

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision Application No. S-110 of 2019

Applicant Abdar Khan son of Abdul Jabbar Khan	:	through Mr. Abdul Baqi Jan Kakar, Advocate
Respondent No.1 Shahid son of Muhammad Usman Rajpar	:	through Mr. Hafiz Tanveer Ahmed, Advocate
Respondents No.2 to 6	:	through Mr. Agha Athar Hussain Pathan, Addl. Advocate General, Sindh
Date of Hearing	:	27.01.2025
Date of Judgment	:	28.02.2025
Date of Announcement	:	03.03.2025

JUDGMENT

Muhammad Saleem Jessar, J.- Through this Civil Revision Application filed under Section 115 of Civil Procedure Code, the applicant Abdar Khan has challenged the Judgment and Decree dated 02.05.2019 passed by IInd Additional District Judge, Naushehro Feroz, in Civil Appeal No.118/2019 (Re: Abdar Khan Vs. Shahid and others) whereby he maintained the judgment and decree dated 10.04.2018 passed by IInd Senior Civil Judge, Naushehro Feroz in old FC Suit No.228/2915 and New F.C. Suit No.198 of 2016.

2. Brief facts giving rise to filing of instant Civil Revision Application are; that applicant Abdar Khan filed abovesaid civil suit in the Court of IInd Senior Civil Judge, Naushehro Feroz for Declaration, Possession, Mesne Profits and Permanent Injunction, alleging therein that the disputed agricultural land admeasuring 2-00 acres, situated in Mohag of Survey No.340 of Deh Tharushah, originally belonged to Government, thereafter, the same was granted to the applicant / plaintiff by the Barrage Department being Muhagedar on fully paid basis according to land grant policy and such A-From, Qabooliyat and other documents were issued in his favour by the Barrage Department on 29.4.1984. After grant of the suit land, the applicant / plaintiff approached the then Executive District Officer, Naushahro Feroze for confirmation of said grant, which was accordingly confirmed vide order dated 27.11.2006 and the plaintiff become lawful owner of suit land and since then he was in possession of the land and beside was cultivating and enjoying its produce. It was further stated that in the second week of October, 2014 defendant No.1 forcibly occupied the suit land illegally with malafide intention. However, some other persons namely, Azizullah and others filed F.C. Suit No.153/2014 against him and they in collusion with each other with malafide intention made attempt to usurp the property of the plaintiff. However, when the plaintiffs in aforesaid suit came to know that the suit property had already been granted in favour of applicant / plaintiff by Barrage Department, they withdrew their suit on 16.10.2014. Thereafter, the applicant / plaintiff approached several times to the Revenue Authorities for mutation of record of rights in his name, but they always kept him on false hopes and lastly refused to do so, as such he filed the abovesaid suit.

3. After admission of the suit, the defendants were served and defendants No.1 & 2 filed their respective written statements, while official defendants No.3 to 6 adopted the same written statement as filed by official defendant No.2.

4. Defendant No.1 in his written statement stated that claim of the plaintiff is false and that, in fact, he is the lawful owner of the suit property on the basis of title documents issued by the competent authority in favour of his father Mohammad Usman. He further asserted that the documents relied upon by the plaintiff had been arranged by him, thus the same have no binding effect upon the defendant. He further stated that the plaintiff has

never remained in possession of suit property and he (defendant No.1) is in lawful possession thereof since long and the claim of possession of the plaintiff is false. He lastly stated that the suit of the plaintiff is without cause of action and the same is not maintainable under the law and is liable to be dismissed.

5. Official defendant No.2 in his written statement stated that in the report submitted by concerned Supervising Tapedar/Tapedar of the beat, has stated that as per entry No.55 of VF-VII-A an area of 1-00 acre out of S.No.340 of Deh Tharushah was entered in the name of Abdar S/O Abdul Jabbar (share 28 paisa) on the basis of registered sale deed and the Muhaga of S.No.340 has not been entered in the record of rights on the basis of A-Form in the name of any person by Barrage Mukhtiarkar. He further stated that the dispute over the said plot is in between two private parties in which the government interest is not involved.

6. After recoding evidence of the parties and hearing their advocates, the suit was decreed by the trial court vide judgment and decree dated 05.4.2017 which were assailed by defendant No.1 Shahid by preferring Civil Appeal No.57/2017 in the Court of District Judge, Naushahro Feroze. Consequently, the appeal was allowed, Judgment and Decree passed by trial court were set-aside and the case was remanded to the trial court with direction to frame the following additional issue, lead evidence on that issue and decide the matter afresh.

"Whether defendant No.1 Shahid is lawful owner of the suit land on the basis of documents of his father Muhammad Usman?"

7. The trial court, in compliance with above direction framed above said additional issue. Plaintiff Abdar Khan adduced his evidence on the additional issue and thereafter counsel for the plaintiff closed plaintiff's side. However, defendant No.1 did not adduce any evidence on the additional issue but his counsel filed statement Ex.78 thereby adopting the same evidence already recorded by trial court and closed defendant's side.

