

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
R.A.No.124 of 1995

DATE	JUDGMENT WITH SIGNATURE OF JUDGE
	1. For hearing of MA 1368/2006 2. For hearing of MA 1369/2006.
Applicant	Ghulam Ali Mugheri through Mr. Jhamat Jethanand Advocate.
Respondents	None present for the respondents
Date of hearing:	08.08.2014.
Date of Judgment	<u>19.09.2014.</u>

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NAZAR AKBAR J:- This Civil Revision Application is directed against the Judgment and Decree passed by learned Additional District Judge Shahdadpur District Sanghar dismissing Civil Appeal No.15 of 1994 filed by the applicant and maintaining the Judgment and Decree dated 05.03.1994 and 12.04.1994 passed by learned Senior Civil Judge, Shahdadpur in IIIrd Class Suit No.29 of 1980 filed by the respondents No.1 & 2.

2. Briefly stated the facts leading to this Revision Application are that respondent No.1 & 2 and Mst. Sodhi filed suit against the applicant, respondent No.3 and Mst. Hani for declaration and mesne profits claiming that agricultural land bearing S.Nos.133, 134, 135/A, B, 136/A, B and 137 admeasuring 12-11 acres situated in Deh 63 Jamrao, Taluka Sinjhorro, District Sanghar was owned by Mir Hassan and after his death, it was inherited by his widow Mst. Saeedan (plaintiff No.2), Mst. Malha and two sisters Mst. Sodhi (plaintiff No.3) and Mst. Hanni (defendant No.3). The said legal heirs occupied the land and were enjoying its produce jointly. About two years back from filing of the suit, respondent / defendant No.3 (Hussain Bux) forged a power of attorney and gifted

the portion of the suit land of respondent No.1 (Nawabzadi) to the applicant (Ghulam Ali), who on the basis of alleged gift, took away the produce. The applicants were also claiming some right on the shares of the plaintiffs No.2 & 3 and were trying to take away the produce, therefore, the respondents/ plaintiffs filed the suit and during pendency of the suit, plaintiff No.3 (Sodhi) and defendant No.3 (Hani) died issueless. Thus only respondent No.1 & 2 remained as plaintiffs in the suit for declaration and mesne profits with following prayers:-

- a) That the power of attorney to be executed by plaintiff (Nawabzadi) in favour of Hussain Bux and the gift of her share in favour of Ghulam Ali on that basis be declared forged, illegal and canceled and the plaintiffs declared the rightful owners of the suit land to their shares shown in para 3 of the plaint;
- b) That the defendant No.2 should pay the mesne profits of the land to the plaintiffs according to the shares for the last three years and till the final decision of the matter;
- c) Costs.
- d) Any other relief.

3. The applicant / defendant No.1 contested the suit and filed written statement. The applicant /defendant No.1 in his written statement pleaded that suit land was originally owned by Haji Gul Muhammad, father of Mir Hassan and after his death the same was inherited by his son Mir Hassan, widow Mst. Jeevi and two daughters Mst. Hanni and Mst.Sodhi. Mst. Hanni and Mst. Sodhi gifted out their share to the applicant/defendant No.1 and put him into possession thereof. Applicant further asserted that being cousin of Mir Hassan, inherited his property alongwith his other heirs and that he was in legal and lawful possession after execution of Gift in his favour.

4. Learned trial court framed issues and recorded evidence of the parties and after hearing both the parties, decreed the suit by Judgment and Decree dated 31.07.1988, which were assailed by the applicant in Civil Appeal No.25/1988 wherein the Judgment and Decree of the trial court were set-aside and matter was remanded to the learned trial court with directions to frame following additional issue and give fresh findings on all the issues.

“Who are the legal heirs after the death of Mst. Sodhi and Mst. Hanni, who are sisters of deceased Mir Hassan?”

5. The learned trial court in compliance of the directions of appellate court, framed additional issue and recorded evidence of the parties and after hearing the counsel for the parties, again decreed the suit of the respondents/plaintiffs by Judgment and Decree dated 05.03.1994 and 12.04.1994. The applicant again challenged the Judgment and Decree in Civil Appeal No.15/1994 which was also dismissed by Additional District Judge, Shahdadpur by Judgment dated 25.04.1995 and Decree dated 02.05.1995. Now the concurrent findings have been assailed in this Revision Application.

