

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 174 of 2019

(Bashir Ahmed Arain & others v. Rehmat Ali Arain & others)

Date of hearing : 16.12.2024

Date of announcement : 28.02.2025

Mr. Nasir Ali Rajput, Advocate for applicants.
Mr. Haji Shamsuddin Rajper, Advocate for respondents.
Mr. Ghulam Abbas Kubar, Assistant Advocate General Sindh along
with Asif Ali Shar, Mukhtiarkar, Mehrabpur.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – Through this Civil Revision, the applicants have challenged the judgment and decree dated 11.09.2019, passed by the learned Additional District Judge-II, Naushahro Feroze, in Civil Appeal No.209 of 2018. In this appeal, the judgment and decree dated 17.09.2018, passed by the learned 2nd Senior Civil Judge, Kandiaro, in Old F.C. Suit No.47 of 2013 (New F.C. Suit No.30 of 2018), were upheld, thereby dismissing the applicants' suit.

2. The applicants (plaintiffs) claim that the disputed agricultural land, located in Survey Nos. 47/A, 47/B and 179, measuring 6-21 acres, in Deh Jeeando Rajper, Taluka Mehrabpur, District Naushahro Feroze, was originally allotted to Rehmat Ali son of Nooruddin Arain, the predecessor-in-interest of the applicants. This allotment was made in accordance with the Displaced Persons (Land Settlement) Act, based on Rehmat Ali's bonafide claim. After Rehmat Ali's death in 1975, the applicants inherited the land as his legal heirs. Due to their relocation to Punjab, they were unable to take possession of the land, during which time respondent No.1, Rehmat Ali (son of Fazaluddin, not Nooruddin), falsely claimed to be the son of Nooruddin. He, along with respondents No.2 and 3, is alleged to have conspired with the revenue authorities (respondents No.4, 5 and 6)

to manipulate the revenue records and illegally seize the land. Despite the applicants' multiple attempts, including a formal request in 2005 to vacate the land, they were met with threats and resistance. Respondent No.1 filed a suit (F.C. Suit No.74 of 2005) in the Court of the learned Senior Civil Judge, Naushahro Feroze, seeking a declaration, perpetual injunction and cancellation of entries, which was eventually dismissed as withdrawn on 06.02.2013.

3. The applicants had previously filed F.C. Suit No.14 of 2006, where the learned Senior Civil Judge, Naushahro Feroze, ordered a DNA test to confirm the familial relationship between Rehmat Ali (respondent No.1) and one Arshad Ali, who was purportedly his brother. The blood samples of both Rehmat Ali and Arshad Ali were taken in open Court and sent to the Centre for Applied Molecular Biology, Lahore. The report revealed that the Y-chromosome profiles of Rehmat Ali and Arshad Ali matched, confirming that they shared the same paternal lineage. On the basis of this report, the applicants' suit was decreed in their favour vide judgment and decree dated 31.08.2007 and 05.09.2007, respectively. However, this decision was contested by respondent No.1 through Civil Appeal No.71 of 2007, which led to the matter being remanded by the learned Additional District Judge, Moro, through his judgment dated 05.11.2010. The case was sent back to the learned trial Court with directions to allow the parties to present their evidence and decide the matter on its merits.

4. After the remand, the applicants eventually withdrew the suit on 06.02.2013 with permission to file a fresh one, due to some formal and technical defects in the plaint. They filed the current suit, reiterating their earlier claims and asserting that in Survey Nos. 47/A (02-25 acres) and 47/B (03-16 acres) of Deh Jeeando Rajper, there were co-sharers; however, respondent No.1, Rehmat Ali, had by personation fraudulently portrayed himself as the son of Nooruddin, and through fraud and deceit,

executed a registered sale deed dated 13.01.1970, selling the share of Nooruddin in these survey numbers, along with other vendors, in favour of Jurio (Jurial). The legal heir of Jurio, his son, namely Muhammad Yousif was joined as defendant in the previous suit, but he also passed away during the suit's pendency. As a result, respondents No.2, legal heir of Muhammad Yousif, and legal heirs of respondent No.3, who is purchaser, were joined in the present suit. It is claimed that the registered sale deed was kept concealed as it was based on fraud and deceit, hence, the applicants assert that there is no limitation to challenge a document forged under such circumstances. The following prayers were made in the current suit:

- a) It be declared that the plaintiffs are owners of the suit land by way of inheritance from original owner Rehmat Ali son of Nooruddin and the defendants have got no right, title or interest over the suit land.
- b) It also be declared that defendant Rehmat Ali is personating and falsely claiming to be son of Nooruddin but in fact he is son of Fazal Din the D.N.A Test has proved.
- c) It also be adjudged that the registered sale deed dated 13-01-1970 No.76 registered by the Sub Registrar Naushahro Feroze in favour of late Jurial who expired during pendency of previous suit his son Yousif also expired at present defendant No.2 Habib is divided in interest, the registered sale deed is based on fraud. Malafide and personation hence subsequent sale transaction also collapse the sale deed be cancelled and adjudged void and delivered up, the defendant No.8 Sub Registrar Naushahro Feroze put a note with red ink on sale deed as CANCELLED to the extent of sale by Rehmat.
- d) That this Honourable Court may be pleased to order the defendants No.1 to 3 to put plaintiffs vacant possession of the suit land.
- e) This Honourable Court may be pleased to appoint a Commissioner to assess the Mesne profits of the suit land from last 14 years till including the period of previous suit 7 years, the restoration of the possession of suit land to the plaintiffs and final decree be drawn in accordance with the report of Commissioner.
- f) A permanent injunction be issued against the defendants, retraining them from alienating, transferring or leasing out the suit land to any other person directly or indirectly personally or through any of their agent relative or attorney in any manner.

