

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

**R.A No. 139 of 1998**

Applicants : Dadu and others through  
Mr. Parkash Kumar, Advocate

Respondents : Ziaul Haque and others through  
Nemo  
Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing : 29.08.2022  
Date of Decision : 23.09.2022

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through instant Civil Revision Application, the applicants have called in question the vires of Judgement dated 15.4.1998 and decree dated 20.5.1998 passed by learned Illrd Additional District Judge, Dadu in Civil Appeal No. 22 of 1988, whereby the learned Judge while dismissing the appeal maintained the Judgment dated 05.01.1988 and Decree dated 16.1.1988 of the trial court passed in F.C. Suit No. 33 of 1975 filed by respondent being minor through his father for declaration, permanent injunction and for specific performance of contract.

2. I have noticed that despite service, respondents have not appeared to defend the case and have chosen to remain absent, compelling this court to hear the counsel for applicants and learned AAG on the subject issue and as such perused the record with their assistance.

3. Mr. Parkash Kumar, learned counsel for the applicants has argued that the judgments and decrees of both the courts below are against the facts, law, and equity; admittedly Mst. Sahibdini was an old, sick, and infirm lady. The burden to prove the sale agreement was heavily upon the plaintiff but he failed to discharge the said burden; that learned trial court committed illegality in holding that the agreements were executed by Mst. Sahibdini; that it was not disputed that Mst.Sahibdini was pardah-nasheen lady and was living at Hyderabad with her niece Mrs. Aapa Shama; that neither the scribe nor any witness to the agreements was the inmates even the persons living at Hyderabad; that the agreements on the face of it were false and fraudulent. Learned lower courts illegally held the same to be genuine; that the plaintiff failed to prove the payment of consideration to Mst.Sahibdini; that plaintiff had neither pleaded nor proved the delivery of possession in pursuance of sale agreement and learned lower courts had no jurisdiction to decree the suit in absence of such pleas; admittedly the plaintiff was

minor and could not enter into any contract. The contract was unenforceable; therefore, learned lower courts had no jurisdiction to enforce the said contract; that it was established from the oral and documentary evidence on record that Mst. Sahibdini had given the land as a gift to Dr. Meharunisa who had accepted the same and taken over possession. The khata was mutated and the possession of subsequent purchasers was admitted. The decision of learned lower courts on issue No.5 is against the evidence on record; it was established from the evidence on record that Mst. Sahibdini died on 26.9.1972. Learned lower courts illegally relied upon unreliable oral evidence and managed death certificates in holding the date of death of Mst. Sahibdini on 9.8.1972; that the suit for specific performance of alleged agreement dated 9.10.1970 was time-barred being filed on 7.5.1975; therefore, learned lower courts committed illegality in holding the suit within time; it was established that defendants 8 to 10 were bonafide purchasers for valuable consideration without any notice of any right of the plaintiff. The learned lower courts had no jurisdiction to decree the suit against defendants 8 to 10 because of the said proved facts; that learned lower courts have illegally held that since the gift in favor of Dr. Meharunisa was not proved; therefore, it did not make any difference if the purchasers had no notice. The decisions of both the courts below are liable to be reversed; admittedly the possession of major portion of suit land in two Dehs was with defendants 8 to 10. The plaintiff had not made any prayer for possession and falsely claimed to be in possession of suit land; therefore, the suit was liable to be dismissed on this ground alone. He lastly prayed for setting aside the judgments and decrees of both the courts below as the same are based upon conjectures, surmises, misreading, and non-reading of pleadings and evidence on record.

4. Mr. Allah Bachayo Soomro, Addl. A.G. has supported the judgments and decrees of both the courts below.

5. The case of the plaintiff / respondent No.1, namely Ziaul Haq, minor at the time of filling the subject suit, is that he filed suit for declaration, permanent injunction, and specific performance of contract through his natural guardian/father against respondents 2 to 8 and applicants alleging therein that respondent No.1/ plaintiff's father was zamindar and government servant in Education Department; therefore, he obtained sanction to purchase agriculture land admeasuring 37-15 acres in Dehs Pat and Samoohi Taluka Dadu and Deh Rapnari Taluka Mehar (suit land), from Mst. Sahibdini the grandmother of plaintiff in the year 1969. Plaintiff's father was in possession of land since 1962 and was looking after the same as Mst. Sahibdini was residing in Hyderabad. Mst. Sahibdini entered into an agreement dated 9.10.1970 with plaintiff and received Rs. 1700/-. The balance amount was payable on or before 31.3.1973; on 4.3.1972 the

