

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE FAISAL ARAB
MR. JUSTICE MUNIB AKHTAR

CIVIL PETITION NO. 339-K OF 2017

(On appeal against the judgment dated 19.05.2017
passed by the High Court of Sindh, Hyderabad in
R.A. No. 44/2015)

Muhammad Rahim

... Petitioner

VERSUS

Mohsin and another

... Respondents

For the Petitioner: Mr. Noor Ahmed Memon, ASC
Mr. Abdul Saeed Kahn Ghor, AOR

For the Respondent (s): Barrister Shabbir Shah, Addl. A.G. Sindh
Mr. Kazi Hameed Siddiqui, ASC
Mr. Ghulam Rasool Mangi, AOR

Date of Hearing: 20.12.2018

JUDGEMENT

Faisal Arab, J:- Dispute in the present proceedings pertains to ownership of half portion of a plot bearing No. 479 measuring 1650 square feet situated in Deh Badin, district Badin. The said plot, which was previously evacuee property, was sold at auction held on 25.02.1967 jointly to Ali Buksh and Abdullah Memon both of whom held equal share. Sale was confirmed on 17.05.1967 and PTD No.19061 was issued on 31.12.1968. Upon payment of auction money, a mutation entry No. 69 was kept in their names in the revenue record. The respondents namely Mohsin Ali and his sister Mst. Zuhra are the heirs of one of the co-owners Ali Buksh. They initiated suits for possession of their shares in the plot in question when Mohsin Ali who lived abroad

from 1973 to 2009 upon his return found that the heirs of the other co-owner Abdullah had occupied the portion on the front of the plot and the plot was in unauthorized occupation of the present petitioner. Suit No.8 of 2010 was filed against the heirs of Abdullah who during the course of the proceedings accepted the claim of the respondents and agreed to give a road facing portion of 440 square feet to the respondents. In this regard, a compromise decree was passed in the suit on 03.04.2010. Another suit bearing No.15 of 2010 for declaration, possession, mesne profits and permanent injunction was filed against the petitioner who denied the respondents' claim that he is in unlawful occupation of any part of their plot and claimed ownership of his own on the strength of a sale deed executed by Gul Muhammad and Noor Muhammad. The respondents' suit was dismissed after which an appeal was filed which was also dismissed on 17.12.2014. The respondents then filed civil revision application in the High Court which was decided on 05.05.2017 in their favour holding the petitioner to be in unlawful occupation of respondents' plot. Hence this petition.

2. Learned counsel of the petitioner argued that the plot in question was sold to the petitioner vide registered sale deed dated 13.11.1994 by Gul Muhammad and Noor Muhammad who were at that time the owners and denied that the father of the respondents owned any share in the said plot; that the respondents have not mentioned in their plaint the Deh in which the suit plot is situated but referred to entry No. 121/A, which is recorded in revenue record of Deh Pattar, district Badin; that the chain of documents produced by them show location of

respondents' plot in Deh Pattar as well as Deh Badin which creates doubt in the title of the respondents. Learned counsel for respondents on the other hand defended the impugned judgement.

3. The main point in issue is as to in which Deh the disputed property lies. According to entry No. 461 dated 16.05.2009 of VF-II produced by the respondents at trial it is stated that the plot in question is situated in Deh Badin, which was wrongly recorded in Deh Pattar however the petitioner denies this and maintains that their plot is in Deh Pattar. Upon perusal of documents and the report filed by the Mukhtiyarkar Badin, it becomes clear that the "foti khata" of deceased Ali Buksh's 50% share measuring 825 square feet in the disputed plot was transferred in favour of the respondents vide entry 461 and a note has also been recorded that the plot is located in Deh Badin which mistakenly stands entered in the records of Deh Pattar. The order No. AC/27/2015 dated 20.01.2015 of then Assistant Commissioner Badin also clarifies that the location of the plot is in Deh Badin.

4. It is important to mention that even though the petitioner claims to have purchased the plot in question from Gul Muhammad, he was unable to satisfy the High Court as to how Gul Muhammad acquired title in the disputed plot. The learned High Courts while examining this issue held as below:

"When the learned counsel for the respondent was posed with the question to satisfy this court as to how did the seller of the property namely Gul Muhammad got his title? He had no answer. In this regard however reference could

be made to the EX.No.61, where the respondent admits that he is the bona fide purchaser of the suit land from the 'original owners' however he even did not provide their names which he mentioned only in the cross to be Gul Muhammad and Noor Muhammad. While in the same cross he denied that the allotment of Gul Muhammad and Noor Muhammad was cancelled vide Commissioner Hyderabad orders which were upheld by the Member Board of Revenue in case No SPOR 723 of 1982-83 dated 28.11.1984. However despite the presence of these impressive documents the courts below utterly looked on the other side by ignoring these compelling pieces of evidence, it was also alleged that even the said Noor Muhammad preferred an appeal against Abdullah which was dismissed.

.... It is also noted that both the judgements while mentioning the sale deed in terms of which the respondent became owner of a part of the plot in question, however, are completely silent as to from where did Gul Muhammad acquired his title as no proof is produced thereof at all in the two judgements in question"

5. As per the case of the petitioner an area of 919 square feet plot out of Bhadda land of Deh Pattar was transferred by Gul Muhammad in his name on the basis of registered sale deed No. 737 dated 13.11.1994 and mutation was affected in the revenue record vide entry No. 14 dated 10.12.1994 but plot number or survey number is not mentioned and the description in the sale deed also does not match with the plot in question. In any case, the sale deed dated 13.11.1994 pertains to land located in Deh Pattar whereas the respondents' plot No. 479 is found to be in Deh Badin. Both are adjoining Dehs. Hence, on the basis of documents available on record and the report submitted by Assistant Commissioner, Badin, it has become clear that the plot No. 479 is located in Deh Badin and its original owners were Ali Buksh and Abdullah Memon and the respondents as heirs of Ali Bakhsh became entitled to half share in the disputed plot which was unlawfully occupied by the petitioner on the basis of a document that pertains to land located in Deh Pattar and not Deh Badin.

6. In light of the above we do not find any reason to interfere with the findings arrived at in the judgement of the High Court, this petition is therefore dismissed.

JUDGE

JUDGE

JUDGE

Announced on 08.05.2019 at Islamabad.

Not Approved For Reporting

Khurram