

Judgment Sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision Application No. S-13 of 2024

Applicant : Abdul Ghafar s/o Muhammad Siddique
Through Mr. Zamir Ali Shah, Advocate

Respondents No.1 & 2 : Bashir Ahmed and Mst. Hajra
Through Mr. Aijaz Ali Kalhor, Advocate

Respondents No.3 to 9 : Through Mr.Munawar Ali Abbasi, Asst. A.G.

Date of hearing : **06.11.2024**
Date of Decision : **20.11.2024**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through the above-captioned Civil Revision Application under Section 115 C.P.C, the applicant has called into question the Judgment and Decree dated 04.11.2023, passed by the Court of Additional District Judge-II, Kamber ("the **appellate Court**"), whereby Civil Appeal No.34 of 2023, preferred by the applicant, was dismissed. Consequently, the consolidated Judgment and Decree dated 22.03.2023, passed in F.C. Suit No.30/2020 and F.C. Suit No.77/2020, by the Senior Civil Judge, Warah ("the **trial Court**"), decreeing F.C. Suit No.30/2020 and dismissing F.C. Suit No.77/2020, was maintained.

2. There were two suits. The first, F.C. Suit No.30/2020, was filed by Respondents No.1 and 2 against the applicant and others, seeking relief in the form of Declaration, Possession, and Permanent Injunction. The second, F.C. Suit No.77/2020, was filed by the applicant against Respondents No.1 and 2 and others, seeking relief in the form of Specific Performance of Contract, Cancellation of Entry and Permanent Injunction.

3. In concise summation, the salient facts of F.C. Suit No.30/2020 elucidate that the cousin of Respondents No.1 and 2, namely Muhammad Usman, son of Muhammad Siddique Chhan, owned an agricultural land measuring 3-31 acres out of the total area of 4-12 acres, bearing Survey No.246, situated in Deh and Tapo Abad Taluka Warrah District Kamber-Shahdadkot. He acquired this land from his father, Muhammad Siddique, and one Ahmed Ali, son of Abid Mirani. Muhammad Usman was in peaceful

possession of this land, and his ownership was officially recorded vide Entry No.92 dated 28.02.2014. Respondents No.1 and 2 also claimed a residential house measuring 3000 Square feet, consisting of two rooms, a veranda, and a shop, situated in Village Thariri Hajiran, Taluka Warrah, District Kamber-Shahdadkot. Muhammad Usman passed away on 03.12.2014, and his father, Muhammad Siddique, also passed away in the year 2018, leaving no direct heirs. Therefore, Respondents No.1 and 2, being cousins and the legal heirs of Muhammad Usman, inherited the agricultural land and the residential property as recorded in Entry No.248 dated 14.03.2019. The Respondents No.1 and 2 maintained peaceful cultivation of the land until 14.03.2019, when the applicant and other defendants, namely Abdul Razzaque, Ghulam Sarwar, Abdul Wahab, Muhammad Malook, Zamir Ahmed and Najam, along with their relatives, armed with weapons, forcibly and unlawfully took possession of the land. On 25.04.2019, these defendants also took possession of the residential house, leading Respondents No.1 and 2 to file the suit.

4. Subsequent to the institution of the aforementioned suit, the applicant had filed F.C. Suit No.77/2020 against Respondents No.1 and 2, asserting that he had acquired the agricultural land admeasuring 3-31 acres from Muhammad Siddique, the progenitor of Muhammad Usman, via a sale agreement dated 10.12.2015, for an aggregate consideration of Rs.1,300,000/- in the presence of witnesses.

The applicant further contended that possession of the said land was duly handed over to him. The applicant alleged that, subsequent to Muhammad Siddique's demise, Respondents Nos. 1 and 2 surreptitiously and fraudulently altered the Foti-Khata in their favour, notwithstanding their cognizance that the deceased Muhammad Siddique had lawfully executed a sale agreement with the applicant.

5. Upon the issuance of the summons, both parties duly submitted their respective written statements in both suits. Both the suits were subsequently consolidated by the trial Court, with F.C. Suit No.30/2020 designated as the leading suit and F.C. Suit No.77/2020 as the subsequent suit. Consequently, predicated on the divergent averments of the parties, the trial Court formulated six consolidated issues upon which both parties adduced their respective evidence. Upon the culmination of the trial, the trial Court decreed leading F.C. Suit No.30/2020 and dismissed the subsequent F.C. Suit No.77/2020, vide consolidated Judgment and Decree dated 22.03.2023.

6. Aggrieved by the above-consolidated Judgment and Decree, the applicant preferred an appeal before the appellate Court. The appellate Court dismissed the appeal vide its impugned Judgment and Decree dated 04.11.2023, thereby maintaining the judgment and decree of the trial Court. Consequently, this has led to the present Civil Revision.

