

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE FAISAL ARAB
MR. JUSTICE SAJJAD ALI SHAH

CIVIL APPEAL NO. 42-K OF 2016 &
H.R.C. NO. 36629-S OF 2018

(On appeal against the judgment dated 19.02.2016 passed by the High Court of Sindh, Hyderabad in R.A. No. 272/2011)

Manzoor Hussain and another
Application for early hearing filed by Mst. Azra
Shamim, respondent No. 2

(In CA 42-K/2016)

(In HRC 36629-S/18)

... Appellants

VERSUS

Khalid Aziz and others

(In CA 42-K/2016)

... Respondents

For the Appellants: Mr. Abid S. Zuberi, ASC
Mr. K.A. Wahab, AOR

For Respondents (1-2): Syed Abdul Waheed, ASC
Ms. Lubna Ali d/o Mst. Azra Shamim

On Court's Notice: Mr. Shoukat Bijoro, Mukhtiarkar, Tando Adam
Mr. Umer Farooq, Tapedar
(They appeared subsequently)

Date of Hearing: 07.09.2018

JUDGMENT

FAISAL ARAB, J.- The dispute in these proceedings relates to 56 acres and 28 ghuntas of land situated in Deh and Taluqa Tando Adam, District Sanghar. A big part of this land was an evacuee land, which was granted to Shah Azizullah Abbasi and her wife Mst. Tayyeba Khatoon against their claim. He died on 30.05.1992 and was survived by his widow Mst. Tayyeba Khatoon, respondent No. 1 (son) and respondent No. 2 (daughter). On 17.09.2002, Mst. Tayyeba Khatoon also died. To seek transfer of the land in the revenue record in their names respondents No. 1 & 2 approached the Mukhtiarkar but were told that their parents had already sold the property to respondents No. 3 and 4 who thereafter sold the property to the appellants. This led respondents No. 1 and 2 to file a suit before the

Senior Civil Judge, Tando Adam for declaration, permanent injunction, cancellation of documents, possession and mesne profits. The suit was decreed vide judgment dated 30.04.2010. It was held that the appellants have failed to establish that the parents of the respondents No. 1 & 2 have sold the land to respondent No. 3 & 4. The appellants then filed an appeal before the Additional District Judge, Tando Adam, which was allowed vide judgment dated 24.09.2011 and the judgment of the Trial Court was reversed. Aggrieved by such decision, the respondents No. 1 & 2 filed a Revision Application before the High Court, which was allowed, the judgment of the Appellate Court was set aside and that of the Trial Court restored. While allowing the revision application, the learned High Court held that the appellants have failed to prove that the land in question was sold to respondent No. 3 & 4 by the deceased owners; that no document of sale transaction with the deceased was placed on record; no witness of the sale transaction appeared in Court and even the revenue officials, who allegedly attested such entries, were not examined as witnesses. This decision has been challenged in this appeal.

2. Learned counsel for the appellants *inter alia* submitted that the judgment of the High Court is entirely based on misreading and non-reading of evidence as there was no material to hold that the revenue record was tampered. It was also argued that the suit filed by the respondents was barred by time.

3. Learned counsel for respondent No. 1 & 2 in rebuttal contended that it was for the appellants to prove that the sale transactions had taken place between their parents and respondents No. 3 & 4 but they failed as neither any document as to payment of sale consideration was produced nor the witnesses of sale transactions

or the officials before whom the alleged sale took place were examined by the appellants and that the entire claim of the appellants was solely based on the revenue entries, which are fraudulent.

4. Apart from examining the record, we out of abandoned caution summoned the revenue record and upon examining it found that Shah Azizullah sold 3-39 acres of land bearing survey No. 483/3, through registered sale deed dated 25.05.1987 to one Abdul Sattar which is not subject matter of present proceedings and yet we are surprised to note that the disputed sale transactions made in 1986 and 1987 are based merely on oral statements purportedly made by Shah Azizullah and her wife before the revenue authorities and allegedly witnessed by persons namely Furqan son of Gul Muhammad Mirani, Noor Muhammad Sheikh son of Ladhu Khan Sheikh, Sher Muhammad son of Babu Khan Bhatti and Muhammad Yaqoob son of Qaiser Junejo none of whom are from the side of the parents of respondents No. 1 & 2. Additionally, the disputed statements neither contains their CNIC numbers nor their addresses, only their purported thumb impressions, which show that they were also illiterate. Although the CNIC numbers would have helped in confirming that these witnesses actually affixed their thumb impressions on the revenue record but due to the absence of the CNIC numbers, it could not be verified from NADRA's database. In any case, as none of the witnesses of the disputed statements were examined in Court, it is sufficient to hold that the transaction of sale has not been proved. Additionally, from the examination of the register of village Forms VII, the page that contains one of the two disputed transfer entries is numbered as '58'. The font of the page number '58' is quite bigger than the page numbers on the remaining pages of the same register; that the imprint of page number '58' is also much darker

than the imprint of the rest of the page numbers of the same register. We may mention here that when pages of a register are numbered with a numbering machine, it is not possible that the size of numbers on pages would be different. Even the impression of ink on a particular page of a register would be the same in comparison to previous and subsequent pages. Either the impression would be light or darker but in the present case the impression on page No. '58' is much pronounced i.e. it is darker than the impression of page numbers on the earlier and subsequent pages. This page also appears to have been subsequently inserted in the register as it is taped from the spine. All this further leads us to draw inference that page number '58' was not part of the same register but has been subsequently inserted with the intention to show a back dated transaction in order to defeat the plea of limitation in case the matter is taken to Court.

5. With regard to the disputed sale transaction of 20-34 acres allegedly entered into with Mst. Tayyeba Khatoon, it was pleaded that she being resident of Karachi came to Tando Adam with her relative to record her oral statement for transferring the land. Interestingly, relative was not made a witness in the purported statement. Then the alleged witnesses of the disputed statement were also not examined in court. Their CNIC numbers too have not been recorded nor have their addresses been given. Even the CNIC number of Mst. Tayyeba Khatoon is not mentioned in the statement. This second sale transaction also could not be proved. Let a copy of this judgment be sent to the Member, Board of Revenue so that appropriate disciplinary action shall be taken against such officials of the revenue department who have manipulated the relevant revenue record. In case any of them has retired, criminal action may be initiated.

6. In view of what has been stated above, we find no exception to the conclusions drawn by the learned Single Judge of the High Court in its well reasoned judgment, therefore, we do not find any merit in this appeal, which is accordingly dismissed with no order as to costs.

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7. Since, judgment is being rendered on merits in this appeal the above referred HRC for early hearing of the said appeal has become infructuous and is disposed of accordingly.

JUDGE

JUDGE

JUDGE

Announced on **22.11.2018** in **Islamabad**.

Approved For Reporting
Khurram