

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.191 of 2023

[Umaid Ali and another vs. Province of Sindh and others]

Applicants by : Mr. Aqeel Ahmed Siddiqui, Advocate

Respondents No.7 to 10 by: Mr. Muhammad Nasir Abro, Advocate

Respondents No.1 to 6 by : Mr. Muhammad Ismail Bhutto, Addl. A.G

Date of hearing : 27.01.2025

Date of Decision : 27.02.2025

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115 of the Civil Procedure Code 1908 (“C.P.C.”), the applicants/Plaintiffs challenge the Judgment and Decree dated 09.3.2023, passed by the II-Additional District Judge, Tando Allahyar (“the **Appellate Court**”) in Civil Appeal No.75 of 2022. The said Judgment and Decree upheld the Judgment and Decree dated 26.3.2022, passed by the I-Senior Civil Judge, Tando Allahyar (“the **Trial Court**”) in F.C. Suit No.92 of 2021, thereby dismissing the Applicants’ Suit.

2. The pertinent facts of the case are that the applicants/plaintiffs filed a suit seeking declarations, partitions, possession, and mandatory and permanent injunctions. They averred that the deceased Mitho, son of Dilawar Solangi, was the owner of the suit land¹. Upon Mitho's demise, the mother of the applicants/plaintiffs Mst. Kheri, being his sister and the private respondents, his brother, widow, and sister, inherited the suit land according to their respective shares. It was further averred that the suit land remained under the possession of Respondent No. 7, Anwar, following the death of their mother, Mst. Kheri, the applicants inherited her share and subsequently demanded their share from the private respondents, who refused. Consequently, they approached the concerned revenue authorities to no avail, prompting the filing of the present suit.

3. The private defendants/respondents contested the suit by filing separate written statements, in which they refuted the applicants' claims. They asserted

¹ Bearing Revenue Survey Nos. 04, 05, 06, 06-A, 11, 14, 15, 16-A, 184/05, 06, 201, and 208/5, total measuring 09-32 acres and situated in Deh Sandki Taluka Chamber District Tando Allahyar

that during his lifetime, in the year 2006, the deceased Mitho had sold the suit land to Respondent No. 7, Anwar, through a sale agreement, and that the applicants were fully aware of this sale. They further contended that the applicants never made any such claim during the lifetime of their mother and that the present suit was filed with dishonest and malafide intentions.

4. Arising from the divergent pleadings of the parties, the trial court framed issues, and the evidence of the parties was recorded both in pro and contra. Upon the conclusion of the trial, the trial court, vide impugned Judgment and Decree dated 26.3.2022, dismissed the suit filed by the applicants. Dissatisfied and aggrieved by this decision, the applicants preferred an appeal, which was subsequently dismissed by the appellate Court through the impugned Judgment and Decree dated 09.3.2023. Hence, the applicants have filed the instant revision application.

5. At the outset, the learned counsel representing the applicants contended that both lower courts erroneously concluded that the applicants had failed to avail themselves of remedies before the Revenue forum, without considering that the private respondents disputed the applicants' share based on an alleged agreement to sell. He further contended that the dispute regarding the title should be adjudicated by the Civil Court, being the Court of ultimate jurisdiction under Section 9 C.P.C. He also argued that a mere agreement to sell does not create rights, title, and interest, and no suit for specific performance of the contract was filed by Respondent No. 7. Furthermore, he contended that Respondent No. 7 failed to produce the marginal witnesses. He asserted that the onus to prove that the deceased Mitho had sold the suit land to Respondent No. 7 was upon Respondent No. 7, but he miserably failed. Lastly, it was submitted that the judgments and decrees passed by both lower courts suffer from gross illegalities and irregularities, are not sustainable under the law and are liable to be set aside.

