*

3. While proceeding with the aforementioned Suit, the learned trial Court decided two applications (one under Order VII Rule 11, CPC, and the other under Order XXXIX Rule 1 & 2, CPC) jointly in favour of the petitioner (plaintiff) by order dated 23.12.2009. The first application was dismissed, while the second was allowed as prayed. Challenging the

same, respondents (defendants) No.1 to 3 filed civil revision, which was allowed by the learned revisional Court through order dated 29.06.2010, and the order of the learned trial Court was set aside by allowing the application under Order VII Rule 11, CPC, and rejecting the plaint of the petitioner. Consequently, this petition has been filed to challenge that decision.

4. During pendency of the instant petition, respondents No.1 and 2 expired, and their legal heirs have been joined upon allowing an application under Order XXII Rule 3 & 4 read with Section 151, CPC by this Court's order dated 23.10.2023, when learned Counsel for respondents No.1 to 3 made a submission that he had already filed *vakalatnama* on behalf of the legal heirs of the deceased, but he remained absent on the last five dates of hearings, without any intimation. Therefore, this Court in his absence proceeds with the matter.

5. Considered the arguments presented by learned Counsel for the petitioner as well as learned AAG Sindh, and examined the material available on record with their assistance.

6. The petitioner seeks a declaration of legal ownership of the suit land and requests that Entry No.142 in the revenue record be declared null and void, followed by its cancellation. This request is based on an agreement dated 17.10.1979, which has yet to be executed. Although the petitioner did not previously challenge Entry No.31 dated 15.02.1964, which mutated the land in favour of respondent No.1, he took action when Entry No.142 was recorded, through which respondent No.1 transferred the land to respondents No.2 and 3 (his sons). The petitioner initially submitted his request to the Deputy District Officer (Revenue), Ghotki, challenging both entries. However, this application was dismissed on 19.04.2006 by the DDO (Revenue), Ghotki, who stated that long-standing entries cannot be altered by Revenue Officers. The petitioner was advised

to seek remedy before the Civil Court. Subsequently, he challenged that order before the District Officer (Revenue), Ghotki, but no order from that forum is available on the record.

7. Admittedly, respondent No.1 previously filed Suit No.14 of 1963, which was decreed in his favour. A review of that suit reveals significant discrepancies in the petitioner's account. Respondent No.1 (the plaintiff in that case) asserted that Tursumal S/o Menghomal had entered into a sale agreement with him and his late uncle, Karim Bakhsh alias Karim Dino, regarding the subject property, claiming that they were equal owners. In this regard, Tursumal's statement was recorded by the Mukhtiarkar, Mirpur Mathelo on 11.05.1948. Although Tursumal agreed to execute a formal sale deed and have it registered with the Sub-Registrar, but he migrated to India before completing this process. Subsequent proceedings before the Deputy Custodian in Sukkur resulted in a certificate being issued under Section 16(3) of Act XII of 1957 on 19.11.1962. During this time, Karim Bakhsh also gifted his share to respondent No.1, who then accepted possession of the entire land. Consequently, respondent No.1 obtained title to the suit property based on the judgment and decree issued by the learned Senior Civil Judge, Sukkur on 20.04.1963 and 11.05.1963, respectively, leading to the mutation of the *khata* in his favour. Surprisingly, the petitioner did not challenge respondent No.1's entitlement before any forum until recording of Entry No.142 on 05.09.2003.

8. The petitioner's case relies entirely on an agreement dated 17.10.1979, which was between the petitioner and respondent No.1, wherein the petitioner claims to have acquired 1-30 acres of land from Survey No.87. However, the written agreement (available at page 33) contradicts this assertion, stating that respondent No.1 agreed to transfer 1-00 acre to the petitioner and 0-30 acre to his brother Arbab Ali. Since Arbab Ali did not cultivate his portion, it was also handed over to the

petitioner for tending. It has emerged that the petitioner has not presented these facts before the Courts below in either the suit or the revision, nor has he raised them in the present petition before this Court. Furthermore, Arbab Ali has not participated in these proceedings.

