

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

R.A. No. 129 of 1992

R.A. No. 130 of 1992

Date of Hearing : 15.09.2015

Date of decision ; 09.10.2015

Applicant : Haji Ghulam Hyder and others
Through Mr. Suresh Kumar advocate

Respondents : Jumo and another
None present for respondents

J U D G M E N T

NAZAR AKBAR, J.- By this common judgment, I intend to dispose of R.A. No. 129 of 1992 and R.A. No. 130 of 1992. Both arising out of consolidated judgment of F.C. Suit No. 11 of 1985 filed by Jumo (respondent No.1) and F.C. Suit No. 25 of 1985 filed by applicants herein against Jumo (respondent No.1) and upheld by District Judge Nawabshah in Civil Appeal No. 103 of 1990 and Civil Appeal No. 110 of 1990 by judgment dated 30.8.1992. Respondent Jumo in F.C. Suit No. 11 of 1985 has claimed recovery of possession and mesne profits in respect of agricultural land bearing Survey No. 515 (3-18 acres) and out of Survey No. 516 (5-00 acres) total admeasuring 8-19 acres Deh Deran, Taluka Sakrand District Nawabshah. It was in the name of Jairamdas and Mohib alias Mohabat in equal share according to revenue record of 1918-19. The plaintiffs (applicants herein) in F.C. Suit No. 25 of 1985 have claimed declaration, ownership and correction in the record in respect of agricultural land bearing Survey No. 515 (6-37 acres) and Survey No. 516 (9-39 acres) Deh Deran, Taluka Sakrand District Nawabshah.

2. The claim of the respondent No.1 was that the suit property mentioned in Suit No. 11 of 1985 belongs to his ancestor namely Muhib and it has never been treated as evacuee property which has been unlawfully taken over by the applicants

(plaintiffs of F.C. Suit No. 25 of 1985) as they were working as haris of the hindu owner to half of the property which was subsequently treated as evauee property. The respondent No.1 after seeking possession from the applicants on the basis of his right as legal heirs of Muhib was constrained to file an application before the Additional Deputy Commissioner Nawabshah and Additional Settlement Commissioner (L) Nawabshah which were decided on **10.5.1974** upholding that the plaintiff of Suit No. 11 of 1985 (respondent No.1) was entitled to have share in the property. The appeal was preferred by the applicants herein which was decided by the Deputy Commissioner on **24.11.1976** in favour of Jumo, respondent No.1 herein (Plaintiff of F.C. Suit No. 11 of 1985). The applicants did not agree to handover possession of the suit premises to respondent (Jumo) even after clear cut findings of Revenue Authorities and filed **F.C. Suit No. 41 of 1977** in the court of Senior Civil Judge Nawabshah, which was subsequently re-numbered as **F.C. Suit No .80 of 1983**. In the said suit the applicants herein sought restraining orders against the respondent No.1 and respondent No.1 wanted to appoint a Receiver on the suit property and therefore the learned Senior Civil Judge, Nawabshah as an interim order on their respective applications passed following joint order:-

“That 50 paisa share of the defendant (respondent No.1) will be treated as property on lease with the plaintiffs (applicants) and plaintiffs of F.C. Suit No. 80 of 1983) @ Rs.2000 per acre per year and the plaintiffs (applicants) will deposit the lease money in court till decision of that suit and the party who succeeds in suit will draw the amount”.

3. The applicants herein who were plaintiffs of Suit No. 80 of 1983 on **26.1.1985** to defeat the aforementioned order withdrew their F.C. Suit No. 80 of 1983 and therefore, the respondent was compelled to file F.C. Suit No. 11 of 1985. The applicants subsequently filed F.C. Suit No. 25 of 1985 and it was admitted in their plaint that they were haris in the suit land. In the suit land 50 paisa share was with Hindu owner namely Jairam Das which was transferred by Settlement Authorities to M/s. Bashir Ahmed, Abdul Hassan, Manzoor Hussain and Muhammad Hussain and subsequently it which was purchased by applicants / plaintiffs by way of two registered sale deeds dated 20.5.1965 and 8.6.1966. The other 50 paisa share of Sher Muhammad Khan was resumed in Land Reforms and it

was allotted to one Jumo Khan son of Allah Dino who sold the same to applicant Nos. 1 and 3 / plaintiff Nos. 1 and 3 by registered sale deed dated 8.6.1980.

