

IN THE HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Revision Application No.242 of 2004
[Samina and 3 others *versus* Mst. Dilshad Begum and 13 others]

Date of hearing : 08.11.2024 and 15.11.2024.

Appellants : Samina and 3 others, through Syed Muhammad Saulat Rizvi, Advocate.

Respondents No.1, 3 to 6 : Mst. Dilshad Begum, Mst. Sadaf, Mst. Beenish, Yasir Ali and Mst. Saba, through Mr. Aqeel Ahmed Siddiqui, Advocate.

Respondent No.2 : Amir Ali, through Mr. Anis-ur-Rehman Siddiqui, Advocate.

Respondents No.7 to 14 : *Nemo.*

JUDGMENT

Muhammad Faisal Kamal Alam, J: Through this Revision Application, the Applicants have challenged the Judgment and Decree dated 03.08.2004, passed by the learned 1st Appellate Court [in Civil Appeal No.169 of 2003], which was preferred against the Judgment dated 08.03.2003 [Decree dated 10.03.2003], passed by the learned Trial Court in IInd Class Suit No.34 of 2000, filed by present Respondents Nos.1 to 6 against the Appellants and other Respondents No.7 to 14.

2. Initial dispute was with regard to the two Properties, viz. City Survey No. B/1201, measuring 56.6 Square Yards [**the First Property**] and City Survey No.B/1203, measuring 193.5 Square Yards [**the Second Property**], situated in Shahi Bazaar, Hyderabad, Sindh. Later in the Proceeding, since claim of present Respondents No. 1 to 6 [who were

Plaintiffs in the above Suit]-**the Claimants**, was admitted by the present Appellants and other Respondents with regard to their [Claimants'] 18 paisas share in the First Property, thus, now the dispute is only for the Second Property, in which the Claimants are claiming for 33.3 paisas share and partition accordingly.

3. Plaint contains the following Prayer clause:

“The Plaintiffs therefore pray for the Judgment and Decree in their favour as under: -

- a) To direct the defendants for partition the suit property in accordance with the share of the parties under Muslim Hanafi Law.*
- b) To grant separate possession to the plaintiffs and defendants each according to their share in the suit property.*
- c) To grant permanent injunction restraining the defendants from sub-letting or changing the nature of the suit property without partition till the decision of the suit.*
- d) Cost of the suit be awarded to the plaintiffs.*
- e) Any other relief which this Honourable Court may deems fit and proper be granted.”*

4. The Suit was resisted mainly by the present Appellants [**the Objectors**], through their Written Statement. The Appellants were Defendants No. 5, 6 and 9, whereas, the present Appellant No.4 was their Attorney so also Defendant No.12, but, as the Defendant No.12, was admittedly declared *ex parte*.

5. In the Written Statement, the present Appellants have not disputed the Co-ownership of all the Parties hereto in respect of the above two Properties [paragraph-2 of the written statement], however, the stance of the Appellants with regard to the Second Property is, that the Respondents / Claimants are not entitled to 33.33 paisas share therein, but their share is only to the extent of ten [10] paisas.

6. The Appellants' Counsel has stated that both Courts have neither appraised the evidence properly nor considered the record, especially the official record and have deprived the present Appellants of their legitimate share in the Second Property. Jurisdiction was not properly exercised, hence, both Judgments should be set-aside and the share of Claimants be determined, as stated by the Appellants in their pleadings / Written Statement so also evidence. In support of his arguments, cited the following Case Law_

- i. **P L D 2016 Supreme Court 730**
[*Combined Investment [Pvt.] Ltd. versus Wali Bhai and others*];
- ii. **2015 S C M R 1698**
[*Sardar Muhammad Naseem Khan versus Returning Officer, PP-12 and others*];
- iii. **2024 S C M R 1709**
[*Hafiz Qari Abdul Fateh through L.Rs. versus Ms. Urooj Fatima and others*];
- iv. **2021 S C M R 1068,**
[*Muhammad Rafique and another versus Syed Warand Ali Shah and others*];
- v. **2023 S C M R 344**
[*Muhammad Ghaffar [Deceased] through LR's and others versus Arif Muhammad*]; and
- vi. **P L D 2013 Supreme Court 239**
[*Abaid Ullah Malik versus Additional District Judge, Mianwali and others*].

