IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD

R.A. NO. 56 of 1987

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

For hearing of CMA-166 of 2010.

Date of Hearing : ***02.03.2018.***
Date of Order : ***02.03.2018.***

Mr. Muhammad Idrees Khan, Advocate for applicant, Hot S/o Mir Khan, in CMA No.166 of 2010.

Mr. Kamaluddin, Advocate for Applicant No.1(a) & (b) in the main Civil Revision Application and the respondents herein.

Mr. Muhammad Humayoon Khan, Attorney of applicant No.1 in the main Civil Revision Application.

Mr. Allah Bachayo Soomro, Addl. A.G. Sindh.

O R D E R

AGHA FAISAL, J: The present matter is an application under section 12(2) of the CPC, filed in the year 2010, seeking to set aside a Judgment of this Court dated 18.02.1995 (hereinafter referred as to the "Impugned Judgment").

2. The applicant claimed that the Impugned Judgment had been procured through fraud, misrepresentation and want of jurisdiction as it created third party interests in the applicant's property, being Survey No.489/1 & 2 measuring 6-04 acres in deh Pai Taluka Tando Adam District Sanghar (hereinafter referred as to the "Subject Property").

3. The corroboratory documents filed by the applicant in support of his claim comprise of an illegible copy of a Form A, purportedly issued by Barrage Mukhtiarkar in the name of Mir Khan in the year 1937, and a copy of a letter dated 08.10.2010 purportedly issued by the Mukhtiarkar (Revenue) Tando Adam, which stipulates as follows:

> *"It is submitted that Mr. Hot S/O Mir Khan R/O Village Mir Khan moved an application to you as well as the undersigned requesting therein that the possession certificate may be issued to him in respect of S.No. 489/1,2 area 6-04 acres of Deh Pai Taluka Tando Adam.*
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> *The Tapedar concerned after visiting the site and consulting revenue record has reported that S.No. 489/1,2 area 6-04 acres stand entered in the khata of Malak Allahyar Khan S/O Malak Sher Muhammad vide entry No.166 of VF VII B Deh Pai. He further reported that an area of 0-30 ghuntas out of both the S.Nos. is lying uncultivated while the remaining area of both S. Nos. is being cultivated by the applicant with wheat crop who pays land revenue etc in respect of the land in question. It is added that FC Suit No. 78 of 2009 filed by Malak Allahyar against Hot and others in respect of land in question is also pending adjudication in the court of Senior Civil Judge Tando Adam.*
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> *The original application alongwith report of concerned tapedar and Record of Rights is submitted herewith for further orders."*

4. It is contended by the applicant that he is *the* legal heir of the aforementioned Mir Khan and that the Subject Property is his sole domain by way of inheritance.

5. In reliance upon the two documents mentioned supra the applicant sought to set aside the Impugned Judgment.

6. In response it was stated at the outset by learned counsel for respondents that the applicant's claim was baseless and it was in fact the applicant's claim which was predicated upon fraud and misrepresentation.

7. It was argued that the Form A was a forgery and it appeared to have been collusively prepared by the same Mukhtiarkar who had issued the fallacious letter dated 08.01.2010, contents whereof are *prima facie* contrary to the record.

8. It was contended by the learned counsel for the respondents that, notwithstanding the fact that the purported Form A is a forgery, even if it assumed that the same was a valid document it was insufficient to convey title in the land to the purported allottee Mir Khan.

9. It was pointed out that the historical process of acquiring land in barrage areas was delineated in the Standing Order 10 of the Revenue Department, Section B whereof stipulated as follows:

> *"The following procedure is prescribed for the sale or lease of agricultural land in the Lloyd Barrage area for recovery, accounting and audit of installments of malkano and lease money, and for keeping a watch on the progress of such recoveries. (G. R., R. D., No. 34124, dated 30th August 1928, as amended from time to time.*
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> *The Revenue Officer exercises the power of the Revenue Commissioner preliminary and the Assistant Revenue Officer of the Collector under the Land Revenue Code in respect of all the land grant matters in the Barrage area. Therefore appeal against the Revenue Officer's orders lies to the Sindh Revenue Tribunal and that against the order of the Assistant Revenue Officer to the Revenue Officer*
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> *Sales of agricultural land in the Lloyd Barrage area are sanctioned by the Sales Revenue Officer and the Assistant Revenue Officer on an offer received from the intending purchasers in the prescribed form at the office of R.O./A.R.O. or to the B.M., 50% of the price agreed to (and 25% in case of rice areas on the Right Bank) is taken in advance. The balance of malkanao is payable in 5 annual equated installments unless the grantee agree to pay the entire amount down. Payment of initial deposit in piece meal is disallowed.*
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> *When there are more offers than one of the same land, it may be auctioned provided the parties are rich and influential or of equal status. In case of inequality of status, e.g., when a small khatedar or hari and a man of good*