6. I have heard learned counsel for the applicant and perused the record. The record shows that the counsel for the applicant has never taken this case seriously as the diaries shows that counsel for the applicant could not get the notices served upon the respondents for several years. Once the impugned orders were suspended on 02.10.1995, this case was not listed for hearing in the court between 1995 to 1998. The precise history of the case from court diaries is as under:-

- On 02.10.1995 Operation of the impugned orders was suspended and notices were ordered to the respondents.
- On 06.10.1998 06.10.1998 interim order was confirmed.
- On 21.02.2000 None was present

- On 13.04.2000 For orders as to non prosecution and two weekø time was granted for compliance;
- On 11.12.2000 For orders as to non prosecution;
- On 25.04.2001 One week time was granted.
- On 23.12.2003 After two years, again this case was listed for orders as to non-prosecution.
- On 19.02.2004 It was ordered that matter was called twice since morning but there was no intimation to justify their absence. Cost for issuance of notices had also not been paid. CMA No. 55 of 2000 was dismissed for non-prosecution.
- On 24.01.2005 Learned counsel for the applicants requested for time.
- On 13.09.2005 Counsel for the applicant was not in attendance and matter was adjourned on account of illness of counsel for the respondents.
- On 27.10.2005 None was present for the applicant.
- On 13.12.2005 Case was adjourned to bring legal heirs of respondent No.1 on record;
- On 06.03.2006 None was present for the applicant;
- On 20.03.2006 Learned counsel for the applicant informed the court that he has written letters to the applicants but there is no response from them. He requested one chance more.
- On 06.04.2006 None was present for the applicant and therefore, by a detailed order this Revision Application was dismissed for non prosecution and since then this Revision application is lying dismissed.
- On 09.10.2006 After six months learned counsel filed an application for restoration of Revision bearing CMA No.68/2006 and again story of notice to the respondents began. Office had raised objection as to how this application for restoration was within time, since the same

was filed after six months and learned counsel replied that this may be referred to Honourable High Court; no explanation was given;

- On 03.11.2006 Service could not be effected on the respondents. Repeat notice to the respondents No.2 & 3.
- On 08.12.2006 Counsel for the respondent No.1 requested to withdraw his power and informed the court that the respondent No.1 has taken away brief from him.
- On 08.01.2007 Learned counsel for the respondent No.1 filed an application for withdrawal of power when case was also listed for office objection as process had returned un-served on the remaining respondents and learned counsel for the applicant was directed to file fresh address for service on the respondents.
- On 06.08.2007 Repeat notice;
- On 24.08.2007 Repeat notice;
- On 05.10.2007 Notices were not returned served.
- On 17.12.2007 None was present for the applicants;
- On 02.04.2008 Again repeat notice.
- On 22.08.2008 Again process returned unserved.
- On 14.10.2009 Again notices were returned unserved.
- On 16.11.2009 Again repeat notice to the L.Rs of respondent No.1.
- On 10.08.2010 None was present for the applicants.
- On 21.02.2011 Again case was adjourned.
- On 04.11.2013 For the first time notices were ordered to be served through first three modes without any application from the applicants side. However, record does not show that any efforts were made by the applicants to get service effected through pasting or by publication. Atleast in

the court file, court order for service through first three modes was not complied.

- On 07.08.2014 None was present and case was adjourned on 08.08.2014 at 8.30 a.m.

7. It is indeed unfortunate to note here that from 1995 till today no efforts have been made to get the respondents served through alternate mode of service as provided **U/O V CPC** for service of summons and notices on the parties by way of pasting in case of failure of the Bailiff to them get served through normal course. No application for service through pasting was ever filed nor an application for substitute service by way of publication was made.

8. Ultimately I have the honour of hearing the learned counsel for the applicant on his application for restoration as well as main case though it was lying dismissed for non-prosecution since 2006. The learned counsel for the applicant was comfortable ever since dismissal of the Revision Application for non-prosecution since he had in his pocket a case law reported in **PLD 2000 SC 820** (Muhammad Sadiq Vs. Mst. Bashiran and 9 others) wherein the Honourable Supreme Court has held that the dismissal of a Civil Revision after its admission by the court seized with it for non-prosecution is not well recognized for the reason that the jurisdiction of revisional court U/S 115 CPC is invoked by an aggrieved person to point out **illegalities** or **irregularities** or **jurisdictional defect** in the proceedings and the orders passed by the subordinate courts, therefore, it becomes the matter between revisional and subordinate courts.