7. Conversely, the Advocates for Respondents have supported the Judgment and state that the present Revision is an act of *mala fide*, merely to delay the litigation, so that the legitimate share of the Claimants, as stated in their plaint, could not be determined once and for all.

8. Arguments heard, Record considered.

From the pleadings following Issues were framed by the learned Trial Court_

- “1/- WHETHER plaintiffs are owners of 18-paisas share in the property bearing C.S.No:-1201 measuring 56-6 Sq. Yards situated at Shahi Bazar Hyderabad?”**
- 2/- WHETHER plaintiffs are the owners of 33-33 paisas Share in the property bearing C.S.No:1203 measuring 193.5 Sq. Yards situated at Shahi Bazar Hyderabad?”**
- 3/- WHETHER property is partitionable?**
- 4/- WHETHER plaintiffs are entitled separate possession of suit properties to the extent of their share according to law?**
- 5/- WHETHER suit is maintainable”**
- 6/- WHAT should the decree be?”**

The Appellate Court framed following Points for Determination for deciding the Civil Appeal_

- “1/- What is the share of Plaintiffs in City Survey No. B/1201 & B/1203?”**
- 2/- Whether respondents/plaintiffs are entitled for private partition and possession to the extent of their share.”**

9. Mst. Dilshad Begum led the evidence on behalf of the Claimants, whereas, the above Attorney Mr. Ayaz Ahmed testified on behalf of the present Appellants. One official Witness [Ramesh Kumar, Record Clerk, Registrar Office Hyderabad] appeared and produced the official record.

10. At the conclusion of the arguments, the learned Counsel for the Appellants has also submitted written arguments / Synopsis along with the Case Law [*supra*]. The Appellant has acknowledged in the above Synopsis, since share of Mst. Qadeeran in the Second Property was purchased by Ghous Bux and Iqbal Ahmed through the Sale Deed [**Exhibit-74, undisputed Document**]; therefore, each would have equal proportion of

share in the Second Property, that comes to 16.665 paisas and not 33 paisas as claimed by Claimants in their Suit.

11. In order to appreciate the controversy, it is necessary to highlight the relationship *inter se* of the Parties hereto vis-à-vis the **Second Property**; which, as per the official Record-Extract from the Property Registrar Card, produced in the evidence as **Exhibit-71/2**, the Second Property stood in the name of Kareem Bux, Ghous Bux and Iqbal Ahmed, all sons of Haji Ghulam Rasool. The present Parties are Legal Heirs of these three Co-Owners, whereas the Respondents No.7, 8 and 9 are the Daughters of Haji Ghulam Rasool. The Parties hereto are close relatives; either wives of the above undisputed Co-owners or their Children. The successors-in-interest of the above named three Co-Owners/Brothers have contested the present litigation.

12. The present **LIS** record as well as of R&P of Civil Appeal No.169 of 2003, filed by the present Appellants, contains Cross-objections filed by the Respondents No.10, 12 and 14 in the said Civil Appeal. Respondent No.10 is Mst. Khadija wife of Iqbal Ahmed (Co-Owner/Predecessors-in-interest). Respondent No.12 is Hussain Bux son of Kareem Bux, again a Legal Heir of the Co-Owner and Riaz Ahmed is the son of Iqbal Ahmed, another Successor-in-interest of the Co-Owner. Surprisingly, these cross-objections were not pointed out by the learned Advocates. However, perusal of the above (cross-objections) concludes that, with regard to the First Property, there is no dispute amongst the Parties hereto, about 18 paisas share of the Claimants in the First Property, but with regard to the Second Property, these Respondents have also based their counter-claim on the afore-referred two documents, viz. the Sale Deed (**Exhibit-74**) and the Property Extract (**Exhibit-71/2**), according to which predecessors-in-interest of the

Claimants / Plaintiffs, namely, Ghous Bux is a transferee of 50% [fifty percent] share of Mst. Qadeeran, who was owner of the Middle Portion of the Second Property, and not the entire Second Property and, therefore, the share of the Claimants be determined accordingly, with a request that the Appellate Court should remand the case to the learned Trial Court for a new Decision.

13 . Due to conflicting impugned Judgments, the testimonies have to be appraised.

