

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

R.A. No.84 of 2021

[Shahzada Khurram & another v. Athar Naeem & others]

Applicants: Through Mr. Muhammad Nadeem Khan,
Advocate.

Respondent No.1 Mr. Naeem Akhtar, Advocate.

Date of Hearing & order: 12.03.2025

ORDER

ARSHAD HUSSAIN KHAN, J; Through the instant Civil Revision Application the applicants have challenged the judgment dated 14.04.2021 passed by the Sessions Judge, Karachi-Central whereby Civil Appeal No.125 of 2020, filed against the judgment dated 21.09.2020 and decree dated 23.09.2020 passed by the VIIth Senior Civil Judge, Karachi-Central in Civil Suit No.1014 of 2016 under Section 9 of the Specific Relief Act, 1877, was dismissed.

2. Facts necessary for disposal of the present Revision Application are that Ch. Manzoor Saleemi was owner of the plot No.A-3/12, Block-8, F.B. Area, Karachi admeasuring 120 Sq. yards (**suit property**) by means of lease deed registered at Serial No.1551 dated 12.02.1975, who constructed triple story house over the said plot and sold 2/3 undivided share in the property i.e first and second floor to respondent No.1-Athar Naeem (plaintiff) on 06.11.2015 through registered sale deed and also handed over the possession in completion of the sale transaction. Respondent No.1, after getting physical possession of the property put his household articles in the premises, however he decided to shift in the property in the month of June 2016 and when on 22.05.2016 he visited the premises the main entrance of property was found locked, then he went to applicants / defendants No.1 and 2 and raised his objection. They were residing in the adjacent house. Respondent No.1 noticed that applicant No.1 was residing at the first floor by demolishing intervening wall of the drawing room and the applicant No.2 had illegally occupied the second floor by making a way from roof of his house No.A-3/13, and they did not allow him to enter in the subject property, though he was bonafide purchaser and lawful owner of the property. Applicants are real brother and son of respondent No.2 (Ch. Manzoor Saleemi), who was owner of the property and sold 2/3 share i.e 1st and 2nd floor of the property to the respondent No.1. Consequently, respondent No.1 filed Suit

No.125/2020 under Section 9 of the Specific Relief Act, 1877 for grant of decree of the possession, which was decreed in his favour, said judgment and decree was challenged by the applicants by filing Civil Appeal No.125/2020, which was dismissed. Hence, the applicants have filed instant Revision Application.

3. Learned counsel for the applicant contends that the impugned judgments and decrees are bad and erroneous on facts and law and same are not sustainable and liable to be set-aside. He further contends that the applicants through bonafide mistake filed Civil Appeal and requested the respondent No.3 for conversion of appeal into Revision Application and provided the case law however, same was not converted only on the sole ground that the applicants did not provide complete record and proceedings of the case and without providing such opportunity dismissed the appeal. He further submits that the impugned judgments and decrees are arbitrary, perverse, null and void in the eyes of law as the same have been passed without applying judicious mind by both the Courts below. He further contends that this is a case of non-reading and misreading of evidence by the Courts below, as such, the impugned judgments and decrees are against all norms of justice, equity and good consensus so also have been passed without applying judicious mind, hence the same are liable to be set-aside. He has relied upon the case of *Bakhshal and 4 others v. Mukhtar Ahmed through legal heirs and others* [2006 YLR 161].

