

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 08 of 2012

(Mst. Farida Zafar v. Taluka Municipal & others)

Date of hearing : 25.11.2024

Date of decision : 25.11.2024

Mr. Muhammad Zubair Malik, Advocate for applicant.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – Through this civil revision application, the applicant / plaintiff seeks to challenge the decisions of the Courts below, including the judgment and decree dated 12.08.2008 and 15.08.2008, respectively, passed by learned IInd Senior Civil Judge, Sukkur, wherein F.C. Suit Old No.45 of 2003 (New No.172 of 2006) was dismissed, as well as the judgment and decree dated 28.10.2011, rendered by learned Vth Additional District Judge, Sukkur, which dismissed Civil Appeal No.24 of 2008, thereby affirming the trial Court's decision. For clarity, the plaintiff will hereinafter be referred to as the '**applicant**' and the defendants as the '**respondents**'.

2. In brief, the applicant claims to be the rightful owner of a plot designated as C.S. No.550/8, measuring 444.4 Sq. Yds., located on Circuit House Road, opposite office of Mukhtiarkar, Ward 'C', Sukkur, which she purchased from Haji Zahir Ahmed and others via a registered sale deed dated 08.12.1994, with physical possession. The applicant's plot is surrounded by several properties. To the north is C.S. No.550/59, owned by respondent No.5, and to the east is C.S. No.550/140, which was purchased by respondents No.3 and 4 from respondent No.2 in 2001. The applicant submits that this sale violated the terms of the Katchi Abadi Scheme, which prohibits property transfers within five years, except by

inheritance or mortgage. To the south is a large plot (C.S. No.550) with Islamia College, Sukkur. The applicant claims that respondents No.3 and 4 encroached on 360.9 Sq. Yds. of his land, constructing a boundary wall, while respondent No.5 encroached on 83.5 Sq. Yds. Despite efforts to have the encroachments removed, the respondents refused. The applicant then approached the City Survey Officer, Sukkur, but received an incomplete report. As a result, the applicant filed a suit for declaration, cancellation, possession and permanent injunction, seeking the following reliefs:

- a. *To declare that the plaintiff is owner of plot bearing C.S. No.550/8 measuring 444.4 Sq. Yds. situated at Ward "C" Circuit House Road Opposite Office of Mukhtiarkar Sukkur.*
- b. *To declare that the defendant No.2 was not competent to execute sale deed dated 24.11.2001 in favour of defendant No.3 & 4 in view of condition No.2 of the lease deed dated 30.12.1998 as such sale deed dated 24-11-2001 executed by defendant No.2 in favour of defendant No.3 & 4 is void, ab-initio and be cancelled.*
- c. *To declare that the defendant No.3 & 4 have trespassed and encroached upon 360.9 sq. yds. and defendant No.5 has trespassed and encroached upon 83.5 sq. yds property of the plaintiff.*
- d. *To decree the suit for possession of the encroached area of 360.9 sq. yds. from Defendants No.3 & 4 and 83.5 sq. yds. from defendant No.5 by removing such encroachment.*
- e. *To grant the permanent injunction restraining the Defendant No.3 to 5 from raising any construction over the property of the plaintiff and restrain them from transferring, alienating, mortgaging property bearing C.S. No.550/8 measuring 444.4 Sq. Yds. Ward "C" Circuit House Road Sukkur opposite office of Mukhtiarkar Sukkur, through permanent injunction.*
- f. *To award the cost of Suit.*

3. Respondent No. 2 filed a written statement denying the applicant's claims to some extent. Similarly, respondents No.3 and 4 submitted a joint written statement, objecting to the non-joinder of the Province of Sindh as a necessary party and stating that the suit is defective due to this omission. They further claimed that the applicant's C.S. No.550/8 and respondent No.5's C.S. No.550/59 are, in fact, the same plot, as

evidenced by the *robkari* attached by the applicant herself, and that respondent No.5 is in possession of the property. They also stated that prior to purchasing the plot, they obtained a no objection certificate from Sukkur Municipal Corporation, and that they had constructed a boundary wall on their plot two years ago, at which time the applicant did not raise any objections. Additionally, they obtained approval for their construction plan. Respondent No.5 filed a separate written statement, asserting her exclusive ownership of C.S. No.550/59, measuring 333.3 Sq. Yds., and confirming that she is in physical possession of the property. Respondent No.7 also filed a written statement, denying the applicant's claims and asserting that the suit is not maintainable.