7. In the course of arguments, learned counsel for the applicant candidly conceded and formally withdrew his claim for the specific performance of the contract pertaining to the agricultural land. He posited that the possession of the agricultural land was delivered to Respondents No.1 and 2 in compliance with execution proceedings and that the execution application filed by Respondents No.1 and 2 in F.C. Suit No.30 of 2020 was satisfied. However, he focused his arguments on a residential house measuring 3000 sq. feet, comprising two rooms, a veranda, and one shop (hereinafter referred to as the "**suit house**"). He contended that the trial Court failed to recognize that Respondents No.1 and 2 did not substantiate their ownership or possession of the suit house yet decreed the suit in its entirety. Moreover, he asserted that Respondents No.1 and 2 and their witnesses conceded that no title document exists in the name of Respondents No.1 and 2. He further argued that pursuant to Article 126 of the Qanun-e-Shahadat Order, 1984 (QSO, 1984), the burden of proof was on Respondents No.1 and 2, which they failed to discharge. He maintained that the findings of the trial Court on issue No.2 are erroneous and that the judgments and decrees of both lower Courts are predicated on misreading and non-reading of the evidence. In conclusion, he prayed for the impugned judgments and decrees of both the lower Courts to be set aside to the extent of the relief of possession concerning the suit house.

8. Conversely, learned counsel representing Respondents No.1 and 2 supported the impugned judgments and decrees, asserting that both lower courts recorded concurrent findings of fact based on a meticulous appreciation of evidence. He argued that no instance of misreading or non-reading of evidence had been demonstrated, nor had any legal infirmity been identified that would warrant this Court's interference under its revisional jurisdiction pursuant to Section 115 of the C.P.C.

9. The contentions have been fastidiously scrutinized, and the accessible record has been carefully assessed. To ascertain whether an adequate and comprehensive dispensation of justice was achieved, it is imperative to analyze the

findings concurrently documented by the Courts below.

10. Firstly, it is to be seen whether the suit filed by Respondents No.1 and 2, according to its contents and averments, falls within the ambit of Sections 8 or 9 of the Specific Relief Act, 1877 (SRA, 1877). For ready reference, Sections 8 & 9 are reproduced hereunder: -

“8. Recovery of specific immovable property. A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.

9. Suit by person dispossessed of immovable property. If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Federal Government or any Provincial Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.”

11. The perusal of the aforementioned provisions unequivocally elucidates that Section 8 of the SRA, 1877, confers a juridical remedy upon a person seeking to reclaim immovable property to which they hold a legitimate claim. This entails that the claimant must be legally entitled to possess the immovable property in question for recovery of possession. Conversely, Section 9 of the SRA, 1877 applies when a person is dispossessed without his/their consent and in contravention of legal protocols. The dispossessed person, or his/their successor, retains the right to initiate legal proceedings to recover possession, irrespective of any competing title claims. Moreover, possession serves as prima facie evidence of title, indicating that the possessor of the property is presumptively regarded as the rightful owner. This presumption operates to the advantage of the possessor in instances of wrongful dispossession, thereby enabling them to reclaim possession. In conventional suits, if the plaintiff successfully demonstrates both title and prior possession, the Court is inclined to adjudicate in their favour. Even in the absence of title proof, the plaintiff may prevail based on prior possession alone. However, this presumption is rebuttable. Should the defendant establish a superior title, the presumption favouring the plaintiff is negated. Consequently, the titles of both parties are subject to judicial scrutiny and

comprehensive examination by the Court. A suit under Section 9 of the SRA, 1877, is distinct from ordinary possession suits. Section 9 proffers an expeditious remedy for the persons dispossessed of immovable property without adherence to due legal process. To prevail in such a suit, the plaintiff must substantiate the following: (1) they were in possession, (2) the defendant dispossessed them, (3) the dispossession was unlawful, and (4) the suit was instituted within six months of dispossession. A salient aspect of Section 9 is the exclusion of title considerations; neither the plaintiff's nor the defendant's title is subject to adjudication. The plaintiff's right to reclaim possession is predicated solely on the aforementioned criteria. Reliance is placed on Canal View Cooperative Housing Society¹ and Late Mst. Majeedan through Legal heirs and another²

12. Upon meticulous examination of the suit filed by Respondents No. 1 and 2, it is noted that they assert ownership of a suit house and agricultural land, purportedly inherited from their deceased cousin Muhammad Usman, as evidenced by entry No. 248 dated 14.03.2019. Respondents No.1 and 2 claim possession of these properties and seek a declaration of lawful ownership within the prayer clause of the suit. However, the evidence tendered by Respondents No. 1 and 2 to substantiate their ownership claim is restricted to the *Foti-Khata Badal* entry No. 248 dated 14.03.2019, which exclusively pertains to agricultural land measuring 03-31 Acres and does not encompass the suit house. Furthermore, during cross-examination, witness Fayaz Ahmed Ali conceded that no *Khata* exists for the suit house, given its location in a village. This critical omission signifies a failure on the part of Respondents No. 1 and 2 to present concrete evidence of their ownership of the suit house. Consequently, their claim for ownership and possession of the suit house remains unsubstantiated, rendering it legally untenable to decree in their favour based on the current evidentiary record.