9. The primary entry is Entry No.31 dated 15.02.1964, on which respondent No.1 based his transfer of the land to his sons under Entry No.142 dated 05.09.2003. Since the petitioner did not challenge the earlier entry within the prescribed timeframe, he lacks the authority to contest the subsequent entry, particularly in the absence of any title document. The only document, the agreement dated 17.10.1979, remains unexecuted. If the petitioner had any grievance, he could have challenged the initial entry of 1964, which was recorded following a judgment and decree issued by the learned Senior Civil Judge, Sukkur in 1963. If the petitioner was intending to seek a declaration, he could have filed a suit against the parent entry dated 15.02.1964 within the six-year limitation period set forth in Article 120 of the Limitation Act, 1908. Additionally, if respondent No.1 failed to fulfill his obligations under the agreement dated 17.10.1979, the petitioner could have initiated a suit for specific performance of contract within three years as outlined in Article 113 of the same Act. The Hon'ble Supreme Court, in the case of Ghulam Mustafa v. Mst. Mah Begum and others (2024 SCMR 795), has ruled as follows:

“6. We are afraid, the contention of the learned counsel for the appellant is devoid of legal force. In the instant case, the impugned mutation regarding the disputed property was entered on 03.04.1984, which led the appellant to file the suit in 1998 seeking declaration of ownership, recovery of possession and permanent injunction. What is pertinent to note that in the suit filed by the appellant, the reliefs for recovery of possession and permanent injunction are consequential ones, dependent on the main relief of declaration of ownership of the disputed property, which in the present case was filed after 14 years, and thus, goes clearly beyond the six-year period of limitation provided under Article 120 of the First Schedule to the Limitation Act, 1908. By now, it is settled that when the main relief of declaration of ownership is barred by time, the consequential reliefs, even if within time, would be of no legal avail. In this regard, reference

may be made to the cases of Muhammad Din v. Deputy Settlement Commissioner (2022 SCMR 1481) and Javaid Shafi v. Rashid Arshad (PLD 2015 SC 212).”

10. In the case in hand, the petitioner was fully aware of the entry made in 1964, yet he chose to remain silent for nearly 39 years, until 2003, when he finally attempted to contest it. This prolonged period of inaction raises questions about the sincerity and validity of his claims. Moreover, the agreement in question (of 1979) has not been executed to date, marking an elapsed period of approximately 45 years since its inception. This failure to formalize the agreement further undermines the petitioner’s position.

11. Here, it is important to consider Section 42 of the Specific Relief Act, 1877, which addresses the rights of parties in seeking a declaration of title. The section states: “*Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right.*” Inasmuch as the petitioner lacks a title document and the only relevant document — the agreement dated 17.10.1979 — remains unexecuted, the petitioner does not have a valid basis for seeking a declaration under Section 42 *ibid*. The absence of a formal title or executed agreement undermines any claim to legal entitlement, making it difficult for the petitioner to establish a right to the property in question. Consequently, without the necessary legal standing, the petitioner’s attempts to challenge the entries in the revenue record have been unsuccessful.

12. As the petitioner has not provided evidence to establish legal ownership of the suit property, he lacks the requisite standing to challenge the subsequent entry. The absence of a valid title or executed agreement weakens his case, making it untenable for him to contest entries in the revenue record, especially after such a lengthy delay. In light of these factors, the petitioner’s claims appear to be without merit.

13. I, therefore, have come to conclusion that the revisional Court has correctly granted the application under Order VII Rule 11, CPC, and rejected the plaint. This provision allows a Court to reject a plaint if it is not disclosing a cause of action or is otherwise not maintainable. Taking into account the petitioner's failure to establish legal ownership of the suit property, as well as the significant delay in challenging the entries in the revenue record, the plaint does not meet the necessary criteria for proceeding. Therefore, the order of the revisional Court is upheld, as it represents an appropriate and well-founded decision.

14. As a result, the instant petition is **dismissed**. Above are the reasons of my short order dated 21.10.2024.

J U D G E

Abdul Basit