4. Respondent No.1 in his written statement contended that Jairamdas owned 50 paisa share in the suit land and the remaining 50 paisa share was owned by Mohib, the uncle of respondent No.1. That Jairamdas sold his share to Hemraj who in turn sold the same to Sher Muhammad Unar. Subsequently, the share of Sher Muhammad Unar was entered into Evacuee pool and allotted to the claimants. The share of uncle of respondent No.1 as it was a Muslim property was not allotted to anyone nor it was purchased by anybody. The 50 paisa share of uncle of respondent No.1 remained intact, therefore, the applicants were lessees of the uncle of respondent No.1 and after his death lessee of respondent No.1. Lastly he contended that the order passed by the Deputy Commissioner was valid and legal. The respondents also raised legal pleas.

5. The Trial Court at the request of the parties consolidated both the suits i.e. F.C. Suit No. 11 of 1985 & F.C. Suit No. 25 of 1985 and ordered that F.C. Suit No. 25 of 1985 be treated as a leading suit and delivered judgment on the following issues framed by trial court from the pleadings of the parties:-

- i. Whether the suit land belonged to Jairamdas and Rais Sher Muhammad Unar in equal share or did 50 paisa share of the suit property belonged to Mohib, if so its effect?
- ii. Whether the plaintiff purchased the suit property from the claimants and Hari Jumo Manjotho, if so its effect?
- iii. Whether the defendant No.1 have any share in the suit property? If so its effect?
- iv. Whether the suit is hit by Rule of Resjudicata?
- v. Whether the defendants are liable to hand over possession to plaintiff and mesne profits, if so to what extent?
- vi. What should the decree be?

In order to prove their respective claim the applicants (Plaintiffs of Suit No. 25 of 1985) examined himself and respondent No.1 (plaintiff of F.C. Suit No. 11 of 1985) examined himself and both closed their side.

6. The learned Trial Court on the basis of evidence and after hearing the parties decreed F.C. Suit No. 11 of 1985 on the basis of undisputed documents leading to the fact that there was joint ownership of Jairamdas son of Bherumal and Muhib son of Ehsan Rajpar in the old revenue record and the learned Trial Court has found that the applicants / plaintiffs of F.C. Suit No. 25 of 1985 were unable to shatter the findings of Deputy Commissioner and the operative part of the order of Deputy Commissioner was reproduced by the Trial Court in its judgment as under:-

“According to the old revenue record pertaining to the year 1918-19, the ownership of the land in dispute was as under:-

Deh	Entry No.	S.No.	Memo	Share
Deran	519	515 1.	Jeramdas s/o Bherumal	0-8-0
	520	516 2.	Muhib s/ Ahsan Rajpar	0-8-0

Perusal of F.VI from 1926-27 to 1947-48 shows that 0-50 paisa share was entered in the name of Mohabat son of Ahsan Rajpar. Further perusal of record shows that 0-8-0 oannas share was sold by Jairamdas to Hemrajmal in the year 1939-40 was subsequently sold it to Sher Mohammad Unar in the year 1949-41. Perusal of Rehab: record shows that 0-8-0 share belonging to Jairamdas s/o Bherumal was utilized under P.S.S. and was allowed against the claim of Bashir and others.