means apply for a particular piece of land and if that piece is situate near about the village in which such small khatedar or hari resides or such small khatedar or hari has no other land except the land applied for, it should be given to the small khatedar or hari at the prescribed rates of malkano without restoring to auction. In cases where there is dispute between two haris, the hari near whose village the land is situate should be given preference. (Government letter, R.D., No. P-24-F/50, dated the 7th February 1951).

"In future lands lying within 20 chains of all authorized villages whether in the rice canal zone or outside it, are disposed of either permanently or on attached to the grant. The restriction should not be removed either permanently or temporarily under any circumstances. In the non-Barrage area, however, such lands may be disposed of on lease only. Each case of the disposal of such lands should be decided by the Revenue Officer, L.B.S., on its merits but in disposing of these cases, the procedure laid down in Government Resolution, Revenue Department, No. R-9373-E(a), dated the 20th July, 1944, should invariably be followed. (Government Resolutions, Revenue Department, No. R-9373-F, dated the 31st May, 1949, and 29th March 1952).

2. On receipt of sanction to a sale, the Barrage Mukhtiarkar should take the following steps in the order given:--

(i) Recover:--

(a) the full price when the installments are not ordered

(b) the value of trees, if any, and credit the amount in the treasury.

(ii) Issue intimation of the grant in the tear-off form (specimen attached) and send two counterfoils of the form to take Taluka Mukhtiarkar, with the particulars of the S. Nos. in question, their areas, and the date (for the season or the year) from which the possession of the land is allowed.

On receipt of these counterfoils the Taluka Mukhtiarkar will pass them on to the tapedar. The tapedar will enter the details of the grant in question for the recovery of malkano in case the area is more and for adjustment or refund, if the area is less.

(iii) Get an agreement executed by the purchaser in the prescribed form

(iv) Issue an ijazatnama.

(v) The Barrage Mukhtiarkar will prepare "A Forms" in duplicate, give serial and khata numbers to it and send one copy to the "Accounts Branch" of the Revenue Officer's Office, the other copy being retained by his office. This is according to the practice in vogue at present at the Barrage Department. This form is to be maintained separately for each taluka in alphabetical order in both the offices. It is to be prepared even when the price is recovered full. In such cases, it will not be necessary to fill in columns 11 to 13 of the form, but the entry against item 7 should indicate that the amount recovered is the entire price of the land. Separate serial and khata numbers should however, be given to A Form prepared for full rate grant, harap, and concessionary grants. A forms should be kept in chronological order with numbers as Pe. For peasants and Co. 1, 2, 3, etc. for concessionary grants respectively. There should be separate files for different kinds of grants for each taluka.

Re-arrangement of A Forms is carried out every year in September. Therefore the new A Forms issued before September are kept in separate files by Barrage Mukhtiarkars/Revenue Officer's offices. Every year in September the new A Forms are put in their proper place according to the number of khatas, and the fully paid and cancelled grants. A Forms (in which cancellation is over 4 years old) are extracted from the files and put in separate files maintained for the purpose. The numbers of these A Forms are scored off from the index and entries regarding the new A Forms made in it. The A Forms in which cancellation is less than (4 years old) are allowed to remain in the running grants files till the date on which the next arrangement falls due. These instructions are to be observed very carefully and a certificate to the effect that the re-arrangement has been done, should be submitted by the Barrage Mukhtiarkars so as to reach the Revenue Officer's office before 15th September every year.

The same procedure of filing will be followed by the Revenue Officer and if the Revenue Officer discovers at any time that an A Form is missing or there is any mistake in the intimation (tear off form) the wanting A Form will be obtained and the mistake in the intimation corrected.