13. The Respondents No. 1 and 2, having claimed ownership of the suit house through inheritance, bear the burden of proof under Section 126 of the Qanun-e-Shahadat Order, 1984³. When the question arises whether any person is the owner of something they are shown to be in possession, the

¹Canal View Cooperative Housing Society v. Javed Iqbal and another" (PLD 2004 Supreme Court 20)

²Mst. Majeedan through Legal heirs and another v. Late Muhamamd Naseem through Legal Heirs and another" (2001 SCMR 345)

³Article 126-**Burden of proof as to ownership:** When the question is whether any person is owner of anything of which he is not the owner is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

burden of proving non-ownership rests upon the person asserting that the person in possession is not the owner. In this instance, Respondents No. 1 and 2 assert ownership of the suit house, whereas the defendants are in possession. Thus, the burden lies heavily on Respondents No. 1 and 2 to prove that the defendants are not the owners of the suit house. To discharge this burden, they must produce convincing and compelling evidence to the satisfaction of the Court. It is a well-established judicial principle that the weakness of the defendant's case does not inherently strengthen the plaintiff's case. The plaintiff must prove their case to the satisfaction of the Court through convincing and compelling evidence, not necessarily beyond a reasonable doubt. Consequently, Respondents No. 1 and 2 have failed to meet the burden of proof required to establish their ownership of the suit house.

14. Upon evaluating whether Respondents No.1 and 2 have successfully established their prior possession of the suit house, it is crucial to examine the claims and evidence presented. In their plaint, Respondents No.1 and 2 asserted that they were in peaceful possession of the suit house. They alleged that on 25.04.2019, the applicant and others, armed with deadly weapons, forcibly dispossessed them from the suit house. However, during cross-examination, Respondent No.2 conceded that he had not provided proof of the suit house, nor could he confirm whether he had documented evidence of his dispossession. This admission significantly undermines their claim of prior possession. Moreover, the plaint lacks any corroborative testimony from eyewitnesses who could attest to the alleged forcible dispossession by the applicant and others. The absence of such crucial evidence further weakens the Respondents' case. Although witnesses Roshan Ali and Fayaz Ahmed were presented to support their claim, they failed to provide specific details, such as the exact date and time of the alleged illegal dispossession and description of the suit house. This vagueness and lack of precision cast doubt on the veracity of their testimonies and the overall credibility of the Respondents' allegations.

15. Furthermore, the burden of proof lies heavily upon Respondents No.1 and 2 to substantiate their claim of prior possession with convincing evidence. The respondents' inability to produce concrete and compelling evidence to demonstrate their possession of the suit property, coupled with the lack of specific witness accounts detailing the incident, leads to the inevitable conclusion that their claim remains unproven. Consequently, the petitioners/plaintiffs failed to establish that they were in possession of the suit

house before their dispossession and that the respondents/defendants forcibly occupied the land without due process of law.

16. Notwithstanding, the rule of in *pari delicto* is applicable in the present case. This legal doctrine, derived from the Latin meaning "*in equal fault*," holds significant implications when both parties involved in a legal dispute are deemed equally culpable for the wrongdoing in question. The doctrine operates on the principle that the Court will not extend its assistance to either party when they are equally at fault, thereby preventing one wrongdoer from benefiting over the other. Under the rule of in *pari delicto*, the focus shifts to the possession of the disputed item. The party in possession typically retains it, as the Court refrains from intervening on behalf of either equally guilty party. However, an exception exists within the application of this doctrine: if a non-faulty third party can establish a legitimate claim to the disputed item, the possession may be transferred. This ensures that the doctrine of in *pari delicto* does not unjustly penalize innocent parties who may have a rightful claim. In the context of the current case, the rule of in *pari delicto* suggests that neither party-Respondents No.1 and 2 nor the applicant should receive preferential treatment from the Court due to their equal fault.

17. Upon a comprehensive evaluation, I find myself unpersuaded by the determinations made by the Courts below regarding the decreeing of the suit in favour of Respondents No.1 and 2 as a whole. In the present matter, Respondents No.1 and 2 (the plaintiffs) have failed to substantiate their ownership and prior possession of the suit house. Consequently, they cannot be declared to be owners of the subject house or entitled to its possession. Nonetheless, the lower Courts have thoroughly examined the records, appropriately decreed the suit, and dismissed the appeal to the extent of agricultural land. The concurrent findings of the subordinate Courts are based on cogent and valid reasons, with no misinterpretation or omission of evidence identified by the learned counsel for the applicants that would necessitate interference by this Court.

18. In light of the foregoing, the instant Revision Application is disposed of with the aforementioned modification. The parties are to bear their costs.

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