6. Conversely, the learned counsel for the private respondents argued that both lower courts correctly concluded that the suit was not maintainable, as the applicants had available remedies before the Revenue forum, which they had not exhausted. He further contended that during his lifetime, the deceased Mitho had sold the suit land to Respondent No. 7, and this fact is supported by the remaining private defendants/respondents. He also argued that the deceased Mst. Kheri, the mother of the applicants, was aware that the deceased had sold the suit land to Respondent No. 7 and therefore, she never claimed her share during her lifetime. He asserted that since the execution of the agreement

to sell, Respondent No. 7 has been in possession of the suit land. Additionally, he pointed out that one of the marginal witnesses, namely Muhammad Hassan, was examined and supported the version of Respondent No. 7. Lastly, he contended that it is a well-settled principle of law that this Court has very narrow jurisdiction to interfere in the concurrent findings of the lower courts. Both the judgments and decrees of the lower courts are in accordance with the law and do not suffer from any gross illegality, irregularity, or infirmity warranting interference by this Court.

7. Learned Addl. Advocate General, while refuting the contention, argued that the Revision is not sustainable under the law. It is a case of concurrent findings, and in the Revisional Court, the facts recorded by the inferior Courts cannot be disturbed; therefore, this Revision is not maintainable under the law.

8. I have contemplated the arguments presented by the learned counsel for both parties and have thoroughly reviewed the legality and propriety of the judgments and decrees rendered by the Courts below.

9. Upon scrutinizing the impugned judgment of the trial Court, it becomes evident that the trial Court, in its findings on issue No.1 concerning the maintainability of the suit, adjudged the suit as not maintainable based on the following principal grounds: the suit land is designated as agricultural land, and its partition falls under the exclusive purview of the Revenue Authorities; the applicants were unable to furnish any documentary evidence to substantiate their claims before approaching the pertinent Revenue Authority; and the private defendants contended that the deceased had sold out the suit land to the Respondent No.7 vide a sale agreement. Until such a claim is resolved, it cannot be conclusively determined that the suit land was inherited by the applicants. The trial court further emphasized that the jurisdiction of the Civil Court is unequivocally barred under Sections 135 and 172 of the Sindh Land Revenue Act, 1967 ("**SLRA, 1967**") concerning matters related to the demarcation/partition of land. Consequently, the applicants were obligated to exhaust all available remedies before the Revenue Authorities prior to instituting the suit, as mandated under Section 11 of the Sindh Revenue Jurisdiction Act, 1876, which they failed to do. The aforementioned findings of the trial Court were upheld by the appellate Court. In the present case, therefore, the question arises as to whether, based on the assertions made in the plaint, among other claims that the applicants have been denied their share of inheritance of their mother, the relief of declaration concerning their entitlement to their share and interest in the suit land, along with the consequential relief of

partition and possession, is precluded under Section 172 of the SLRA, 1967. It is pertinent to refer here to the relevant provisions, viz.: Sections 141 and 172 of the SLRA, 1967, which are reproduced herein below:-

"Section 141. Disposal of questions as to title in the property to be divided: - (1) When there is a question as to title in any property of which partition is sought, the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as though he were such a Court.

(2) Where the Revenue Officer does not himself proceed to determine the question of title as a civil Court, he may, for reasons to be recorded by him in this behalf, require a party specified by him to file a suit in a civil Court, within such period not exceeding ninety days from the date of his order as he may fix, for obtaining a decision regarding the question.

(3) On the filing of a civil suit by the party required so to do within the specified period, the Revenue Officer shall, suspend further action on the application for partition till the said civil suit is decided by the Court and a 'copy of the Court's order is produced before him.

(4) In case the party so required fails to file a suit within the specified period, the Revenue Officer may proceed with the partition and decide the question of title himself."

Then follows subsection.(5) which lays down the rules which shall apply if the Revenue Officer proceeds to determine the question of title.

Section 172 (1) and (2) , (xviii) below:-

"Section 172. Exclusion of jurisdiction of civil Courts in matters within the jurisdiction of Revenue Officers;--(1) Except as otherwise provided by this Act, no Civil Court shall have jurisdiction in any matter which Government, the Board of Revenue, or any Revenue Officer, is empowered by this Act to dispose of or take cognizance of the matter in which Government, the Board of Revenue, or any Revenue Officer exercises any powers vested in it or him by or under this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), a civil Court shall not exercise jurisdiction over any of the following matters namely:-

(xviii) any claim for partition of an estate or holding, or any question connected with or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought."

