

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
R.A.No.166 of 1997

DATE	JUDGMENT WITH SIGNATURE OF JUDGE
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Date of hearing: 28.08.2014.

Date of Judgment 29 .09.2014.

Applicant : Muhammad Yaseen
through his legal heirs
Through Mr. Saeeduddin Siddiqui
Advocate.

Official Respondents : Govt. of Sindh & others
Through Mr. Ashfaqe Nabi Qazi
Assistant A.G

Private Respondents : None present for the respondents

J U D G M E N T

NAZAR AKBAR J:- This Civil Revision Application is directed against the Judgment dated 16.09.1997 passed by learned Ist Additional District Judge Badin dismissing Civil Appeal No.09 of 1997 filed by the applicant and maintaining the order dated 11.04.1997 passed by learned Senior Civil Judge, Matli in F.C Suit No.20/1996 whereby pliant was rejected U/O VII Rule 11 CPC.

2. Briefly stated the facts leading to this Revision Application are that applicant Muhammad Yaseen filed F.C. suit No.20/1996 for Declaration and permanent injunction claiming to be owner of land admeasuring 12-07 acres by virtue of gift made in his favour by Mst. Hajran wife of Muhammad Ali

Jat equivalent to her share viz. 0-12 paisa in agricultural land bearing S.No.21/3,4, 25/1/A to D, 25/3-A to 4-A, 29/1 to 4, 30/3-A to D, 55/1 to 4, 56/4, 21/1,2,, 22/1,2,2/A, 24/1A to D, 4/A to D, 23/1 to 4 admeasuring 112-02 acres situated in Deh Sikni Taluka Matli District Badin. According to applicant, mutation was also effected in his favour vide entry No.87 dated 15.06.1994. In the month of January, 1995 the applicant/ plaintiff proceeded to Punjab with his personal work and by taking advantage of his absence, the respondents/ defendants No.7 & 8 leased out the entire land including the share of the appellant/plaintiff in favour of respondents /defendants No.5 & 6, though respondents No.7 and 8 had no legal right to lease out the property of the applicant/plaintiff. The respondents No.7 and 8 moved an application to the Deputy Commissioner, Badin for cancellation of khata of the applicant/plaintiff, who issued notice to the applicant, therefore, applicant while apprehending cancellation of his khata, filed suit for permanent injunction before the learned trial court. The applicant amongst others sought declaration that even nothing notice to him by the Deputy Commissioner to him was illegal and unlawful.

3. The respondents/ defendants No.5 to 8 contested the suit and filed written statement denying the claim of the applicant /plaintiff. They challenged the gift in favour of the applicant and contended that the same has been managed by the applicant fraudulently. They pleaded that Mst. Hajra was ill and never appeared before Mukhtiarkar for making declaration of gift in favour of the applicant, and in any case gift was not complete as the corpus of gift was never handed over to the applicant by Mst. Hajran, since she was herself not in possession.

4. The respondents / defendants No.5 to 8 also filed an application U/O VII Rule 11 CPC on the ground that the suit was not maintainable and was barred by law. The applicant/ defendant contested such application by filing objections.

5. Learned trial court after hearing learned counsel for the parties allowed application U/O VII Rule 11 CPC and rejected plaint of the Suit No.20 of 1996 by order dated 11.04.1997, which was assailed by the applicant before the appellate court but his appeal was dismissed and rejection of plaint was maintained.

6. Learned counsel for the applicant contended that impugned orders of two courts below suffer from illegality as they failed to examine the contents of plaint; that the claim of the applicant was based on the basis of gift made by Mst. Hajra before Mukhtiarkar and such mutation had also been effected, therefore, learned trial court ought to have framed issues and recorded evidence but the learned trial court failed to follow the law and the learned appellate court also failed to examine such aspect of the matter; that learned two courts below thrown out the claim of the applicant without affording him opportunity to prove the same by producing evidence; that findings of two courts below are against law, facts and circumstances, therefore, same are liable to be set-aside. Learned counsel further contended that it is well settled law that the matter should be decided on merits rather on technicalities but the learned two court below have erred by rejecting plaint of Suit No. 20 of 1996.

7. I have heard learned counsel for the parties and examined the record meticulously.

8. I have examined the impugned orders of learned appellate court and trial court. Both the courts while exercising jurisdiction U/O VII Rule 11 CPC for rejection of plaint have relied on several case laws and also have referred Section 149 and 150 of Mohammadan Law to form an opinion that gift was not complete since the possession of the property in dispute was never handed over by the donor to the applicant Muhammad Yaseen. Both the courts have relied on (i) PLD 1990 AJ and K 34, (ii) PLD 1975 Pesh. 60, (iii) 1992 CLC 225; and (iv) 1984 CLC 2708 to substantiate their conclusion that the donor Mst. Hajra herself was never in possession of her share which was only 15-37 acres out of 128 acres of land in Tapa Additional Tando Ghulam Ali. I have also noted from the plaint that the applicant/plaintiff was claiming gift from an illiterate woman Mst. Hajra w/o Muhammad Ali Jat on **15.06.1994** through revenue record entry No.87 in village form VII-B and after getting the gift, within six months i.e. in **January, 1995**, the applicant /plaintiff left for Punjab, where he stayed for more than one year and yet he claimed that he had invested lot of money on 15-00 acres of un-portioned land with 128 acres of land in possession of private respondents and he has challenged the notice of Deputy Commissioner Badin for cancellation of Khata of applicant/plaintiff instead of contesting the notice and to satisfy the Deputy Commissioner Badin, the custodian of the record of agricultural land that the entry is lawful and correct.

9. Admittedly, from their own showing in the plaint that in their absence entire land was leased by some of the Respondents to the other Respondents and yet he only prayed for declaration and injunction without the prayer of

possession. Thus suit was also hit by the proviso of Section 42 of the Specific Relief Act, 1877. In para 6 of plaint, the applicant has stated that he enquired from respondent Nos. 5 and 6 that who allowed to trespass them but he neither lodged report of trespassing nor prayed for recovery of possession from them. In prayer clause -Dø he has prayed for restraining the Respondents not to trespass / interfere with his possession as if he was in possession of 12-07 acres of land out of 128 acres land though admittedly there was no record of partition and the suit land was part of joint property. One more aspect of the case to justify their rejection of plaint is that despite challenge to gift by Respondents, the applicant has not prayed for declaration of ownership on the basis of so-called gift.

10. Learned counsel for the applicant has not been to distinguish the case law relied upon by the learned trial court as well as the appellate court for rejection of plaint U/O VII Rule 11 CPC. I do not find any justification to interfere with the findings of the courts below. Consequently, this Revision Application is dismissed with no order as to costs.

JUDGE

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