4. To resolve the issue between the parties, the trial Court settled the following issues:

1. *Whether the plaintiff has any legal right, title and character over plot bearing CS No.550/8 measuring 444.4 sq. yds. Ward 'C' situated at Circuit House Road opposite office of Mukhtiarkar Sukkur? (OPP)*
2. *Whether the plaintiff and defendant No.5 are owners of the same being double allotment in their favour? (OPD)*
3. *Whether the sale of plot by Abdul Qadir defendant No.2 in favour of defendant No.3 and 4 is in violation of Katchi Abadi Scheme. If so what is its effect?*
4. *Whether defendant No.3 and 4 as well as defendant No.5 encroached upon the plot bearing CS No.550/8?*
5. *Whether the plaintiff is entitled for the restoration of said plot encroached upon by the defendant No.5 as well as defendant No.3 and 4? (OPP)*
6. *Whether the suit of plaintiff is barred by any provision of law?*
7. *What should the decree be?*

5. Both parties presented evidence to support their respective claims. Zafar Ahmed Shaikh, the attorney and husband of the applicant, was examined and submitted various documents, including general power-of-

attorney, registered sale deed, extract of the property card, *robkari*, map, and report of City Survey Officer, Sukkur. Sikandar Ali, Office Superintendent of Land Grant Branch, TMA Sukkur, was also examined and presented agreement / allotment orders dated 09.04.1976 and 28.05.1986 in favour of Ameenuddin Shah and Jamal Ahmed Shaikh, respectively. The second allotment was later transferred to the name of Mst. Rana Begum. Additionally, he produced Rana Begum's application dated 22.04.1986, an application by Jamal Ahmed Shaikh accompanied by his affidavit dated 05.04.1986, sheet of the master plan showing the location of plots No.550/8 and 550/59, and a letter dated 14.02.1989. Respondent No.3 was then examined and presented the power-of-attorney on behalf of his mother (respondent No.4), along with the registered sub-lease deed and a no-objection certificate. Ali Muhammad, Sub-Engineer of Katchi Abadi, Sukkur, was also examined and produced a report submitted to the Mukhtiarkar. Muhammad Javed, Deputy Director of Katchi Abadi, Sukkur, was subsequently examined and produced the final allotment order dated 26.10.1998. Finally, Manzoor Ahmed, the husband and attorney of respondent No.5, was examined and provided an extract of the property registered card.

6. Upon considering the above evidence, the trial Court dismissed the applicant's suit through its judgment and decree dated 12.08.2008 and 15.08.2008, respectively. The applicant subsequently appealed the decision, but the appellate Court also ruled against him, dismissing the appeal through a judgment and decree dated 28.10.2011, thereby upholding the trial Court's decision. Consequently, the applicant has filed this revision application.

7. During the pendency of this civil revision, an application under Order I Rule 10, CPC (CMA No.551 of 2019) was filed on behalf of respondents No.3 and 4, seeking the striking off of their names from the

proceedings. They claimed that during the appeal, the applicant had settled her dispute with them and withdrawn her case, with the appellate Court passing an order to that effect on 04.10.2011. This Court, by order dated 28.11.2022, after hearing both parties, allowed the application in the following terms:

“It is an admitted position that during pendency of aforementioned Civil Appeal, the applicant and respondents No.3 & 4 entered into a settlement by moving an application, which was allowed by learned appellate Court vide order dated 04.10.2011; consequently, Civil Appeal stood withdrawn against the said respondents. So far point for determination framed by learned appellate Court, mentioned above, is concerned it is only with regard to reference of the subject plot that the same was allegedly encroached upon by the respondent No.5 as well as respondents No.3 & 4, however, the fact that the Civil Appeal stood dismissed as withdrawn has been recorded by learned appellate Court in its impugned judgment in the following terms:

“It is pertinent to mention here that appellant did not want to proceed against respondents No.3 & 4, and withdrew her claim against them, therefore, appeal is partly dismissed as withdrawn against respondents No.3 & 4, vide order dated 4.10.2011. So, claim of the appellant remains against respondent No.5”.