10. Perusal of the provisions of SLRA, 1967 reproduced above, would show that the jurisdiction of the civil Courts is barred only in specified cases. A civil Court shall not exercise jurisdiction over any matter, "any claim for partition of an estate or holding, or any question connected with or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought. This provision primarily addresses the exclusion of civil Court jurisdiction in matters relating to the partition of estates or holdings. However, the exception "**not being a question as to title**" is crucial. It explicitly

implies that while the civil Court is barred from dealing with partition claims and related matters, it retains jurisdiction over questions of title in the property sought to be partitioned. In the context of the present case, the plaintiffs/applicants sought a declaration of their share of inheritance, partition, and possession of suit land inherited by their mother from her brother Mitho. The Respondent/defendant No.7 denied their claim, alleging that the deceased Mitho had sold the suit land to him by an agreement to sell, thus raising a title dispute.

11. The impugned judgments of the trial and appellate Court concluded that the suit was not maintainable based on the exclusive jurisdiction of Revenue Authorities over partition matters under Sections 135 and 172 of the SLRA, 1967, and the procedural requirement to exhaust remedies before Revenue Authorities under Section 11 of the SRJA, 1876. Nevertheless, the applicants' claim fundamentally involves a question of title to the suit land, given defendant No.7's allegation of a sale agreement. Sub-Section 2 (xviii) of Section 172 of the SLA, 1967, specifically excludes civil Court jurisdiction in matters related to the partition of estates or holdings unless it involves a question of title. This exception is paramount as it acknowledges that civil Courts possess the jurisdiction to adjudicate title disputes, even in partition matters. Therefore, when a title dispute arises, as in the present case, the civil Court's jurisdiction is not precluded by Section 172 of the SLRA, 1967. The judicial interpretation of Sub-Section 2 (xviii) underscores the necessity to distinguish between pure partition matters and those intertwined with title disputes. The Legislature's intent behind this provision is to ensure that specialized Revenue Authorities handle the technical aspects of partition while enabling civil Courts to address complex legal issues concerning title. This bifurcation ensures efficient adjudication by competent authorities while preserving the litigants' right to seek judicial determination of title disputes.

12. In light of the foregoing, the plaintiffs'/applicant's suit, primarily seeking a declaration of their right of inheritance and consequential relief of partition and possession, falls within the jurisdiction of the civil Court due to the inherent title dispute. The trial and appellate Courts' failure to recognize this pivotal aspect and their reliance on the general exclusion of jurisdiction under Sections 135 and 172 of SLRA, 1967, without acknowledging the exception in Sub-Section 2 (xviii), constitutes a misapplication of the law. Thus, a meticulous judicial review necessitates the acknowledgement that the civil Court retains jurisdiction over the plaintiffs' suit, as the primary issue revolves

around the title to the suit land. The exclusionary provisions of Section 172 of the SLRA, 1967, do not apply in cases where title disputes are central, thereby rendering the plaintiffs' suit maintainable in the civil Court. In the case of Nazir Ahmad and another², the Supreme Court of Pakistan enunciated the following holding: -

"3. So far as the jurisdiction of civil Court is concerned, it has been held by the trial Court and affirmed by all the Courts where a question of title or ownership of land or any immovable property is involved then the civil Court alone, to the exclusion of the Revenue officer or Revenue Court is competent to decide it. In this case it was not so much the demarcation of the land as the title in immovable property which was in issue. The civil Court rightly took cognizance of the matter and proceeded to decide it."

13. The scope of section 172 of the SLRA, delineates a distinct scope. It expressly excludes the jurisdiction of Civil Courts from undertaking the functions assigned to Revenue Courts, as well as from addressing the methodology adopted by Revenue Courts in discharging such functions. The core function of Revenue Courts is the preparation of Revenue Records based on evidence pertaining to one's title or interest. However, the ultimate finality and determination of civil rights are vested in the orders passed by Civil Courts. Section 42 of the Specific Relief Act, 1877, empowers an aggrieved person to seek a declaratory judgment from a Civil Court regarding their rights or title, whether it pertains to a character either in rem (against the world) or in personam (against specific individuals).