- g) The defendants No.4, 5 and 6 be ordered by a mandatory injunction to restore the entries in Revenue Record of rights in the name of plaintiffs.
- h) That the costs of the suit be borne by the defendants No.1 to 3.
- i) Any other relief which this Honourable Court deems fit and proper may also be awarded to the plaintiffs.

5. The respondent No.1 by filing his written statement denied the applicants' claims, asserting that the suit land was allotted to him, and not to the applicants' predecessor. It is contended that the revenue records were correctly maintained, and that respondent No.1 has been in lawful possession since the original allotment. The sale deeds for the land, executed in 1970, were legal, and the applicants were aware of the same from the beginning, rendering the suit time-barred. The respondent further denied the applicants' allegations of fraud, personation and unlawful possession. It is also claimed that the applicants have no cause of action and have not come to the Court with clean hands. Additionally, the suit is argued to be improperly filed against a deceased person (respondent No.3) and barred by law. The respondent prayed for the dismissal of the suit with costs.

6. Based on the pleadings of the parties, the learned trial court framed the following issues:

- 1. Whether the suit is time barred, not maintainable at law?
- 2. Whether the defendant No.1 Rehmat Ali is son of Fazal Din and he is falsely claims to be son of Noor Din?
- 3. Whether D.N.A Test of defendant Rehmat Ali and his real brothers Arshad Ali Blood sample taken in the Court in previous suit No.14 of 2006 Re: Bashir Ahmed Versus Rehmat Ali & others through Centre for applied Molecular Biology Lahore Reference CAMB PS-00024/07 dated 1st August 2007?
- 4. Whether the suit land was allotted to deceased Rehmat Ali Arain, the predecessor-interest of the plaintiffs by Evacuee department?
- 5. Whether the plaintiffs are lawful owners of the suit land by virtue of inheritance?

6. Whether the registered sale deed dated 13-01-1970 bearing 76 in favour of Jurio the predecessor-interest of defendant No.2 and 3 is illegal, null and void, fraudulent document and liable to be cancelled?
7. Whether the Survey No.179 of deh Jaindo Rajper was Muslim property and never allotted to any person?
8. Whether the defendants are in illegal possession of the suit land, if yes they are liable to pay Mesne profits, from which date for what quantum?
9. What should the decree be?

7. After recording evidence and hearing the parties, the learned Senior Civil Judge, Kandiaro, dismissed the suit through judgment and decree dated 15.02.2016 and 16.02.2016, respectively. The applicants then appealed the decision through Civil Appeal No.19 of 2016, which was decided through judgment dated 04.05.2018 by the learned 1st Additional District Judge, Naushahro Feroze. The matter was remanded, with directions to the trial Court to rehear it, giving full opportunity to the parties and deciding the case afresh while addressing issues No.1, 6 and 8 with proper findings and reasons. On rehearing, the learned Senior Civil Judge-II, Kandiaro, dismissed the applicants' claims again vide judgment and decree dated 17.09.2018. The applicants then filed another appeal (Civil Appeal No.209 of 2018), which was dismissed by the learned Additional District Judge-II, Naushahro Feroze through judgment and decree dated 11.09.2019. The present Civil Revision has been filed against the same.

8. Heard learned Counsel for the parties and perused the material available on record with their assistance.

9. Upon review of the case, it is evident that this is the third round of litigation. In the first round, the suit was decreed based on the DNA test, which confirmed that Rehmat Ali (respondent No.1) and Arshad Ali shared the same paternal lineage. Despite respondent No.1's objections to the validity of the DNA test, the learned trial Court concluded that respondent

No.1 was the son of Fazaluddin, not Nooruddin, and that the applicants were the rightful owners of the land. The learned trial Court ruled that respondent No.1's actions concerning the land were unlawful, and the applicants were entitled to challenge the sale transactions.

10. However, the learned appellate Court remanded the case, claiming the DNA test was not conclusive enough to establish brotherhood, and additional tests should have been performed. This reasoning ignores the clear findings of the DNA test, which definitively established a shared paternal lineage between Rehmat Ali and Arshad Ali.