It is clear that 0-50 paisas share in S.No. 515 and 516 of deh Deran Taluka Sakrand was Muslim property since 1918-19 and was in the name of Muhib Rajpar. As per Rehab: record 0-50 paisas share in the S.Nos. in dispute belonging to Jairamdas was allotted to the claimants. But in fact the share of Jeramdas had been purchased first by Hemrajmal and then by Sher Mohammad as discussed above. Thus share of Muhib Rajpar remained intact and it was not utilized under P.S.S.”

7. The applicants have failed to establish their right over the entire piece of land though admittedly there were claiming possession /ownership of only the evacuee property which at the relevant time belonged to Jairamdas which was utilized under PSS and allotted against the claim of Bashir and others. The applicants were unable to justify their possession over the entire joint holding of Jairamdas and Muhib.

8. The applicants preferred two civil appeals i.e. Civil Appeal No. 110 of 1990 and Civil Appeal No. 103 of 1990 because in terms of consolidated judgment their suit was dismissed and suit of respondent No.1 (F.C. Suit No. 11 of 1985) was decreed. The appeals also met with the same fate as on the basis of evidence on record it was established that share of Muhib remained intact through out. It was never treated as evacuee and the appellant possession over it was unauthorized and the applicants have assailed both the judgments but they were unable to point out any defect of misreading or non-reading of evidence.

9. The applicants have realized from day one the weakness in their case, therefore, they did not pursue these Revision Applications and tried to delay as much as they can. These Revisions were filed on **15.10.1992** and the diary of Additional Registrar shows that the address of respondent was incomplete. First notice which was issued on 25.11.1992 for 2.12.1992 but the diary dated 16.12.1992 shows that notices were not issued as neither cost was paid nor fresh address was supplied. However once service was held good on **17.2.1993** by the Additional Registrar and the case was listed in court for hearing of stay application CMA No. 502 of 1992 on **22.4.1993** when the court granted status-quo in the meanwhile. The said CMA No. 502 of 1992 was against listed for hearing after years on 26.5.1997, 5.5.1998, 12.10.1998, 10.5.1999, 7.10.1999, 2.10.2000, 15.1.2001, 17.4.2001, 22.5.2001, 14.3.2002, 22.4.2002 and ultimately on **19.11.2002** the said CMA was disposed of in following terms:-

“Through listed application applicant seeks suspension of the impugned judgment and decree of possession and mesne profits passed by court below and maintained by the first appellate court. The decree of mesne profits is sought to be suspended till hearing of Revision. Judgment and Decree is suspended subject to furnishing surety in the sum of Rs. 25,000/- [Rupees Twenty Five Thousand]. Revision to be set for regular hearing after winter vacations”.

The applicants never complied with the above order. The perusal of diaries of Additional Registrar dated 30.4.2003 and 7.5.2003 suggest that nobody appeared before the Additional Registrar. The diary dated **10.9.2003** shows that none was present and order for deposit of surety was not complied with.

10. In the meanwhile applicant No.1 and respondent No.1 died and the learned counsel on **18.12.2002** presented two separate applications under Order XXII Rule 3 & 4 CPC without even disclosing the dates of their deaths to bring their legal heirs on record. However, the counsel never made any effort to get the two applications disposed of and formally file amended title. These applications were never numbered. Interestingly enough the learned counsel for the applicant never pursued these applications and the order sheet shows that the cases were always listed for non-prosecution. Ultimately on **10.9.2015** an attempt was made to seek adjournment on the ground that legal heirs have not been brought on record. But the court ordered that in case of death of applicant or respondent the proceedings are never abated and no service is necessary upon the legal heirs. The case pertains to the year 1992 should be heard at 8:30 a.m. on 15.09.2015.

11. Pursuant to order dated 10.9.2005 Mr. Suresh Kumar advocate for applicants appeared and argued this case. He however, did not disclose the fact that since **19.11.2002** he has not complied with the order of furnishing surety in the sum of Rs.25,000/- and even after dismissal of CMA No. 4006 of 2003 for extension of time for furnishing of surety of Rs.25,000/- on the ground that after the initial order of furnishing surety the matter was fixed for hearing in court on **22.9.2003** i.e. after 10 months and four weeks and on 22.9.2003, four weeks time was granted.