14. Reverting to the merits of the case concerning the inheritance rights of the applicants' mother, Mst. Khairi, the trial Court addressed two primary questions: the right of inheritance of Mst. Khairi in the suit land and the legal heirship/status of the applicants as her successors. The trial Court held that the burden of proof rested on the applicants, who presented evidence including testimony from an official of NADRA and the Family Tree of Mst. Khairi. While this evidence confirmed the applicants as legal heirs, the trial Court emphasized the contesting private defendants' claim that Mitho, the original owner, had sold the suit land during his lifetime through a sale agreement. There is no denying that Mst. Khairi was one of the legal heirs of deceased Mitho, being his sister, and after the death of Mst. Khairi, the applicants are her legal heirs. The trial Court declined the relief to the applicants by solely relying upon the version of Respondent No.7, who claimed that deceased Mitho had sold the suit

² Nazir Ahmad and another vs. Maula Bakhsh (1987 SCMR 61)

land to him through an agreement to sell, which was neither produced nor exhibited in evidence. No legal proceedings were initiated by Respondent No.7 during the lifetime of deceased Mitho to properly transfer the title of the suit land in his name pursuant to the alleged sale agreement. Furthermore, Respondent No.7 did not offer any plausible reason to justify his omission of not approaching a court of law for the implementation of the agreement at the relevant time.

15. According to Section 54 of the Transfer of Property Act, 1882, a "sale" means the transfer of ownership in exchange for a price paid or promised, or part paid and part promised, and in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can only be made by a registered instrument. Additionally, a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties, but it does not, of itself, create any interest in or charge on such property. In the present case, Respondent No.7 was claiming the title merely on the strength of the agreement to sell. It is a glaring and patent legal error committed by the trial Court to rely on the alleged agreement to sell and refuse to grant the applicants their right of inheritance. On the basis of a sale agreement, no legal character or right can be established to prove the title of the suit property unless the title is transferred pursuant to such agreement to sell. The Supreme Court of Pakistan, in the case of Muhammad Yousaf vs Munawar Hussain and others (2000 SCMR 204), held that an agreement to sell by itself could not confer any title on the vendee because it is not a title deed and does not confer any proprietary right. The only right arising from an agreement to sell is to seek its specific performance.

16. Moreover, the purported agreement to sell was neither produced nor exhibited in evidence by Respondent No.7; rather, it was introduced into the record through a statement by the learned counsel for the private defendants, which was neither exhibited nor formally marked. Respondents No.7 and No.9 testified on behalf of the private respondents, as did one of the marginal witnesses, Muhammad Hassan (DW-3). However, no documents were formally exhibited during their testimonies. The alleged agreement to sell, a pivotal document underpinning Respondent No.7's claim, was not properly exhibited but was introduced through the statement of the learned counsel, rather than through the testimonies of the witnesses. In this regard, the Supreme Court of

Pakistan, in the case reported as *Federation of Pakistan through the Secretary, Ministry of Defence and another*³, has observed that:

"The document which has not been brought on record through witnesses and has not duly exhibited, cannot be taken into consideration by the Court. A party having produced no evidence on its own would have to abide by it, and be bound by such evidence as had come on record. Written statements cannot be exhibited in the case without the person who filed the same being examined in the Court and cannot be treated as substantive evidence except where such a statement amounts to admission of the plaintiff's plea. The contention of the learned counsel for the petitioners that the Court has to take into consideration the document on which the petitioners relied upon, has no force as neither the copy of such document was brought on record nor during their cross-examination were the witnesses of the respondents confronted with said document."

