

2010 M L D 805

[Lahore]

Before Nasir Saeed Sheikh and Mian Shahid Iqbal, JJ

SARDAR KHAN and another---Applicants

Versus

SADIQ alias MUHAMMAD SADIQ through legal heirs and others---Respondents

R.A. No.7 of 2005, in C.R. No. 1277 of 1997, heard on 24th March, 2010.

Specific Relief Act (I of 1877)---

---S. 42---Civil Procedure Code (V of 1908), O.XLVII, R.1, O.XLI, R.27 & O.XXXIX, Rr.1, 2--
--Suit for declaration and permanent injunction---Plaintiffs assailed registered sale-deed---Trial
Court dismissed suit---Appeal was accepted by Additional District Judge and decree of Trial
Court was set aside---Revision was filed but the same was dismissed by single Judge of the
High Court---Application for review---Scope---Petitioners in review application contended that
revision was decided without disposing petitioners' civil miscellaneous application for producing
additional evidence which amounted to miscarriage of justice---Petitioners' counsel further
contended that the case was mishandled by the counsel who argued the revision in her place by
making an incorrect admission that the possession of suit property lay with the respondents,
therefore revision was incorrectly decided---Respondents alleged that under the pretext of review
application the petitioners had attempted to argue the main petition on merits and that the
counsel who argued the case, admittedly, belonged to the chamber of the original counsel but the
fact was not mentioned in review application---Validity---Held, civil revision was decided by
single Judge on merits after conscious application of mind on points raised at the time of hearing
the revision petition---Petitioners' request for producing additional evidence was declined in
review because the document sought to be produced had been in petitioners' possession when the
suit was decided but the said document was neither produced before Trial Court nor before the
Appellate Court---Counsel for the petitioners had made an attempt to re-argue the matter on
merits which exercise could not be permitted while hearing an application for review---Counsel
who argued the revision was fully authorized to argue the matter, a fact admitted by the counsel
for the petitioners and no specific objection was raised to his authority in review application,
therefore, the contention of the counsel that the case of petitioners had been prejudiced in the
process, was without substance and was repelled---Review application was dismissed.

2006 SCMR 425; 2006 SCMR 1574; 2007 SCMR 755; 2008 SCMR 554 and 2008 SCMR 562
ref.

Mrs. Nasira Iqbal for Appellants.

Mrs. Naveed Shaheryar Sheikh and Zafar Iqbal Chohan for Respondents.

Date of hearing: 24th March, 2010.

JUDGMENT

NASIR SAEED SHEIKH, J.---This review application has been instituted by the petitioners of Civil Revision No.1277 of 1997 which was dismissed by a learned Single Judge of this Court vide judgment, dated 28-1-2005.

2. Briefly stating the facts necessary for the present review application are that a suit for declaration and permanent injunction was instituted by the petitioners seeking declaration of title of the subject land in their favour and also praying that the registered sale-deed, dated 30-9-1986 is ineffective upon the rights of the plaintiffs/petitioners. The suit was contested by the respondents and out of the pleadings of the parties, following issues were framed:--

ISSUES:

1. "Whether the plaintiffs are owners of suit property? OPP
2. Whether Sale-deed No.1191, dated 30-9-1986 is void and ineffective upon the rights of plaintiff? OPP
3. Whether the suit is not maintainable in its present form? OPD
4. Whether the suit is not properly valued for purposes of court-fee and jurisdiction. If so what was the correct valuation for both purpose? OPD
5. Whether the suit is bad for non-joinder of necessary parties? OPD
6. Whether the defendants are entitled to special costs? OPD
7. Relief."

3. This suit was ultimately dismissed vide judgment and decree, dated 7-2-1994. An appeal was preferred against the judgment and decree, dated 7-2-1994. In the operative part of the relief clause, the plaintiffs/petitioners were directed to make deficiency of court-fee up-till 7-3-1994, failing which the plaint of the suit will be considered to have been rejected. The plaintiffs preferred an appeal against the judgment and decree, dated 7-2-1994 before the learned District Judge, Kharian which was entrusted for hearing to a learned Additional District Judge, Kharian. The appeal came up for preliminary hearing on 14-2-1994 and status quo order was issued by the learned first Appellate Court with respect to the impugned judgment and decree, dated 7-2-1994. This appeal was ultimately accepted by the learned Additional District Judge, Kharian vide judgment and decree, dated 19-7-.997 and judgment and decree of the learned trial Court was set aside and the suit of the plaintiffs was decreed as prayed with costs. Civil Revision No.1277 of 1997 was instituted against the judgment and decree, dated 19-7-1997 of the learned Additional District Judge, Kharian which came up for hearing before this Court and vide judgment, dated 28-1-2005, the same was dismissed by a learned Single Judge of this Court. Through the instant

review application, judgment, dated 28-1-2005 whereby Civil Revision No.1277 of 1997 was dismissed, is sought to be reviewed.