11. It is necessary to examine the DNA report dated 01.08.2007 (Page-245), which clearly shows in the results: **DNA Y-STR profile obtained from item 1.1 (Rehmat Ali) matches with the DNA Y-STR profile of item 1.2 (Arshad Ali)**. Moreover the conclusion reflects: **Rehmat Ali (item 1.1) and Arshad Ali (item 1.2) belong to the same paternal lineage**. Despite the clear results and conclusion, the learned appellate Court in the first round, and both the Courts in the second and third rounds only gave weightage to the "Note" given in the end of the report. For convenience, the same is reproduced hereunder:

"Y-Chromosome remains same in a paternal lineage. Because Rehmat Ali and Arshad Ali have same DNA Y-STR profile, therefore, they could be real brothers or paternal cousin etc. To confirm exactly the brotherhood, the samples of father and/or mother are also required."

12. The DNA report clearly establishes that Rehmat Ali (respondent No.1) and Arshad Ali share the same Y-STR profile, indicating they belong to the same paternal lineage. This finding directly addresses the central issue of whether the two individuals are related within the paternal family line. The report's conclusion that they could be real brothers or paternal cousins highlights their shared genetic markers, which is a strong and scientifically valid indicator of their familial connection. The "Note" at the

end of the report, suggesting further testing on the parents to confirm exact brotherhood, does not invalidate the conclusive evidence of their shared paternal lineage. It merely points to additional verification for more specific details, but the fundamental question regarding their relationship is already sufficiently addressed.

13. The insistence by the Courts below on the need for further testing overlooks the fact that Y-STR testing is a highly specific and reliable method for establishing paternal relationships. The match in the Y-STR profiles is enough to confirm that Rehmat Ali and Arshad Ali are closely related through their paternal line, making additional tests unnecessary for determining their familial connection. While further tests could confirm their brotherhood more definitively, the existing DNA evidence already provides a solid basis for the applicants' claim to the suit land, as it establishes their rightful inheritance from Rehmat Ali son of Nooruddin. Therefore, the DNA report should have been considered sufficient for resolving the case, and the need for further testing should not have overshadowed the conclusive evidence already provided.

14. The attitude of respondent No.1 reflects a concerning level of inconsistency and evasion, particularly in relation to the procedures followed during the case. It is important to note that both the learned trial Court's judgment dated 31.08.2007 and the learned appellate Court's judgment dated 05.11.2010 (in the first round) were passed in his presence, and at no point during the proceedings did he contest or object to the fact that his blood sample, along with Arshad Ali's, was taken in open Court. The learned trial Court had clearly documented that the blood samples were obtained in open Court and sent to Aga Khan Hospital for testing, and upon receiving the report, the Court followed up by obtaining further clarification from the Special Medical Board. The Board stated that DNA sequencing for paternity could only be conducted at the Centre of

Excellence at the University of Punjab in Lahore, prompting the learned trial Court to follow the necessary procedure, with fresh blood samples being obtained in open Court and sent to the Centre at the plaintiffs' expense.

15. However, in his written statement dated 06.06.2013, respondent No.1 unexpectedly denied this established fact, stating, "*It is denied that the Blood sample was taken in the open court.*" This denial is particularly egregious because it contradicts the official records of the learned trial Court, which were made in his presence, and at no point during the hearings did he raise any objection or challenge the procedures being followed. This denial appears to be a deliberate attempt to undermine the accuracy and credibility of the Court's record and the DNA testing process. It suggests an evasive attitude towards the truth, perhaps in an effort to avoid the consequences of the DNA results, which supported the applicants' claims. By denying an undeniable fact that was established and recorded in both judgments, respondent No.1's behavior casts doubt on his intentions and raises questions about his willingness to engage honestly in the legal proceedings.

16. Rehmat Ali's testimony is filled with contradictions that seriously undermine his case. For instance, he initially claims in his examination-in-chief that he was about 15 or 16 years old at the time of the creation of Pakistan. However, in cross-examination, he contradicts this, stating that he is currently about 79 or 80 years old, and if we take the birth year he provided on his CNIC as 1946, it would make him only 1.5 years old at the time of Pakistan's creation and 69.5 years old at the time of recording of his evidence on 11.08.2015. This inconsistencies cast doubt on his credibility. Additionally, the mutation order and the land revenue receipts he presents contain serious discrepancies. The mutation order is missing crucial details such as the name of the allottee's village and other required

columns, raising questions about its authenticity. He also claims that the receipts he submitted are valid, but the plaintiffs raised objections, suggesting that they may have been forged or altered. Furthermore, while Rehmat Ali disputes the DNA test results, which clearly show that he and Arshad Ali share the same paternal lineage, he fails to provide any solid evidence to support his claim that the test was incorrect.

17. After thoroughly reviewing the case, it is clear that the lower Courts erred in overlooking the conclusive DNA evidence, which definitively established that Rehmat Ali and Arshad Ali share the same paternal lineage. The insistence on further testing, despite the clear results of the Y-STR test, was unjustified, as the test already provided reliable confirmation of their relationship. Furthermore, respondent No.1's contradictions in testimony and the questionable authenticity of the documents he presented further weakened his case.

18. For what has been discussed above, instant Civil Revision is hereby **allowed**, and the impugned judgments and decrees of the Courts below are set aside. Consequently, the applicants' suit bearing Old F.C. Suit No.47 of 2013 (New F.C. Suit No.30 of 2018) is decreed in their favour.

J U D G E

Abdul Basit