These files will form the primary registers in which sales of all agricultural land in the Barrage area of a taluka recorded and in which account is kept of

the future installments as they are recovered from time to time.

3. When the grants are fully paid, the bandash is removed and intimation in the tear-off forms is issued by the Barrage Mukhtiarkar's and sent to the Taluka Mukhtiarkar through the Revenue Officer. The Accounts Branch of the Revenue Officer after verification with the A Forms certifies that the grant is fully paid including the cost of trees and transmits two counterfoils to Taluka Mukhtiarkar. The Accounts Branch takes care to see that no serial number is missing and if any number is missing it is called for form the Barrage Mukhtiarkar.

In case of lands disposed of from un-assessed S. Nos. bhadas, etc., no T.O. Form is to be issued till the land is measured and difference of malkano if any recovered from the grantee.

4. The Barrage Mukhtiarkars are empowered to sanction the following:--

(a) Yaksalo leases upto 50 acres in the same deh;

(b) To transfer the land in undisputed cases;

(c) To sanction refunds of malkano upto Rs.250/- which become due as a matter of right owing to the grant of land nt being eventually sanctioned.

(d) Maki partition of the land, when the parties agree; (but compulsory partition under Secton 82-A of the Land Revenue Code can be ordered by the Revenue Officer / Assistant Revenue Officer).

5. Exchange of kabuli land is forbidden. But exchange of land granted by the Revenue or Assistant Revenue Officer is allowed if the request is made within one year from the date of the grant. Provided the exchange is proposed on account of inability of the P.W.D. to supply adequate amount of water. Cases in which exchange is proposed for any reason other than that mentioned above, such as unsuitability of soil, should be referred to Government for sanction."

10. It was contended that the chronological order of the process for conveyance of such land may be summated as follows:

(i) The process is initiated by making an application for land to the designated revenue officer.

(ii) The revenue officer then brings that application to an open *kutchery*, where the said offer may be accepted or otherwise.

(iii) If the offer is accepted then an order to that effect is issued by the said revenue officer.

(iv) Form A is then issued, clearly stating the terms of the order, including the date upon which same is issued, and also includes the challan number pertinent thereto.

(v) Subsequent to the issuance of the Form A, a red entry is made in the record of rights which signifies that the said property cannot be sold further without an appropriate order being passed.

(vi) The revenue officer then issues an order for issuance of a T.O Form and it is only subsequent to the issuance of the T.O Form that the land goes from Government pool to private hands.

(vii) Thereafter the record of rights is amended by removal of red entry and it stipulates that the relevant T.O Form has been issued.

(viii) The red entry is substituted with blue / black entry and the title is added therein on the basis of the T.O Form.

ix) After issuance of the T.O. Form, the name mentioned therein is also added to the share list for the apportionment of water resources.

11. It was therefore, contended that mere issuance of a Form A, even if the same were genuine, does not constitute conveyance of title in land.

12. It was further contended that there is no evidence on record that the applicant was a legal heir of the purported Mir Khan.

13. It was argued on behalf of the respondents that applicant's claim is prima facie false as the purported allottee and his legal heirs never bothered to verify the contents of the Record of Rights since 1937, which clearly showed that the Subject Property never belonged thereto.

14. It was also stated that the applicant had filed a suit in respect of the Subject Property in 2010, the withdrawal whereof was permitted, with directions to file a fresh suit within two months, on 17.5.2010.

15. It was contended that it is an admitted fact that no subsequent suit was ever filed by the applicant.

16. It was further contended that the respondents then had in fact filed a suit in respect of the Subject Property, being F.C Suit No.66/2010, which was still pending before the Court of appropriate jurisdiction.

17. It was argued on behalf of the respondents that if the applicant had any grievance the appropriate remedy would have been a civil suit, notwithstanding the fact that the entitlement to such a remedy has been foregone by the applicant.

18. This Court has heard the arguments of learned counsel, perused the record and it appears that the contentions raised by applicant are not supported by any cogent reasoning or corroboration.

19. It appears at the very outset the applicant has failed to plead, demonstrate or substantiate his proximity to Mir Khan, who was the alleged allottee of the Subject Property in 1937.