12. Mr. Suresh Kumar counsel for the applicants has failed to point out any jurisdictional error in the orders / judgments of two courts below or illegality in the exercise of jurisdiction by the courts below. He has also failed to show any material irregularity in the proceedings of the cases before the trial court and as such the orders of the trial court were based on proper exercise of jurisdiction and application of mind to the facts and record. Not a single piece of evidence has been referred to or relied upon by the learned counsel from the record that could have been of some value for the applicants / plaintiffs. It is admitted position from the record that the applicants have acquired only the evacuee property out of the total suit property which was jointly owned by a hindu owner Jairamdas and Muhib in Survey No. 515 & 516. The old revenue record of 1918-19 was Exhibited as Ex.106 which carried name of Muhib and was admittedly never part of evacuee property. Therefore whatever land was owned by the applicants was only an evacuee property

and their possession over the non evacuee property was by all means illegal and unauthorized. The findings of Deputy Commissioner reproduced above from the judgment of the Trial Court have not been shattered by the plaintiffs or atleast they have failed to show that the name of Muhib from the year 1918-19 was not continued and form No. VI from 1926-27 to 1947-48 were not showing ownership of muslim and therefore there was any error in the order of Deputy Commissioner. No evidence contrary to the claim of respondent No.1 was produced by the plaintiffs in their case or in reply to the case of respondent No.1 therefore, in absence of any evidence in their favour the applicants had no option except to prolong the proceedings in court. The applicants filed suit for injunction in **1977** and withdrew the same in **1985** when court passed interim order of deposit of lease money in court pending the said suit. I have given every detail of the conduct of applicants in prosecuting these Civil Revisions during the last 25 years. The possession of applicants over suit land is under challenge right from 1974 and it has been found consistently illegal and unauthorized by the Revenue Authorities as well as civil courts. This case is classical example of justice delayed as the illegal occupant has enjoyed the produce for over 42 years since 1974.

13. In view of the above facts and discussion while dismissing these Revision Applications, the original decree is modified as under:-

- (i) Pending the ascertainment of the mesne profit by the Nazir of the District & Sessions Judge Nawabshah the applicants are directed to deposit tentative lease money at the rate of Rs. 2000/- per acre per year from 1982 till today i.e. Rs. **66,000/-** (Rupees sixty six thousand) as mesne profit for the last 33 year within 30 days.
- (ii) The Nazir of District Judge, Nawabshah should take steps for ascertainment of mesne profit from three years prior to the date of filing of suit No. 11 of 1985 by respondent No.1.
- (iii) The Nazir of District Court, Nawabshah should also take over physical possession of the suit land and;
- (iv) ensure that it should not be encroached upon or occupied by anyone until delivered to the legal heirs of respondent No.1.

- (v) The Nazir fee as per rules shall be 2% of the final determination of the mesne profit to be paid to or deducted by him from the mesne profit once realized from the applicants / judgment debtors.

14. Since the respondent No.1 has died and the applicants themselves have filed an application to bring his legal heirs on record, the Additional Registrar of this court is directed to amend the title of these Civil Revision Applications by showing names of the legal heirs of applicant No.1 namely Haji Ghulam Hyder son of Samo Khan from the application available on record under Order XXII Rule 3 CPC and also legal heirs of Jumo son of Allah Rakhio Rajpar mentioned in the application under Order 22 Rule 4 CPC available on record since December, 2002.

15. The Mukhtiarkar Deh Deran Taluka Sakrand district Nawabshah should change the Revenue Record and enter the name of legal heirs of respondent No.1 within thirty days and submit report to this court through Additional Registrar. The Mukhtiarkar is directed to immediately make note of this judgment on the Revenue Record pending the proper entry in the record in favour of the legal heirs of Jumo (respondent No.1).

JUDGE

Karat/-