4. Conversely, learned counsel appearing on behalf of respondent No.1 submits that respondent No.1 filed civil suit for possession under Section 9 of the Specific Relief Act, 1877, which was decreed and this provision of law excludes the appeal and revision against order and decree passed under Section 9 of Specific Relief Act. He further contends that both the Courts below have rightly passed impugned judgments and decrees against the applicants as per law and after appraisal of evidence of both the parties as well as material available on record. He further submits that the impugned judgments and decrees neither suffer from any illegality, infirmity and irregularity nor misreading and non-reading of evidence, as such, same are sustainable under the law. He prays for dismissal of instant Revision Application. He has relied upon the case of *Late Majeedan through legal heirs and another v. late Muhammad Naseem through legal heirs and another* [2001 SCMR 345], *Abdul Hakeem v. Ameenuddin through legal heirs and 3 others* [2017 CLC 1406], *Muhammad Qasim v. Najja & others* [1995 CLC 1600], *Siraj Din and another v. Additional District Judge, Faisalabad and others* [1991 MLD 1046], *Sufi and another v. Sain Muhammad and another* [2012 CLC 520] and *Muhammad Ramzan v. Additional District Judge, Kabirwala and 3 others* [2006 CLC 216].

5. Before going into further discussion I would like to reproduce Section 9 of the Specific Relief Act, 1877, which reads as follow:-

“9. Suit by person dispossessed by immovable property.--If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Federal Government or any Provincial Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

6. The law has specifically barred an appeal against the order or decree passed in a suit under Section 9 of the SRA, 1877. Since appeal was not maintainable as specifically barred by law, the revision against the impugned appellate order of dismissal of appeal is obviously not maintainable. There appears no jurisdictional defect in dismissal of an appeal by a Court of law as the appeal is specifically barred under the law. In my humble view the contention of learned counsel for conversion of appeal into revision is misconceived as the Sessions Judge, Karachi-Central has dismissed the appeal by detail judgment and discussed each and every aspect of the matter including reasons of not converting the appeal into revision.

7. Besides above, it may be observed that interference in a revision in a particular case is justified if the case may have been disposed of on an obvious, misapprehension as to the legal position, or where there is some defect of jurisdiction. But where no exceptional circumstances are brought out and the only contention raised is that the finding on a question of fact is not based on adequate evidence or is erroneous, interference would not be justified. It may also be observed that the revision lies when *no appeal lies* but in the case of an order / decree under Section 9 of SRA, 1877, the appeal has been specifically barred. The phrase *no appeal lies* in Section 115 CPC cannot be equated with the phrase *No appeal shall lie* in Section 9 of SRA, 1877. The legislative intention of barring an appeal is re-enforced in the next sentence that *nor shall any review of any such order or decree be allowed* cannot be ignored either. This is not any injustice to a party against whom the verdict is given by the court nor it is even against the Article 10-A of the constitution of the Islamic Republic of Pakistan, 1973 for two reasons. Firstly, the right and entitlement of the parties

in suit property is not determined by the Court under Section 9 of SRA, 1877 in favour of either party. Secondly, the remedy is also provided to the lawful claimant of suit property in the same Section 9 of SRA, 1877 by allowing him to file a civil suit for his title and recovery of possession. Reference can be made to the case of *Abdul Hakeem v. Ameenuddin through Legal Heirs and 3 others* [2017 CLC 1406].

8. The Supreme Court of Pakistan in the case of *Late Mst. Majeedan through LRs and another V. Late Muhammad Naseem through LRs and another* [2001 SCMR 345], has examined several judgment from Pakistan and Indian Supreme Court and concluded that suit under Section 9 CPC can be filed even against the true owner of the property and revision against an order under Section 9 SRA, 1877 would be generally declined though remedy of revision is not excluded altogether. Relevant observation of the Hon'ble Supreme Court from side note B, C and D are reproduced below:-

Side note B:-

“It is well-established legal position that “Title was not material in a suit falling under section 9 and any person who had been dispossessed, otherwise than in due course of law, could, without pleading or proving title, seek to be reinducted into possession, even though such a relief was sought against true owner of property himself”. (Sobha v. Ram Phal, AIR 1957 All, 394; Azam Khan v. The State of Pakistan and another, PLD 1957 Kar. 892; Saddiq Ahmed v. Estate Officer and another PLD 1957 Kar. 887; Riaz and another v. Razi Muhammad PLD 1979 Kar. 227 and Supercon Ltd. v. Eastern Construction Ltd., 1987 CLC 156 ref.) Reference may here be made to the case reported as Ganesh and another v. Dasso and another (AIR 1927 All. 669), where while construing the scope of section 9 of the Specific Relief Act it was observed:-

In suits under section 9, Specific Relief Act, the Court does not try in question of title and, therefore, the Defendant cannot resist the Plaintiff's suit on the ground of his being the rightful owner. No matter how good the title of the dispossession, the person previously in possession is entitled to a decree for possession in suit under section 9, Specific Relief Act, provided he brings, the suit within six months of the date of his dispossession.”