In view of the above, the application in hand is allowed. Hence, learned counsel for the applicant is again directed to file amended title by striking off the names of respondents No.3 & 4”

8. On 23.01.2023, learned Counsel for the applicant did not press the instant revision application against respondent No.2. This Court observed: *“Needless to mention that order passed by this Court and decree by the trial Court will not affect the legal rights of respondent No.2 as counsel contends that applicant has no cause of action. The counsel for applicant shall be at liberty to file amended title.”* Accordingly, an amended title was filed on 26.01.2023, striking off the names of respondents No.2, 3 and 4, leaving respondent No.5 (Mst. Aftab Sandello) as the only private respondent, whose position has now been changed to respondent No.2.

On the same date, i.e. 23.01.2023, this Court directed that service be effected against respondent No.5 (now respondent No.2) through all modes, including publication. The notice was duly published in the Daily Kawish Hyderabad newspaper on 09.09.2023, as submitted by the learned Counsel for the applicant in his statement dated 14.12.2023 and as reflected in this Court's order dated 19.02.2024. However, despite the matter being fixed for hearing on seven occasions since 09.09.2023, including today's date, no appearance has been made on her behalf.

9. Heard learned Counsel for the applicant as well as learned AAG Sindh, and perused material available on record with their assistance.

10. Firstly, the issue addressed by the trial Court — specifically, whether the suit is barred by any provision of law — must be considered. The trial Court concluded that the applicant's suit was flawed due to misjoinder and non-joinder of necessary parties, as the applicant has not approached the Court with clean hands. Therefore, the suit is not maintainable under the law. This deficiency indicates that compliance with Section 79, CPC, as well as Article 174 of the Constitution of the Islamic Republic of Pakistan, 1973, has not been met. Hence, the applicant's suit is not maintainable due to the failure to include the Province of Sindh as a party in the case. Reliance is placed on the case of Government of Balochistan, CWPP&H Department and others v. Nawabzada Mir Tariq Hussain Khan Magsi and others (2010 SCMR 115), wherein the Hon'ble Supreme Court observed as follows:

“3. A bare perusal of the leave granting order, as reproduced hereinabove, would reveal that it was mainly granted to consider as to whether the suit was instituted properly pursuant to the provisions as enumerated in Article 174 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as the Constitution) and section 79, C.P.C. as admittedly the Government of Balochistan was not impleaded as party through the Secretary concerned. The question which needs determination would be as to whether without impleading the Provincial Government of Balochistan, the suit instituted by

the respondents can be considered a validly instituted suit in view of the provisions as enumerated in section 79, C.P.C, which is reproduced hereinbelow for ready reference:---

“79. Suits by or against the Government.--- In a suit by or against the Government the authority to be named as plaintiff or defendant, as the case may be, shall be---

(a) in the case of a suit by or against the Federal Government, Pakistan;

(b) in the case of a suit by or against a Provincial Government, the Province;

4. The above reproduced section has been couched in a simple and plain language and there is hardly any need for its scholarly interpretation and it simply provides that a suit instituted against the Government, the authority to be named as defendant would be the Federal Government of Pakistan or Province concerned as the case may be. No suit can be filed against Provincial Government without impleading the Province as a party and the procedural precondition is mandatory in nature and no relief can be sought without its strict compliance and such suit would not be maintainable. The provisions as enumerated in section 79, C.P.C. were discussed in case titled Province of Punjab v. Muhammad Hussain PLD 1993 SC 147, relevant portion whereof is reproduced hereinbelow for ready reference:---

“Section 79 of the C.P.C. requires, and so does Article 174 of the Constitution, that all suits against the Central Government C have to be filed in the name of Pakistan and against a Provincial Government in the name of Province.”

11. Since previous respondents No.2, 3 and 4 are excluded or no longer part of the dispute, the discussion will proceed with respect to the other parties involved.

