

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 66 of 2022

(Haji Shamasuddin through his L.Rs v. Muhammad Yakoob & others)

Civil Revision No. S – 187 of 2022

(Haji Shamasuddin through his L.Rs v. Muhammad Yakoob & others)

Date of hearing : 24.03.2025

Date of decision : 24.03.2025

Mr. Qurban Ali Memon, Advocate for applicant.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – Through instant consolidated judgment, I intend to decide both the captioned Civil Revisions filed by the applicant (defendant). Civil Revision No. S-66 of 2022 has been filed against the judgment and decree dated 24.01.2022, passed by learned Additional District Judge, Moro in Civil Appeal No.49 of 2021, whereby the judgment and decree dated 29.03.2021, passed by learned Senior Civil Judge, Moro in F.C. Suit No.107 of 2014 decreeing the suit, was maintained. Civil Revision No. S-187 of 2022 has been filed against the order dated 22.08.2022, passed by learned Additional District Judge, Moro in Civil Miscellaneous Appeal No.14 of 2022, whereby the appellate Court dismissed the appeal and upheld the order dated 11.02.2022 passed by learned Senior Civil Judge, Moro in Execution Application No.06 of 2021, allowing execution of the said decree.

2. The respondent (plaintiff), Muhammad Yakoob, instituted the suit for declaration, possession and permanent injunction in respect of a plot admeasuring 1200 square feet, stated to be part of Survey No.768, Deh Moro, Taluka Moro, District Naushahro Feroze. The respondent's claim is founded upon a registered sale deed dated 29.08.1977, executed by Wajahuddin Memon (the applicant's father), and a subsequent entry bearing No.743 dated 18.05.2011 in Form-II. According to the respondent,

physical possession was handed over to him at the time of purchase. Due to financial constraints, he could not raise construction on the plot, but continued to oversee and maintain it. He further asserted that around 3–4 years prior to filing the suit, when he intended to commence construction, he discovered that the applicant had unlawfully taken possession of the plot, initially claiming temporary use for Cattle *Pirri*. Upon repeated requests, the applicant failed to vacate and instead gave evasive assurances and ultimately refused. Despite intervention by local notables, the applicant allegedly issued threats and resisted vacation. The respondent then approached the criminal forum under the Illegal Dispossession Act, 2005, but the complaint was dismissed, with a direction to seek civil remedy, leading to the filing of F.C. Suit No.107 of 2014.

3. The applicant, in his defence, contested the location and possession of the suit plot, asserting that the boundaries mentioned in the sale deed had become outdated and the subject land now lies within the Moro Court premises. While denying illegal occupation, he admitted the execution of the registered sale deed by his father but questioned its enforceability due to alleged changes in physical demarcation. He relied on the dismissal of the criminal complaint to bolster his case.

4. The trial Court framed issues, recorded evidence of both sides, including official witnesses, and vide judgment and decree dated 29.03.2021, decreed the suit in favour of the respondent. The trial Court specifically directed the Survey Superintendent, Khairpur and Mukhtiarkar Revenue, Moro to demarcate and identify the suit property and to put the respondent in physical possession.

5. The appeal preferred by the applicant against the said judgment and decree was dismissed by learned Additional District Judge, Moro vide judgment and decree dated 24.01.2022, resulting in the filing of Civil Revision No. S-66 of 2022. Subsequently, when the respondent initiated

execution proceedings, the executing Court allowed Execution Application No.06 of 2021 on 11.02.2022, which order was upheld by the appellate Court on 22.08.2022, giving rise to Civil Revision No. S-187 of 2022.

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

7. It is pertinent to note that this matter has passed through multiple rounds of litigation. Initially, the suit was decreed *ex parte* on 22.08.2015, which was later set aside, and the parties were afforded opportunity to contest the matter afresh. Thereafter, vide judgment dated 14.04.2017, the suit was decreed on merits. The said decree was assailed in Civil Appeal No.88 of 2017, whereupon the appellate Court vide judgment dated 27.06.2019, remanded the case for reconsideration on the issue of proper location of the suit plot, based on evidence of the official witnesses. The matter was thus retried and again decreed on 29.03.2021.