14 . The Appellants' Attorney, namely, Ayaz Ahmed was examined as Exhibit-69. He has brought the record of the above Properties, including the Extract from the Property Register Card as Exhibits-71/1 and 71/2. He has admitted the claim of the Claimants / Respondents to the extent of their 18 paisas share in the First Property, viz. City Survey No.B/1201, measuring 56-6 Square Yards, situated at Shahi Bazar, Hyderabad, whereas he has disputed the stance taken by the Claimants in the pleadings so also the evidence and stated that the Claimant / Respondent's share is only 17.50 paisas in the Subject Property in dispute / Second Property.

The sole witness, Mst. Dilshad Begum (Exhibit-64; on behalf of the Respondents/Claimants), has reiterated her stance in her examination-in-chief, *inter alia*, that the Claimants have 18 paisas share in the First Property (CS No. B/1201) and 33.3 paisas share in the Subject Property, so also their joint possession. In her cross-examination, she has admitted that some of the Parties, namely, Mst. Zulekhan, Hashim Zaidi, Inayat Begum and Mst. Khursheed Begum, reside at Shikarpur and Quetta, respectively. However, her cross-examination has not falsified her entire claim.

15 . What is important is the testimony of the Official Witness, namely, Ramesh Kumar (Record Clerk, Registrar Office, Hyderabad)-Exhibit-73. He has produced the **Sale Deed No.1376 dated 16.11.1967 (Exhibit-74)**, an undisputed document. According to this Sale Deed, Mst. Qadiran alias Masiti wife of Bulaqui Khan, sold her share in the Subject Property to the two brothers, M/s. Ghous Bux and Iqbal Ahmed, who are the predecessors-in-interest / father of the present Appellants/ Objectors and Claimants / Respondents.

16 . The other undisputed official document is the City Survey Extracts of both the above Properties, but, in view of the above discussion, the Property Extract / Record of the Second Property is to be considered, which is **Exhibit-71/2**. Mutation history is clearly reflected in this Document. From the original Owners [Hindus] the Second Property was transferred in the names of Karim Bux [*ibid*, predecessor-in-interest of Appellants No. 2 and 3], Saeed Khan and Mst. Qadeeran through separate Permanent Transfer Deeds [PTDs], way back in the years 1962 and 1963. Thus, the First set of Muslim Transferees were the owners of 33.3 paisas each.

The second transfer was made when the said [Late] Karim Bux purchased the share of Saeed Khan, as clearly reflected from the Mutation Entry of 20.07.1968; thus, the Share of Karim Bux increased to 66.6% [sixty six percent approximately]. **Whereas**, Ghous Bux [the predecessor-in-interest of the Claimants], and Iqbal Ahmed, purchased the share of Mst. Qadeeran. It means that 33.3 % share of Mst. Qadeeran was equally purchased by the two brothers and the Legal Heirs of both the above Co-owners [now deceased] are entitled for 16.65% share each. Consequently, the share of Claimants / Respondents in the Second Property

(*supra*) comes to 16.65 [paisas] so also admitted by the Appellants' witness in his testimony.

17. Ironically this crucial fact, based on the above Documents and evidence, was completely overlooked by both the Courts below. The learned Trial Court has presumed that Mst. Qadeeran was the sole owner of the Second Property in dispute and, hence, determined the share of Respondents / Claimants as fifty percent [50%], which is even more than what she claimed in her plaint (33.3 paisas); instead of correcting this error, being the first Appellate Court, it also decided the matter on assumption and reduced her share to 33.3% as claimed in the plaint, without appraisal of the evidence brought on record. The fact of the matter is that Mst. Qadeeran was owner of the Middle Portion, as clearly mentioned in the Sale Deed (*ibid*) Exhibit-74, which means that she was the owner only to the extent of 33.3 %, which was transferred to Ghous Bux and Iqbal Ahmed (*supra*) in equal proportion.

In view of the discussion in the preceding paragraphs, it is not necessary to discuss the Case Law cited by the Appellants' Counsel.

18. Consequently, both the Judgments are set-aside. Respondents-Claimants / Plaintiffs are only entitled for 16.65% share in the Second Property. Therefore, the Suit of the Plaintiffs / Claimants / Respondents is decreed to that extent, while modifying the Decree accordingly.

19. In the above terms this Revision is partly allowed.

JUDGE

Hyderabad.

Dated: 06.02.2026.

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