

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 89 of 2019

(Moulana Shahzado Dreho v. Province of Sindh & others)

Date of hearing : 26.08.2024

Date of decision : 26.08.2024

Applicant Moulana Shahzado Dreho, present in person.
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 has challenged the concurrent findings of the Courts below viz. judgment and decree dated 13.08.2018 and 15.08.2018, respectively, passed by learned Illrd Senior Civil Judge, Sukkur in F.C. Suit No.296 of 2017, whereby the Suit was dismissed, and judgment and decree dated 12.01.2019, passed by learned Additional District Judge-IV (Hudood), Sukkur, whereby the decision of the trial Court has been maintained.

2. The applicant / plaintiff, an advocate and the President of Madersa Mehmoodia, which is located near the village of Lalmashaikh in the SITE Area of Sukkur, asserts that one Muhammad Sharif has unlawfully occupied a portion of the Madersa property and has constructed a shop on it. Respondent / defendant No.5 has reported this unauthorized occupation to both the learned Sessions Judge and the Executive District Officer (Revenue). Despite the applicant / plaintiff's efforts to obtain true copies of the site sketch for Survey No. 301 in Deh Rahuja, which are necessary for the preparation of a building plan for the Madersa and Masjid, through applications dated 18.10.2016 and 04.02.20217, these documents have not been provided. Furthermore, a complaint was submitted to respondent / defendant No.3 on 09.03.2017, concerning the

matter, but no action has been taken. Consequently, the applicant / plaintiff has filed the present Suit with the following prayer:

- i. *That Declare the defendants No.3 & 5 not provided true copies of site sketch & report of Mukhtiarkar dated 11.4.1991 of survey No.301 Deh Rahooja Sukkur to the plaintiff despite applications of plaintiff deated 18.2.2016 & 14.2.2017 & complaint for non-compliance dated 9.3.2017 to the defendant No.3 such acts of the defendant No.3 & 5 are illegal against the norms of law & justice liable for action, in this ugly task causing damage & harassment spent time & amount of the plaintiff at Rs.49000/- (forty nine thousands rupees).*
- ii. *Declare that inaction on part of the defendant No.3 & 5 are illegal, malafide and perverse liable for action.*
- iii. *Further pass direction for permanent injunction & bound to the defendants No.3 & 5 from to provide said true copies on cost to the plaintiff.*
- iv. *Cost.*
- v. *Any other equitable relief.*

3. Respondent / defendant No.5 (Mukhtiarkar of New Sukkur), submitted a written statement asserting that the Naqabooli land, measuring 1-07 acres, situated in Survey No.301 in Deh Rahooja, Taluka New Sukkur was allocated by the Land Utilization Department for the construction of Madersa Mehmoodia in 2008. However, this allocation stood cancelled under Section 10 of the Colonization of Government Lands Act, 1912, due to the applicant / plaintiff's failure to commence construction within the stipulated timeframe, thereby not adhering to the terms and conditions. The respondent / defendant further noted that the allotment orders do not specify the boundaries of the land. Additionally, the trial Court barred the remaining respondents / defendants from submitting written statements on 24.08.2017.

4. In the first instance, the trial Court framed the following preliminary issues:

1. *Whether a cause of action has been accrued to plaintiff to bring this suit? (OPP)*

2. *If the finding on the proceeding (sic.) issue is in affirmative would the suit lay before the Court? (OPP)*

5. The aforesaid preliminary issues, as per claim of the applicant / plaintiff, were never framed, but the case diary of the trial Court shows that on 17.02.2018, in presence of the applicant / plaintiff, the said preliminary issues were framed and matter was put off to 07.03.2018 for plaintiff's evidence. Thereafter, on 13.08.2018, the trial Court answering the above-mentioned preliminary issue No.1 in '**NEGATIVE**' dismissed the Suit of the applicant / plaintiff, which order has been upheld by the appellate Court in the appeal. Relevant portion of the trial Court's judgment is reproduced below:

“8. In terms of Section 42 of the Specific Relief Act one can maintain declaratory suit when his right or character to any property is denied. Plaintiff is, however, aggrieved of the act of defendants by which they have not provided him certain certified copies. The purported inaction would, therefore, not give rise to a situation of maintaining declaratory suit and the same is, thus, incompetent under Section 42, aforesaid. Plaintiff seeks damages for a sum of Rs.49,000/- which would not attract first or second class suit as he will have to sue the defendants in their personal capacity and, thus, this would be beyond the jurisdiction of this Court.”

6. The appellate Court, maintaining the order of the trial Court, has held as follows:

“07. It transpires from bare judicious reading of prayer discussed above as set-up in plaint that the Appellant/Plaintiff did not seek Declaration of his own legal character or status or any other right in respect of property but sought discretionary relief of DECLARATION, which is apparently beyond the scope & parameters of Section 42 Specific Relief Act, 1877.

08.

09.

10.

11.

12. *Per R&Ps Mukhtiarkar, Revenue Taluka New Sukkur filed his written statement concluding therein that record of such*

report mentioned in the plaint is not traceable/available in the office of defendant No.4&5 and copy thereof was received by one Mehmood S/O Shahzado Dreho (Plaintiff) on 16-6-2017 who did not controvert it.”

7. A review of the judgments of the Courts below shows that neither any of these Courts decided the case perversely, nor it could be said that they acted illegally or with material irregularity in the exercise of their jurisdiction. Where a lower Court passes an order in exercise of its jurisdiction, the High Court has not to interfere with it in revision unless the order (being sought revision), if allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury, which is not the case at hand. In the absence of any defect in the concurrent findings of both the Courts below, interference of High Court in civil revision as held by the Supreme Court in the case of Abdul Mateen and others v. Mst. Mustakhia (2006 SCMR 50), amounts to improper exercise of revisional jurisdiction.

8. In the given circumstances as well as in the light of the above cited judgment of the Supreme Court and other judgment delivered on the same point in the case of Muhammad Feroze and others v. Muhammad Jamaat Ali (2006 SCMR 1304), the instant civil revision application merits no consideration and the same is accordingly **dismissed**.

Above are the reasons of my short order dated 26.08.2024.

J U D G E

Abdul Basit