8. A perusal of the record reveals that the findings of both the trial and appellate Courts are based on proper appreciation of the evidence. The sale deed dated 29.08.1977 and Entry No.743 dated 18.05.2011 in the revenue record were duly proved. The respondent's title was never seriously challenged by the applicant; the dispute revolved solely around location and possession. The applicant's admission regarding execution of the registered sale deed by his father, Wajahuddin, stands on record. However, the applicant failed to substantiate his claim that the subject plot now lies within Moro Court premises or that it ceased to exist in the claimed location.

9. Following the remand judgment of the appellate Court dated 27.06.2019, the trial Court, in exercise of its powers under Order XVIII Rule 18, CPC, directed a site inspection of the suit property through the Survey Superintendent, Khairpur. In compliance, a report was submitted by the authorized official, Muhammad Ayoob Kumbhar, and was exhibited as Ex.79-B. The trial Court considered this report in light of the overall

evidence, including the registered sale deed, revenue entry and oral testimony, and reached the conclusion that the suit plot exists and had been wrongfully occupied by the applicant.

10. The finding that the applicant unlawfully encroached upon the suit plot and was using it for his cattle enclosure (*mal pirri*) is supported by oral as well as documentary evidence. The trial Court noted that due to the sale of adjacent plots and failure to properly seek conversion of agricultural land for residential purposes, boundary confusion had arisen. However, these complications did not vitiate the respondent's title or his right to possession.

11. The appellate Court, while maintaining the decree, held that the trial Court had reached its conclusion after due application of mind and on the basis of sound reasoning. No perversity, illegality or misreading of evidence was found. It was specifically observed that the applicant's claim about the plot being absorbed into Moro Court premises was not supported by any acquisition order or survey document.

12. Coming to the second Civil Revision No. S-187 of 2022, which challenges the order dated 11.02.2022 passed in Execution Application No.06 of 2021, the executing Court rightly allowed the application filed by the decree holder / respondent in pursuance of the judgment and decree dated 29.03.2021. Once the decree became final, having been affirmed in appeal, the executing Court was under legal obligation to enforce it. The appellate Court, in Civil Miscellaneous Appeal No.14 of 2022, correctly noted that the execution proceedings were in accordance with the decree and did not suffer from any irregularity or illegality.

13. It is a settled principle of law that once a decree attains finality, the executing Court cannot go behind the decree. The objections raised by the applicant in execution proceedings were essentially the same as those raised during the trial and appeal, which had already been adjudicated

upon. No fresh or independent grounds were raised which could persuade interference.

14. Both the trial and appellate Courts have, therefore, concurrently held that the respondent is the lawful owner of the suit property by virtue of a registered sale deed and that he has been unlawfully deprived of possession. The applicant's defence, based purely on a vague claim of change in location and alleged non-possession, has not been substantiated by any reliable or cogent evidence. The claim that the property now falls within Moro Court premises, absent any acquisition order or official record, was rightly rejected.

15. It is also worth mentioning that the applicant has been granted multiple opportunities to contest the case, including post-remand proceedings, and has availed the same. However, he has failed to dislodge the findings of fact or raise any question of law warranting interference by this Court under its revisional jurisdiction.

16. In view of the above discussion, I find no illegality, irregularity, jurisdictional error, or miscarriage of justice in the impugned judgments and orders. The concurrent findings of both Courts below are based on proper evaluation of facts, supported by evidence and consistent with settled legal principles. Accordingly, both Civil Revision No. S-66 of 2022 and Civil Revision No. S-187 of 2022, being devoid of merit, are hereby **dismissed** with no order as to costs.

These are the reasons for the short order announced on 24.03.2025. Office is directed to place a signed copy of this judgment in the connected file.

J U D G E

Abdul Basit