4. It is contended by the learned counsel for the petitioners that the petitioners moved C.M. No.1 of 2007 in Civil Revision No.1277 of 1997 whereby a request was made for producing additional evidence by the petitioners. This C.M. was not disposed of and the Civil Revision was decided without disposal of the said C.M.A. No.1 of 2001. The learned counsel for the petitioners thus argued that the non-disposal of the said C.M. has resulted into miscarriage of justice and the matter, therefore, requires recalling the order, dated 28-1-2005. The learned counsel further argued that the learned counsel who had argued the Civil Revision was not authorized to argue on behalf of the petitioners and he did not argue the matter correctly in accordance with instructions and therefore, the petitioners have been prejudiced in this respect as according to the learned counsel for the petitioners, she was the original counsel in Civil Revision and on account of her engagement with the Bar Association matters at the time of hearing of the Civil Revision the case was mishandled by the counsel who appeared in the Court. The learned counsel further submits that the crucial point in this Civil Revision was the determination of the factor of possession of the suit property and an incorrect admission has been made by the learned counsel for the petitioners arguing the civil revision to the effect that the possession of the suit property lies with the respondents, therefore, the civil revision was decided incorrectly. The learned counsel also made an effort to make reference to the report of local commission which, according to her, has not been appreciated by the Court.

5. Conversely the above arguments of the learned counsel for the petitioners have been controverted by the learned counsel for the respondents who submits that a C.P.L.A. No. 350/L of 2005 was preferred against the judgment, dated 28-1-2005 by the petitioners before the Hon'ble Supreme Court of Pakistan which was dismissed as having not been pressed vide order, dated 24-7-2009 on the ground that a review petition is pending before this Court against the order, dated 28-1-2005 and that the petitioners would prefer to pursue the review petition and then seek any other remedy available to them against the final order to be passed. The learned counsel further submits that under the pretext of review application, the main civil revision is attempted to be argued on merits which cannot be allowed in view of the settled law on the proposition that in the course of hearing of view application, the main case cannot be allowed to be re-argued. Learned counsel for the respondents relied upon the following judgments:-

(1) 2006 SCMR 425, (2) 2006 SCMR 1574, (3) 2007 SCMR 755, (4) 2008 SCMR 554 and (5) 2008 SCMR 562.

The learned counsel for the respondents further argued that even if in the civil revision some erroneous view has been taken by the learned single Judge of this Court, the same view cannot be allowed to be substituted. The learned counsel for the respondents further submits that the remedy available to the petitioners is to file a petition for leave to appeal before the Apex Court which was preferred before the Hon'ble. Supreme Court of Pakistan and was later withdrawn vide order, dated 24-7-2009. It is further argued that the learned counsel who appeared to argue the civil revision admittedly belongs to the chamber of the learned counsel for the petitioners and that in the review petition, this point has not been raised that the said counsel was not authorized to appear on behalf of the petitioners. In this view of the matter, the learned counsel for the

respondents has drawn the attention of this Court towards contents of power of attorney of which para. No.5 confers authority upon an Advocate to employ, authorize any other legal practitioners to assist or exercise the power and authorities on his or her behalf to argue the case wherein the original counsel is engaged. The learned counsel for the petitioners appearing today has not stated specifically in the review application or during arguments that the said counsel who appeared on behalf of the petitioners to argue the case at the time of hearing of the civil revision was not authorized by her to argue the matter.

6. We have considered the arguments of the learned counsel for the parties and have perused the record. The judgment, dated 28-1-2005 passed by the learned Single Judge of this Court dismissing the civil revision is on merits of the case after making conscious application of mind on the points raised at the time of hearing of civil revision and all the contentions raised were duly attended to and were decided by the learned single Judge of this Court through the impugned order, dated 28-1-2005. It is also important to note that in the review application, C.M. No.3/C of 2005 was moved by the petitioners for placing on record documents annexed with the C.M.A No.3/C of 2005 by invoking the provisions of Order XLI Rule 27 of C.P.C. as additional evidence which application was dismissed by this Court vide order, dated 30-5-2005 and the request to produce additional evidence was declined. The learned counsel for the petitioners was asked as to what documents, the petitioners wanted to produce as additional evidence through C.M.A No.3/C of 2005 upon which learned counsel states that a pre-emption suit in respect of the suit property was decided vide judgment, dated 14-7-1988 which document is relevant to the point of possession of the suit property. The said suit for pre-emption was though instituted on 30-9-1986 but was decided vide judgment and decree, dated 14-7-1988 and an appeal against the said judgment and decree was decided by a learned Additional District Judge on 17-6-1989. The judgment and decree, dated 14-7-1988 sought to be produced as additional evidence was very much in possession of the petitioners at the time when the present suit was decided on 7-2-1997 but the copy of the judgment and decree, dated 14-7-1988 was not produced before the learned trial Court nor before the learned Appellate Court where appeal was also dismissed vide judgment and decree, dated 19-7-1997. This conduct of the petitioners cannot be described as diligent one. Moreover, the same request was declined by this Court vide order, dated 30-5-2005 passed in C.M. 3/C of 2005 to produce additional evidence sought by the petitioners through the G.M. No.3/C of 2005. The case-law cited by the learned counsel for the respondents that the matter once decide on merits cannot be allowed to be re-opened through a review application, is settled by the Hon'ble Apex Court. The learned counsel for the petitioners has made an attempt to re-argue the matter on merits which exercise cannot be permitted while hearing an application for the review of the judgment, dated 28-1-2005. The learned counsel who argued the Civil Revision No.1277 of 1997 was fully authorised to argue the matter, a fact admitted by the learned counsel for the petitioners as he belonged to her chamber, and no specific objection was raised to his authority to argue the case, in the Review application, therefore, the contention of the learned counsel that the case of the petitioners has been prejudiced in the process, is without any substance and is thus repelled. The instant review application is, therefore, without any merits and is dismissed with no orders as to costs.

A.R.K./S-50/L

Application dismissed.