Having observed as above the learned Court held:-

“This is not the case in suits for possession brought more than six months after the dispossession of the Plaintiff. In such suits Courts have to try question of title and, therefore, it is open to a defendant notwithstanding the previous possession of the Plaintiff to resist the claim for possession by setting up and proving a title in himself. In other words, title is no defence in a suit under Section 9, Specific Relief Act, but affords a conclusive defence in

other suit”. (Messrs A.R. Muhammad Siddique v. The Saife High School Board (1983 CLC 507).

Side note C:-

It is well settled by now that “A revision lies to the High Court under section 115 of the Civil Procedure Code in respect of an order or decree made in a suit under section 9 of the Specific Relief Act (1983 PSC 158 + PLD 1964 Pesh. 157 + 16 DLR (W.P) 164 + PLD 1950 Pesh. 35 + PLD 1952 Dacca 89. But as in a suit under section 9 an aggrieved party can institute suit on the basis of title, interference in revision, has been generally declined even though section 9 does not exclude the remedy by way of revision altogether.

Side note D:-

In the light of foregoing discussion, we are, of the considered opinion that no illegality or infirmity whatsoever has been committed either by the trial or revisional Court calling for interference. It is worth mentioning that interference in a revision in a particular case is justified if the case may have been disposed of on an obvious, misapprehension as to the legal position, or where there is some defect of jurisdiction. But where no exceptional circumstances are brought out and the only contention raised is that the finding on a question of fact is not based on adequate evidence or is erroneous, interference would not be justified. It would be going against the spirit of section 9 of the Specific Relief Act and in effect would be to convert a petition of revision into an appeal which the law expressly disallow.

[Emphasis Supplies]

9. Precisely, the case of the applicants is that their father respondent No.2- Ch Manzoor Saleemi had no authority to execute registered sale deed in favour of respondent No.1 / plaintiff as he was only a benamidar whereas the applicants’ mother, the wife of respondent No.2, was real owner of the suit property. Record shows that respondent No.2 (defendant No.3) was also made party by the respondent No.1 in his suit and respondent No.2 also filed his written statement in the said suit wherein he admitted the stance of the plaintiff. Para-5 of the said written statement is reproduced hereunder:-

“5.It is submitted that being lawful owner, the answering defendant No.3 had sold out the suit property to the plaintiff and physical possession was handed over to the plaintiff and the process of sale deed in favour of plaintiff had lawfully done.

Record further shows that during pendency of the suit respondent No.2 was passed away and his name was deleted from the array of the defendants as no relief was sought against him. Record also shows that the applicants failed to substantiate their stance through evidence at the trial whereas on the contrary respondent No.1 / plaintiff produced series of documents including

registered sale deed in his favour, which substantiated his stance. Resultantly, suit was decreed in favour of respondent No.1.

10. There appears no illegality and / or infirmity in the impugned judgments and decrees, which could warrant interference by this Court. Learned counsel for the petitioner has also not been able to point out any misreading and non-reading of the evidence by the Courts below. Insofar as the case law relied upon by the learned counsel for applicant is concerned, the same is distinguishable from the facts and circumstances of this case, as such, is not applicable.

11. In view of the above discussion on facts, law and the judgment of the Supreme Court of Pakistan I find no merit or legal basis in the revision application and the impugned judgments and decrees being in accordance with the law does not require any intervention. Hence, present revision application is dismissed alongwith pending application(s).

JUDGE