8. After hearing arguments advanced by learned counsel for the parties, as detailed above, the trial Court dismissed the suit and such dismissal was challenged by the applicant / plaintiff by filing Civil Appeal which was also dismissed vide judgment dated 02.05.2019. Hence the applicant has filed

instant Civil Revision Application impugning the aforesaid judgment and decree passed by the Appellate Court.

9. I have heard learned counsel for the parties and have perused the material made available before me on the record.

10. Learned counsel for the applicant submitted that the land in question was granted to the applicant initially in the year 1984; however, due to violence on account of assassination of Muhtarma Benazir Bhutto on 27.12.2007, entire record was set on fire; therefore the defendant / respondent No.1 by taking advantage of said incident had occupied subject land by dispossessing the plaintiff/applicant. According to him, the courts below have not taken into consideration this aspect of the case. He further submitted that the respondents have not produced any record/material to substantiate their claim over the suit land. He further submitted that judgments of the Courts below suffer from misreading of the evidence. He, therefore, prayed for allowing instant civil revision application and setting aside the judgments passed by the courts below.

11. Learned counsel for respondent No.1 opposed the revision application and submitted that initially the suit filed by the applicant was decreed; however, in appeal the judgment was set aside and case was remanded to the trial court for framing additional issue mentioned in said judgment and deciding the matter afresh. The trial court after recording evidence on additional issue and hearing learned advocates for the parties, dismissed the suit. Such dismissal was assailed by the applicant/plaintiff by preferring civil appeal which was also dismissed vide judgment dated 10.04.2018. The applicant/plaintiff has impugned said judgment of the appellate Court by way of Civil Revision Application. According to him, during evidence it has been established that claim of the applicant pertained to the year 1984, whereas, prior to that the father of respondent No.1 namely, Muhammad Usman, was granted suit land in the year 1979-1980 and, according to him, while said grant was intact having neither been cancelled nor such order having been recalled by the concerned department, the applicant could not be granted subject property and such grant, if any, was unlawful and illegal.

12. Learned Assistant Advocate General Sindh appearing for official respondents adopted the arguments advanced by learned counsel for

respondent No.1 and submitted that there is no illegality or infirmity in the impugned judgments which may warrant interference by this court. He also raised question about maintaining second appeal before the first appellate court.

13. At the very outset, it may be observed that instant Civil Revision Application seems to be non-maintainable in view of the fact that where second appeal under Section 100 CPC lies to the High Court, civil revision application shall not be maintainable against the judgment passed by the First Appellate Court. For this proposition I am fortified by a judgment of Honourable Supreme Court passed in the case of *Sheikh FAQIR MUHAMMAD Vs. Mohammad Din*, reported in 1993 SCMR 1055, wherein it was held as under:

“Position thus crystallizes that the respondent had the right to file a second appeal and no revision lay under section 115, C.P.C. As held in PLD 1970 SC 506 a revision does not lie where the order is appealable with the District Court. Even in cases where second appeal lies to the High Court revision will not be maintainable against that judgment and decree.

It is contended that the revision application could have been treated as a second appeal. In that event as contended by the learned counsel for the appellant the period of limitation provided for filing a second appeal having expired the respondent would be required to make an application for condonation of delay. This exercise would require enquiry for determination of facts whether sufficient cause for condoning the delay has been made out. Such determination can hardly be made here.”

14. Besides above, it is also noteworthy to point out at this juncture that normally this Court in exercise of its revisional jurisdiction is not supposed to interfere with the concurrent findings recorded by the Courts below, unless there are exceptional circumstances to do so. In this context, reference may be made to the case of *Haji MUHAMMAD YUNIS (DECEASED) through legal heirs and another Vs. Mst. FARUKH SULTAN and others*, reported in 2022 SCMR 1282, wherein it was held by Honourable Supreme Court as under:

“The High Court did not have, in its revisional jurisdiction, the legal mandate to reverse the concurrent findings of the trial and appellate courts, without first addressing the said reasoning of the trial and appellate courts. Accordingly, the judgment of the High Court warrants correction.”

In another case reported as *MUHAMMAD FEROZE and others Vs. MUHAMMAD JAMAAT ALI* (2006 SCMR 1304), the Apex Court held as under:

"12. It is well-settled that concurrent findings of fact by two Courts below cannot be disturbed by High Court in second civil appeal, muchless in exercise of the revisional jurisdiction under section 115, C.P.C. unless the two Courts below, while recording the findings of fact have exercised jurisdiction not vested in them or failed to exercise jurisdiction so conferred. Scope of interference with concurrent findings of fact by High Court in exercise of revisional jurisdiction is very limited. While examining legality of judgment and decree in exercise of its powers under section 115, C.P.C., High Court cannot upset finding of fact, however, erroneous such finding is, on reappraisal of evidence, and take a different view of evidence."

15. In view of above legal position, instant Civil Revision Applicant is apparently not maintainable and is liable to be dismissed on this score alone. However, even on merits the applicant / plaintiff does not have a good case.

