

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No. 321 of 2022  
[ Province of Sindh & others v. Nadir Hassan]

Applicants : Through Mr. Wali Muhammad Jamari, Asstt: A.G.  
Respondent : Through Mr. Muhammad Saleem Hashmi Qureshi,  
Advocate

Date of Hearing & Order: 19.05.2025

## **ORDER**

**ARSHAD HUSSAIN KHAN, J -.** This Civil Revision Application is directed against the judgment dated 28.11.2022, passed by learned 3<sup>rd</sup> District Judge Hyderabad in C.A. No. 156 of 2022, whereby learned Judge while dismissing the appeal maintained the Judgment dated 07.07.2022, passed by 4<sup>th</sup> Senior Civil Judge, Hyderabad in F.C. Suit No. 592 of 2013.

2. Brief facts of the case are that respondent filed suit for declaration, mandatory and permanent injunction, against defendants / petitioners claiming therein that he is lawful owner of Plot No.189 admeasuring 540 sq.ft out of R.S.No.356, 357 and 363 situated in Noorani Basti Phase-II, Paretabad Taluka City Hyderabad (hereinafter shall be referred as 'suit plot'); that suit plot is situated adjacent to the boundary wall of Government Degree college, Paretabad Hyderabad and as per original approval plan of said college, the Gate/Entrance of the college has been approved towards the main road, while towards suit property there is no approved Gate/Entrance of the said college, only boundary wall of the said college has been approved by the competent authority. In the month of January 2013, plaintiff in order to construct the house over the suit property started to level it, hence, he requested the defendant No.3 to close its college Gate/Entrance, which opened illegally towards suit property, on which, defendant No.3 replied that the matter will be referred to defendants 1&2 but on repeated approach the plaintiff was kept waiting; therefore the plaintiff lodged complaint before defendant No.1 but in vain hence he filed the above suit.

3. Upon service of notices, defendants filed written statement claiming therein that the dispute gate of college is situated within the boundary wall of

college and plaintiff has no right to demand its closure; that the gate was fixed in the 80's and not 2013 on the demand of residents of locality which is in the use of teachers / staff of the college. They lastly prayed that the suit is not maintainable which may be dismissed with costs.

4. Learned trial court on the pleading of the parties framed issues, recorded evidence the parties and decreed the suit in favour of Plaintiff / respondent vide judgment dated 7.7.2022. The petitioners being aggrieved filed C.A. No. 156 of 2022 through Secretary Education and others which was also dismissed vide judgment dated 28.11.2022, hence the instant Constitutional Petition.

5. Learned counsel for the petitioners argued that both the courts below committed illegality in framing the issues regarding status of the property; that there is misreading of evidence and pleadings and also the law has been misapplied; that both the courts below committed illegality in considering that the disputed gate was fixed in 80's, the plaintiff remained mum and filed the suit in 2013; that both the courts below committed illegality in not considering that the suit was barred under Easement Act; that both the courts below committed illegality in not considering the pleadings of the parties but only relying upon the report of Commissioner which is illegal and against the facts of the case; that the disputed plot is fixed within the boundaries of the college which does not cause any interruption to any person; that both the courts below committed illegality in not considering that any demarcation carried out in absence of all the parties has no value in the eyes of law and is violative of Rule 67-A & B of Sindh Land Revenue Act. The Supreme Court has declared such demarcation and site inspection report as null and void; that Mukhtiarkar / Commissioner visited the site prepared the report in absence of Defendants and in collusion with the Plaintiff and learned trial court without calling objections on the report of Commissioner straight away fixed the case for final arguments which is against the law; that the dispute gate was fixed in 80's while the housing scheme wherein the dispute gate is fixed was approved in the year 1992-93, hence learned trial court committed illegality in not framing the issue on this point as well as on the point of limitation which were necessary issues. He lastly prayed for allowing the instant Constitutional Petition.

6. Learned counsel for the respondent argued due to opening of dispute gate by the Petitioners the respondent is facing hardship; that the respondent approached the petitioners requested them to remove the disputed gate but they did not paid any heed; therefore, he moved complaint to Secretary Education

but he also did not pay any heed; therefore, he filed the suit dining no other way.

7. I have gone through the above findings of the courts below and also gone through record as available before me and find that learned trial court while decreeing the suit of Plaintiff has considered each and every aspect of the case on the basis of evidence i.e. ownership of plot of Plaintiff, fixation of disputed gate without approved plan and its opening over the area of plot of Plaintiff and using the disputed gate as street. The said observation of the trial court was upheld by the appellate court with cogent reasoning and admittedly there are concurrent findings of the courts below against the applicants which ordinarily do not require further interference by this Court.

8. Perusal of record reflects that while deciding the controversy learned trial court framed two main issues, which are as under:-

- (1) Whether Defendant No.3 has illegally affixed / opened the disputed gate / door towards suit property?
- (2) Whether defendant No.3 using the suit property as street through disputed gate / door?

In order to prove the above issues learned trial court appointed Mukhtiarkar Taluka City Hyderabad as Commissioner to conduct spot investigation, demarcation of suit property and submit report. The Commissioner submitted report submitted report which reveals that demarcation was carried out in presence of both the parties along with Assistant Director Hyderabad Development Authority in respect of property of Plaintiff upon which there was no adverse claim of Defendants or any one else. The report of Mukhtiarkar further shows that the disputed gate opens over the area of plot of Plaintiff. Counsel appearing on behalf of defendants / petitioners argued that the disputed gate had been affixed on the back side boundary wall of college which is being used as emergency gate; however, he failed to prove that the disputed gate was fixed as per approved plan from any competent authority.

9. The provisions of Section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when the court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law.

Mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For the applicant to succeed under Section 115, C.P.C., he has to show that there is some material defect in procedure or disregard of some rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine the matter and erroneous action of a court in exercise of such jurisdiction. It is settled principle of law that erroneous conclusion of law or fact can be corrected in appeal and not by way of revision, which primarily deals with the question of jurisdiction of a court i.e. whether a court has exercised the jurisdiction not vested in it or has not exercised the jurisdiction vested in it or has exercised the jurisdiction vested in it illegally or with material irregularity.

10. No any infirmity has been shown by the counsel for applicant to call for interference in the impugned decisions by this Court. It is well settled that if no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of two courts below are not to be interfered in revisional jurisdiction, unless extra ordinary circumstances are demonstrated by the applicant. It is also trite law that a revisional court does not sit in reappraisal of evidence and is distinguishable from the court of appellate jurisdiction. Reliance in this regard can be placed in the cases of *Abdul Hakeem v. Habibullah and 11 others* [1997 SCMR 1139], *Anwar Zaman and 5 others v. Bahadur Sher and others* [2000 SCMR 431] and *Abdullah and others v. Fateh Muhammad and others* [2002 CLC 1295].

11. The upshot of the above discussion is that there appears no illegality, irregularity or jurisdictional error in the concurrent findings of the courts below warranting interference of this Court. Hence, this Revision Application being meritless is accordingly dismissed along with pending application(s).

JUDGE