area of Survey No. 138 was corrected and Mst. Sahibdini was paid a further amount of Rs. 3,352.50. The further balance of Rs. 5,000/- was to be paid at the time of registration of sale deed up to 31.3.1974; that Mst. Sahibdini died on 9.8.1972 leaving behind Kamaluddin as her legal heir; after the death of Kamaluddin defendants 4 to 6 were joined as his legal heirs; the plaintiff's father came to know that a forged affidavit was prepared by the attorney of defendant No.7 purporting to have been sworn by Sahibdini on 12.8.1972 in which she had claimed to have gifted the suit land orally to defendant No.7 on 8.7.1971. Both the affidavit and gift statement were forged, illegal and void; Mukhtlarkar had mutated the record of rights village Form-VII and the defendants hurriedly sold the suit land to defendants 8 to 10 who had undertaken to take over possession. The plaintiff's father filed an appeal before Deputy Commissioner, Dadu (defendant No.2) who advised the plaintiff to seek the remedy from the Civil Court, hence the plaintiff filed the above suit.

6. That defendant No.7 in her written statement filed through her attorney contended that the sanction for purchase of land was not in respect of suit land but was fabricated, managed, and unauthorized; it was denied that the suit land was in possession of plaintiff; it was denied if Mst. Sahibdini had agreed to sale or fresh agreement with plaintiff or had received any consideration from the plaintiff's father. It was contended that in 1968 Mst. Sahibdini had an attack of paralysis and she was not in a position to move out. That the death certificate produced by plaintiff was managed; that Mst. Sahibdini died on 27.9.1972. It was denied if the affidavit of gift by Mst. Sahibdini was forged; it was contended that Mst. Sahibdini had given the land in gift to defendant No.7. The gift was accepted and the possession was taken by defendant No.7. The defendant had sold the land in Dehs Samoohi and Pat to defendants 8 to 10 for consideration of Rs. 15,000/- and had delivered the possession of sold land to the said defendants.

7. That defendants 8 to 10 in their separate written statement supported the version of defendant No.7 and further contended that defendants had purchased the suit land except the land of Deh Rapnari for valuable consideration of Rs.15,000/-. The record of right was mutated in favor of defendants and they claimed to be the bonafide purchaser.

8. That defendants 2 to 4 in their written statement admitted the claim of plaintiff and left the matter for determination of the court. On the divergent pleas of the parties, learned Trial Court framed the following issues:-

- i. Whether Mst. Sahibdini (deceased) entered into an agreement of sale on 9.10.1970 of agricultural land in schedule 'A' appended to the plaint with the plaintiff through his father Makhdoom Shamsul Haq and received a sum of Rs.1700/- as advance.

- ii. Whether Mst. Sahibdini in rectification of contents of sale agreement dated 9.10.1970, further executed undertaking dated 4.3.1972 and received a further sum of Rs. 3352.50 and corrected the area of S. No. 2-19 acres instead of 2.10 acres.
- iii. Whether the plaintiff through his father subsequent to 9.10.1970 was in possession of the suit land in his own right?
- iv. If issue Nos. 1, 2 and 3 are answered in the affirmative, whether the contract is enforceable at law?
- v. Whether Mst. Sahibdini had not gifted the suit property to the defendant No.4 orally who accepted it and got the possession earlier on 8.7.1971 and subsequently on 12.8.1972, confirmed it by swearing in affidavit?
- vi. Whether the gift deed required registration and if yes, what is the effect of non-registration?
- vii. Whether the sale agreement dated 9.10.1970 and rectification writing dated 4.3.1972 have been fabricated subsequent to the death of Sahibdini?
- viii. What is the actual date of death of Mst. Sahibdini?
- ix. Whether the plaintiff's father Shamsul Haque whose brother Fazal Haque and cousin Mumtaz Ahmed, being relations of Mst. Sahibdini were in possession of the suit land only as care takers as Mst. Sahibdini being of advanced age?
- x. Whether the suit has been filed within the period of limitation?
- xi. Whether defendants 5 to 7 are not bonafide purchasers for value without notice and are in possession of the suit property except the land in Deh Rapari? If so, what is the effect?
- xii. What should the Decree?