17. Furthermore, in the case of *Mst. Akhtar Sultana*⁴, the Supreme Court of Pakistan reiterated:-

"This Court has time and again emphasized that disputed documents cannot be tendered in evidence in the statement of the counsel for a party because such a procedure deprives the opposing party of the opportunity to test the authenticity of those documents by exercising the right of cross-examination."

18. Similarly, in the case of *Rustam and others*⁵, the Supreme Court of Pakistan held: -

"The document should be produced in evidence by the party itself and a fair opportunity should be given to the opposite party to cross-examine the same. As such, the said two documents produced by the defendants' counsel in his statement could not be taken into consideration."

19. Pertinently, Rule 4 of Order XIII C.P.C, is apposite and shall be elucidated as follows:

"4. Endorsements on document admitted in evidence. – (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:

- (a) the number and title of the suit;*
- (b) the name of the person producing the document;*
- (c) the date on which it was produced, and*

³ Federation of Pakistan through Secretary, Ministry of Defence and another vs Jaffar Khan and others (PLD 2010 SC 604)

⁴ Mst. Akhtar Sultana vs. Major Retd. Muzaffar Khan Malik through his legal heirs and others (PLD 2021 SC 715)

⁵ Rustam and others vs. Jehangir (deceased) through LRs (2023 SCMR 730)

(d) a statement of its having been so admitted; and the endorsement shall be signed or initialed by the Judge.

(2) Whereas document so admitted is an entry in a book, account or record and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialed by the Judge."

20. The aforementioned provision of law renders it unequivocally explicit that any document not brought on record through witnesses and duly exhibited is devoid of legal value or sanctity in the eyes of the law, thus precluding its consideration by the Court. Mere tendering a document through a statement does not obviate the necessity of proving its contents, and it cannot be treated as duly exhibited unless it is substantiated in accordance with legal standards. In its jurisprudence, the Supreme Court of Pakistan has unequivocally established that documents not introduced through the testimonies of witnesses cannot be judicially considered. Both the subordinate courts, however, neglected to adhere to this procedural mandate. Moreover, admitting documents into evidence without complying with the procedural prerequisites of Articles 76 and 79 of the Qanun-e-Shahadat Order, 1984, constitutes a legal irregularity. As such, the procedural lapse undermines the legal sanctity and evidentiary value of the documents in question, warranting a stringent judicial review. The judgments of the Supreme Court of Pakistan, as delineated, reinforce the jurisprudential principle that documents must be produced and properly exhibited in evidence to be relied upon for judicial determination. Consequently, the trial Court's decision to decline relief to the applicants predicated solely on an unproduced and unexhibited sale agreement is legally unsustainable and constitutes a fundamental error in the judicial determination of the applicants' inheritance rights.

21. In view of the foregoing, it is discerned that both the lower Courts have egregiously failed to adjudicate upon the matter by meticulously appreciating the pertinent legal principles; thus, both the Courts below have egregiously misapprehended the evidence adduced by the parties. In such circumstances, this Court is imbued with the plenary authority and ample power to abrogate the concurrent findings while exercising its revisional jurisdiction under Section 115 C.P.C, as has been held in the cases of⁶.

⁶ Nazim-Ud-Din and others vs. Sheikh Zia-Ul-Qamar and others (2016 SCMR 24), Sultan Muhammad and another vs. Muhammad Qasim and others (2010 SCMR 1630), Ghulam Muhammad and others vs Ghulam Ali (2004 SCMR 1001), and Habib Khan and others v. Mst. Bakhtmina and others (2004 SCMR 1668)

22. For the foregoing reasons, the instant Revision Application is **allowed**. Consequently, impugned Judgments and Decrees passed by both the lower Courts are set aside, and as a result, a suit filed by the applicants is decreed. They would be granted a preliminary decree for possession by partition of their share in the suit land. A copy of this judgment will be immediately remitted to the trial court, where the parties shall appear. The trial Court shall requisite the records and proceed to pass the final decree in accordance with law, and the decree be sent to the Collector under the provisions of Order XX Rule 18 C.P.C., which the Court alone has the jurisdiction to do the needful. The parties are to bear their costs.

JUDGE

Sajjad Ali Jessar