9. Therefore, in view of the observation of the Honourable Supreme Court despite all the contumacious behavior of the learned counsel for the applicant since 1995 as reflected from the order sheet reproduced above, the restoration Application bearing CMA No.1368/2006 is allowed and this Revision

Application is restored on the condition that it must be heard on merit on the same day.

10. On merits, the learned counsel for the applicants has failed to point out any **illegality** or **irregularity** or **jurisdictional defect** in the orders passed by two courts below. Learned counsel has not been able to pin point any misreading or non reading of evidence from the file. However, he has relied on **2004 SCMR 1001** (Ghulam Muhammad and 3 others Vs. Ghulam Ali) to claim that no sanctity can be attached to the concurrent findings without realizing that the dictum of Supreme Court in the case law relied by him is that no sanctity can be attached to the concurrent findings on the condition that the party claim ño sanctityö has to show the Court that the same is suffering from defect of misreading or non reading of the evidence. Learned counsel for the applicant has not been able to disclose any instance of misreading or non reading of evidence to be considered as an illegality for exercising revisional jurisdiction by this court, therefore, keeping in view the facts and evidence of the case, the case law cited by the learned counsel is not of any help for him.

11. Learned counsel for the applicant has also relied on another case law reported in **1982 CLC 2625** (National Bank of Pakistan Vs. Bawany Industries Ltd. and 3 others) to find defect in the impugned order on the ground of non-appearance of respondent in witness box though such ground is not available to the applicant since the applicants have led evidence through attorneys. The evidence of attorney is evidence of the party itself. Even otherwise the burden of proof was on the applicant himself to establish that the gift he received from Hussain Bux in respect of the agricultural land which belong to Nawabzadi, respondent No.1 but he failed to discharge his burden rather evidence was contrary to his claim. It has come on record through strong evidence that no power of attorney was ever executed by respondent No.1, Mst. Nawabzadi, in favour of Hussain Bux, who subsequently transferred the suit land

by way of Gift to the applicant. The burden to prove execution of document is always on the beneficiary of document and as beneficiary of Power of attorney the burden of proof was on the applicant and Hussain Bux to establish its execution which they failed to discharge. Both the applicant and Hussain Bux had no answer to the certified copy of Judgment dated 28.10.1983 passed by Special Judge Anticorruption convicting Ghulam Ali and Hussain Bux for an offence punishable U/S 468 PPC read with section 34 PPC for forging the alleged Power of Attorney by Hussain Bux in his favour on the basis of which the applicant claimed Gift of the share of respondent No.1 Nawabzadi in the suit land. The applicant has also miserably failed to even prove his case when he and said Hussain Bux failed to even produce alleged power of attorney in court. Even attesting witnesses of General Power of Attorney were not produced in court, therefore, the case-law reported in 1982 CLC 2625 is not relevant to the facts of the case before me.

12. The above facts of the court file and legal position emerging from evidence establishes that no case for interference in the concurrent findings of courts below is made out. However, the applicant seems to have denied the justice to the poor respondents No.1 & 2 by denying them mesne profits at the rate of Rs.2000/- per acre with effect from 1971 by dragging them in court for 45 years despite losing at every stage. The worst part of it was in this court which covers a period of 19 years. In these 19 years except on 02.10.1995 when interim orders were obtained, the counsel for the applicant has never shown his interest in contesting the case on merit and used all possible means to delay as reflected from order sheet reproduced in para 6 above.

13. In view of the above discussion, this Revision Application is dismissed and keeping in view the prayer of respondent for other relief deemed fit, the Judgment and Decree of trial court in Suit No.29 of 1980 dated 12.04.1994 in addition of relief already granted is modified to the extent that the entries made

in the Revenue Record in respect of suit land i.e. agricultural land bearing S.Nos.133, 134, 135/A, B, 136/A, B and 137 admeasuring 12-11 acres situated in Deh 63 Jamrao, Taluka Sinjhoru, District Sanghar on the basis of forged and fraudulent gift in favour of Ghulam Ali and his legal heirs be reversed and the names of Mst. Nawabzadi and Mst. Saeeda or in case of their death by now names of their legal heirs be entered in Revenue record by way of inheritance as it was before the entries on the basis of fraudulent gift.

14. The applicant to bear the costs throughout.

Copy of this Judgment be sent to Assistant Commissioner and Mukhtiarkar Sinjhoru District Sanghar for compliance of the directions contained in para above and compliance report be submitted to the Additional Registrar of this court, within 15 days from the date of receipt of this Judgment.

JUDGE

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