16. From perusal of record it reveals that claim of the plaintiff is in respect of 2-00 acres of land situated at Muhag of Survey No. 340 of Deh Tharushah allegedly having been granted to him by the Barrage Department in the year 1984. However, during course of evidence the plaintiff could not produce original order of grant in respect of suit land issued by the Barrage Department in his favour in the year 1984. The official witness in his evidence deposed that he tried to verify from the relevant record about the suit property but the same was not available as the original record was burnt on 27th December 2007 at the time of assassination of Muhtrama Benazir Bhutto. From perusal of record it appears that the plaintiff produced only a copy of order passed by Executive District Officer Naushahro Feroze having been issued on the application moved by him, wherein it was stated that the suit land was granted to the applicant. However, from perusal of record it also appears that prior to alleged grant of suit land in favour of the plaintiff, an area of 2-35 acres out of same Survey No.340 in Muhag of Deh Tharushah was granted in the name of one Muhammad Usman viz. father of defendant No.1. It is also significant to point out here that before granting suit land to the plaintiff, the aforesaid grant in favour of Muhammad Usman was neither cancelled nor order in respect of said grant was recalled by the Barrage Department. In the circumstances, it is clear that said grant made in favour of father of defendant No.1 was still intact when the suit land was allegedly

granted in favour of the plaintiff without cancelling earlier grant in favour of Muhammad Usman. The original order of alleged grant in favour of the plaintiff has also not been brought on record by him and the original record is also not available in the office of Barrage Mukhtiarkar.

17. On the other hand, defendant / respondent No.1 has produced original title documents relating to the subject property in the name of his father Muhammad Usman. In support of his claim defendant No.1 produced original complete PC of grant papers in favour of his father Muhammad Usman pertaining to the year 1979/1980. As stated above, from perusal of record it appears that an area of 2-35 acres out of same Survey No.340 in Muhag of Deh Tharushah was granted in favour of father of defendant No.1 namely Muhammad Usman and such grant was neither cancelled nor recalled by the Barrage Department. The Mukhtiarkar Estate Nawabshah by receiving Rs.900/- from father of defendant No.1 issued Form-A, in favour of father of defendant No.1 in the year 1979-1980. In this view of the matter, it is apparent that the grant made in favour of defendant's father was prior to alleged grant of land in favour of the applicant / plaintiff. During course of evidence before the trial Court the applicant / plaintiff could not succeed in establishing that the title of defendant No.1 in respect of subject property was either cancelled or such order was recalled by the concerned Department. The claim of the applicant / plaintiff over subject property relates to the year 1984 i.e. subsequent to the grant of land in favour of father of defendant No.1 in the year 1979-1980 thus, the same is apparently unlawful. By no stretch of imagination an immoveable property could be allotted and / or granted to any person while the same still exists in the name of some other person in the relevant record. In this connection reference may be made to the case of **HAFEEZ AHMAD Vs. MUHAMMAD HUSSAIN AND ANOTHER**, reported in **1983 CLC 130 [Lahore]**, wherein it was held as under:

"6. There are short points involved in this case. Firstly whether the method, mode and manner adopted by the Deputy Settlement Commissioner in re-transferring an already transferred property was permissible under the law. The second question is whether the resumption order of 1968 which was based on a notice of resumption dated 15-8-1965 has any factual basis. In so far as first question is concerned, Mr. Shahzad Jehangir, learned counsel for the Settlement Department has very frankly conceded that no transfer of an evacuee property could be made on the mere statement of an interested person that it was not previously transferred person and was available. The jurisdiction of the functionaries was dependent upon the finding that the

*property in question was an evacuee property and was also available property' it did not stand transferred to anybody previously. There is no scope in law for passing a conditional order of the kind which was passed in this case. I am inclined to agree with this aspect of the submission. The functionary was required to act in the matter with open eyes and satisfy himself that the requirements of existence of jurisdictional facts were fulfilled in this case. He did not even care to consult his own record to find out that the property stood transferred long ago. **It is settled law that a property already transferred cannot be re-transferred to any other person without first previous transfer.** This was not done nor the previous transferee heard in the matter. The impugned order was passed on a misstatement and wrong assumption which lacked factual basis. The result is that the order of transfer dated 20-3-1971 on this score alone is liable to be struck down and declared as being without lawful authority and of no legal effect."*

18. In view of above legal position, although original order of grant has not been produced by the applicant / plaintiff, even then if it is presumed that the land was granted by the concerned department in favour of the applicant / plaintiff in the year 1984, the same was not in consonance with the settled law, as discussed above, and by such grant the defendant No.1 cannot be deprived of his legitimate right as the grant made in favour of his father Mohammad Usman was still intact and effective when the alleged grant of land was made in favour of the applicant / plaintiff.

19. The upshot of above discussion is that instant Civil Revision Application being **not maintainable** under the law, at the same time the applicant has also not made out a case on merits for interference in the judgments passed by two courts below in exercise of its revisional jurisdiction. Consequently, instant Civil Revision Application is hereby **dismissed** with no order as to costs.

JUDGE

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Dated. 03.03.2025

Approved for Reporting