12. The trial Court reviewed the evidence regarding the applicant's ownership claim of plot C.S. No.550/8. The applicant's attorney, during cross-examination, admitted that his wife did not obtain a sale certificate at the time of the transaction, claiming it was not required. He also acknowledged applying for *robkari*, a visit by the City Surveyor, and receiving a notice related to the property. Moreover, he later admitted uncertainty about whether C.S. Nos.550/8 and 550/9 were the same plot.

Nonetheless, Ali Muhammad, a Sub-Engineer, testified that no documents prove that C.S. Nos.550/8 and 550/9 are the same. The trial Court concluded that the mere production of a sale deed does not establish ownership of the plot, especially without examining the deed's author, the registering authority or the attesting witnesses, and thus ruled that the applicant lacked legal ownership of the plot.

13. Learned counsel for the applicant has submitted a statement dated 25.11.2024 along with several documents, including a registered sale deed dated 21.10.1991 in favour of respondent No.5, an agreement dated 10.04.1976 between Aminuddin Shah and the Administrator of People's Municipality, Sukkur, a registered sale deed dated 04.10.1984 in favour of Zahid Ahmed and others, and an extract form dated 10.03.2020 pertaining to Survey No.550/8. He has also placed on record a notification dated 24.11.1982 regarding declaration of the lands mentioned therein as Katchi Abadi.

14. A review of the record submitted by learned Counsel for the applicant reveals several issues to be considered. The applicant claims ownership of plot C.S. No.550/8, measuring 444.4 square yards, which, according to her, was originally owned by Aminuddin Shah. She asserts that he acquired the plot through an agreement dated 10.04.1976 with the Administrator of the People's Municipality, Sukkur, for a 99-year lease with annual rent payments made in advance. However, the agreement references a plot numbered 550, measuring 4000 square feet, rather than 550/8 as claimed by the applicant. While the measurements in square yards provided by the applicant correspond with those in the agreement in square feet, the plot number 550/8 does not appear in the agreement. Instead, the document reflects the plot as number 550, which, according to the applicant's pleadings, pertains to a different plot located to the south of the one she claims.

15. In contrast, the registered sale deed dated 04.10.1984, which is purportedly between Aminuddin Shah and Zahid Ahmed and others (from whom the applicant claims to have purchased the property), lists the plot number as 550/8. Similarly, the Extract from the Property Registered Card also reflects this number, indicating that it was acquired by Aminuddin Shah, then by Zahid (or Zamir) Ahmed and others, and ultimately by the applicant. However, this chain of transactions is based on an initial agreement in which the plot number 550/8 does not appear. Furthermore, the authority of the Administrator of the People's Municipality, Sukkur, to execute such an agreement is also open to question.

16. The applicant failed to substantiate the claim of encroachment by respondent No.5 on her alleged plot, as she was unable to specify the direction from which the encroachment occurred, nor provide details regarding the date and time of the incident. In the sale deed presented by the applicant, a plot (C-550) is mentioned to the north and south of the property, yet in the plaint, C.S. No.550/59 is indicated to the north, which is owned by respondent No.5. Both the Deputy Director of Katchi Abadi and the Office Superintendent of the Land Grant Branch, TMA Sukkur, did not provide any evidence regarding a site visit or measurements of respondent No.5's plot to determine any excess land. Consequently, no credible evidence of encroachment has been presented.

17. The applicant has failed to establish both ownership of the plot C.S. No.550/8 and the claim of encroachment by respondent No.5. The evidence presented, including the chain of documents and testimonies, does not sufficiently support the applicant's claim of legal ownership or the alleged encroachment. Moreover, discrepancies in the documentation and the absence of credible evidence further weaken the applicant's position. The trial Court and the appellate Court have both thoroughly reviewed the matter and dismissed the applicant's claims.

18. In light of the above discussion, since no error has been found in the concurrent findings of both the Courts below, interference by the High Court in this civil revision, as held by the Supreme Court in the case of Abdul Mateen and others v. Mst. Mustakhia (2006 SCMR 50), would amount to an improper exercise of revisional jurisdiction. Therefore, instant civil revision application is hereby **dismissed**.

J U D G E

Abdul Basit