

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
R. A. No. S – 20 of 2013

Date of hearing	Order with signature of Judge
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Hearing of case (priority)

1. For orders on office objections at Flag-A
2. For hearing of main case
3. For hearing of CMA No.133/2013

07-12-2020

Mr. Ch. Shahid Hussain Rajput, Advocate for the applicants.
Mr. Jamshed Ahmed Faiz, Advocate for the private respondents.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

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Mr. Ch. Shahid Hussain Rajput files power and amended title impleading legal heirs of Mst. Chuttan, taken on record. This revision application has impugned the conflicting findings acquired in the suit for possession, declaration and cancellation filed on part of the applicants, which was decreed by the learned trial Court, however, the same was reversed by the learned appellate Court, and the suit stood dismissed.

2. The learned trial Court was pleased to frame the following issues and give its findings as given:

- 1) *Whether the suit of the plaintiffs is maintainable? (Affirmative)*
- 2) *Whether suit of plaintiffs is barred by law? (Negative)*
- 3) *Whether suit of plaintiffs is undervalued and insufficiently stamped? (Not pressed)*
- 4) *Whether plaintiffs are owner of suit land to the extent of four annas share equal the 07-30³/₄ acres situated in deh Reti Taluka Ubauro district Ghotki being legal heirs of Mst. Jamul? (Affirmative)*
- 5) *Whether registered sale deed bearing registration No.1336 dated 27.12.1967 is null, void and liable to be cancelled and subsequent entries/orders on the aforesaid deed are void, null in the eye of law? (Affirmative)*
- 6) *Whether plaintiffs are entitled for relief claimed? (Affirmative)*

7) *What should the decree be? (Suit of the plaintiff is decreed as prayed)*

Whereas, the learned appellate Court was pleased to frame following points of consideration and gave its finds as:

1) *Whether the impugned judgment and decree dated 17.03.2009 passed by learned Senior Civil Judge, Ubauro in F.C.S. No.50/2006 re: Mst. Chhuttan versus Pir Bux and others, are in accordance with law and with proper appreciation of evidence/ material brought on record? (In negative)*

2) *What should the decree be? (Suit of the plaintiffs No.1(a) to 1(c) / respondents stands dismissed)*

3. Learned counsel for the applicants contends that according to the applicants, the private respondents were *haris* of the predecessor of the applicants and had created a document of sale deed where after the revenue entries were acquired in their favour, which were challenged by the applicants, and the learned trial Court after leading of evidence was pleased to decree the suit. It is further contended that the learned appellate Court had wrongly concluded that the onus of proof of the registered document was not available with the respondents, and that the material on record did not support the case of the applicants. It is contended that the learned appellate Court has failed to consider that the respondents had produced the record wherein the name of the seller was established through her mother's name. It is also contended that the registered document, true copy of which was brought on record, was dated 13-10-1966, whereas, the revenue entry in the record was made on 24-10-1966, which being subsequent the entitlement / right being created subsequently the sale deed was not available. It is also contended that the provisions of Article 85 of the Qanun-e-Shahadat Order require the said document to be provided on part of the respondents, to which according to

the learned counsel for the applicants, failure was present. In this regard, he relies upon 2019 MLD 732, 2007 YLR 910, 2012 CLC 125, 2011 CLC 319, 2002 CLC 571, 2000 PLD 2000 Lahore 385, 2001 CLC 622, 1998 CLC 622, 2005 CLC 1251 and 2010 SCMR 1097.

4. Learned counsel for the private respondents, however, contends that the case pertains to long standing entries and was time barred in nature, as such merits were not liable to be discussed, and in this regard, he relies upon PLD 1998 Supreme Court 144 and 1999 MLD 330. It is also contended that the executant of the registered document had never challenged the said document nor agitated the revenue entries before the revenue authorities. It is also contended that *number shumari* record was not produced to establish the status of the private respondents being *haris* as alleged. Learned counsel has also contended that Article 79 of the Qanun-e-Shahadat Order is not applicable for documents before 1984, and in this regard, he relies upon 1992 MLD 862. It is also contended that the document in question was more than thirty (30) years old and as such due status thereof had to be considered, and in this regard, he relies upon 2007 SCMR 996, 2007 CLC 1306 and 1999 CLC 106. It is also contended that ingredients of complete sale transaction were brought on record and the element of fraud was neither alleged nor ingredients thereof brought up.

5. Learned AAG, however, states that the dispute is between the private parties.

6. In rebuttal, learned counsel for the applicants contends that the limitation in the matter being governed by Article 120, six years are provided from the date when the right accrues, and as such on denial of the title, the case brought up. Learned counsel also contends that *number*

shumari record was brought up, to which the learned counsel for the private respondents stated that the same pertain to the period before the sale deed.

7. Having heard the learned counsels and gone through the record with their able assistance, it bears from the record that a registered document of sale in the year 1966 was challenged in the year 2006. The said registered document was also brought up in the revenue record, however, the applicant on its own claimed that the right to sue in the matter was acquired on refusal / denial of her ownership right and stoppage of benefit therefrom. In these circumstances, the case as made out in the matter, it was required on part of the applicants to establish that the reawakening of right was not a sleeping over of the right as alleged rather it actuality existed. In this regard, nothing has been brought on record, as such it is apparent that there was much time lapse between the alleged registered document, revenue entries thereof and the challenge to the same. It also bears from the record that not much an effort was made to prove the subject document as false and fabricated. The enjoyment of the respondents on the subject land in their own right was a word against the word, and in the said circumstances, to the conclusion of the learned appellate Court, no disturbance has been shown for interfere, as such this revision application fails and is accordingly **dismissed** along with costs throughout.

J U D G E

Abdul Basit