9. To settle the issues learned trial court recorded the evidence of the parties and after hearing their counsel decreed the suit on the premise that the oral gift could not be proved through cogent evidence for the reason that under Muhammadan Law it was / is not essential for gift to be in writing and when writing is not necessary it's non-registration is of no effect. Besides the issue of death of deceased was held to have occurred on 9.8.1972. So far as the issue of possession is concerned the learned trial court held that before execution of sale agreements, the possession of these persons was as caretakers. Additionally, regarding the issue of limitation learned trial court held that the suit was filed on 7.5.1975 while according to the sale agreement the payment was required to be made on 31.3.1973; therefore, it was filed within three years and other ancillary issues that defendants 4 to 7 (Now 8 to 10) were purchasers through Dr. Mehrunissa on the basis of alleged gift in her favour. The learned trial court held that since the very foundation of their title was/ is not proved therefore it made no difference if they were purchasers without notice. The sale deed though stated to be registered was

not produced in evidence. An excerpt of the judgment and decree is reproduced as under-

"Issue No.12.

In view of the above findings that suit of the plaintiff is decreed as prayed except relief of permanent injunction against defendant No.8 to 10 who are in possession of the land situated in Deh Pat and Sammahee the suit is partly decreed to the extent of above with no order as to costs."

10. The defendants 7 to 10 preferred appeal which was also dismissed; an excerpt of the judgment is reproduced as under-

"After taking into consideration all the material on record. I am of the considered view that the suit was rightly decreed and the findings on the issues do not call for interference. Consequently, the appeal is rejected. No order as to costs."

11. I have scanned the judgments and decrees of courts below and it is unequivocally reflected from the judgment of trial court that the agreement to sell was considered a valid piece of evidence as the same was produced in evidence at Ex.18, along with scribe and the private witness who was examined at Ex.34 and Ex.65, besides Abdar and Canal Assistant, who was also examined; thus from the above, the respondents-plaintiffs have established on record to have agreed on the purchase of suit land and the payment was made to the vendor. Besides the official witness deposed that respondent-plaintiff was looking after the suit land and subsequently purchased by the father of respondent-plaintiff via agreement and it is not established, that the respondents-plaintiffs were delinquent or failed to perform any of their obligations under the sale agreement discussed supra. However the subsequent purchaser has not been established to be the bona fide purchasers, thus the discretionary relief should not be withheld from the respondents-plaintiffs, otherwise, it would tantamount to giving undue premium to the subsequent purchaser, who though has purchased the property; however, were found disentitled by the courts below to the protection of Specific Relief Act. Additionally, the constituent of supplication as bona fide purchaser against valuable consideration without notice is coupled with strict proof. According to Article 117 of Qanun-e-Shahadat Order, 1984, a person desires any court to give judgment as to any legal right or liability, the burden lies upon him to prove that those facts exist. Whereas under Article 119 of QSO the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person, thus learned appellate court rightly held that purchaser though Dr. Mahrnunisa based on alleged gift deed, said to have been executed in

her favor by Mst. Sahibdini but the execution of gift deed had never been proved in evidence, as such sale of suit land in favor of respondents/Appellants 2 to 4 is was/is of no value. Besides the issue of time-barred suit, In this respect learned trial court rightly held that the suit was filed on 7.5.1975 whereas the date of last payment of consideration was 31.3.1973. Thus it was/is within time.

12. Primarily, cases can be revised by this Court as it possesses revisional jurisdiction as defined under Section 115 of the Code of Civil Procedure. However, that is subject to ensuring delivery of justice and maintenance of fairness; at the revisional stage, the applicant has based his case on the pleas taken by him which he has agitated and already exhausted and also properly adjudicated by the competent forum, even he has failed to point out any perversity and illegality in the findings of competent appellate forums; therefore, no ground existed for re-evaluation of evidence at revisional stage.

13. As a result of above discussion, I do not find any justification to interfere in the impugned judgments and decrees. The Civil Revision Application is dismissed with cost.

\*Karar\_Hussain /PS\*

**JUDGE**