20. The applicant has failed to establish how the purported Form A constitutes as a title document, even if the veracity thereof was not disputed before this Court.

21. The applicant has also filed to provide any cogent reasoning for the delay in instituting the present proceedings or the failure to institute a civil suit in respect of the Subject Property.

22. The Superior Courts have disapproved of the institution of such proceedings beyond the period of limitation provided by law in respect thereof. In the case of *MST. AMTUL KABIR & OTHERS V/S. SAFIA KHATOON & OTHERS,* reported as *1991 SCMR 1022,* the august Supreme Court held as follows:

> *"Leave to appeal was granted by this Court in order to examine the plea raised on behalf of the appellants that there being a direct allegation that the defendants in the earlier suit had not engaged the counsel and had not subscribed to the consent decree, it was not proper for the Court to have accepted as correct what was being challenged as fraudulent. Besides that appellants had claimed that they acquired the knowledge of the decree only 10 days before the filing of the application under section 12(2) of the Civil Procedure Code.*
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> *After having heard the learned counsel for the parties in the light of the record before us, we find we find that the predecessor-in-interest of the appellants had died on 20th February, 1983, long after the decree sought to be challenged by the appellants was passed, and it is admitted that during his lifetime, he had not attempted to challenge the decree. It is further borne on the record that in 1983 one Muhammad Aslam had filed an application under section 12(2) of the Code asserting that he had purchased 40 percent share of the property from Muhammad Shamim prior to his death but the application was dismissed on 17th December, 1984. The application filed by the appellants under section 12(2) of the Code was on the same facts and grounds. As stated above, Muhammad Shamim, predecessor-in-interest of appellants was alive till 1983, and he had not moved any application under section 12(2) of the Code, and it is not shown that he had claimed any share in the suit property or the rent of the property. The defendant No.2 in the suit, who is the real brother of Muhammad*

> *Shamim, also did not make any challenge to the decree passed in favour of Mst. Safia Khatoon, nor he disowned the signatures of defendants Nos.1 and No.3 in the suit.*
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> *Learned Judge in the High Court has also right taken the view that the application under section 12(2) of the Code was barred by time. In this behalf, this Court has already held in Muhammad Iqbal v. Muhammad Alamgir 1990 SCMR 1377 that the period of limitation for filing of an application under section 12(2) of the Code is three years under Article 181 of the Limitation Act.*
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> *For the reasons, we find that the learned Judge in the High court has rightly refused to exercise the limited revisional jurisdiction of the High Court and there is no force in this appeal. It is accordingly dismissed with no order as to costs."*

23. The applicant has also failed to corroborate his alleged possession of the Subject Property when the same appears to be prima facie controverted not only by the respondents but also by the record available before this Court.

24. Even if it is assumed that the applicant had possession of the Subject Property, or a constituent thereof, then the same would prima facie appear to constitute unlawful occupation and that the same cannot be deemed to confer any proprietary rights.

25. In the case of FAZAL UR REHMAN and others v. PROVINCE OF PUNJAB through District Officer (Revenue) Bhakkar and another, reported as 2014 S C M R 1351, it was maintained as follows:

> *"3. It is argued by the learned counsel that the petitioner had a 40 years possession over the land in question; therefore, he had been dispossessed in violation of section 32 of the Colonization of Government Lands (Punjab) Act, 1912. We are not inclined because admittedly no document exists in favour of the petitioner to establish his claim to remain in occupation of the property in dispute. Learned counsel stated that an application has been moved before the Board of Revenue for the property rights. We are not inclined because in our considered opinion this argument*

> *had not been advanced earlier at any stage and it was not the case of the petitioner in any manner. Contrary to it, it strengthens the plea of the respondent that the petitioner was an unauthorized occupant. We may add that the law lean towards persons who believe in the rule of law and not those who takes the law in their hands as happened in the instant case where the petitioner with no legal authority had occupied the premises in dispute. As far as the question that he was in possession for so many years is concerned, it can never be a ground for the purpose of proprietary rights. The petitioner has failed to establish his case in his favour. The learned High Court had rightly declined to exercise its revisional jurisdiction and maintained the orders of the Courts below, thus, we find no merit in this petition which is, therefore, dismissed and leave to appeal is declined. However if the petitioner has any claim for damages he is free to approach the competent forum for redressal of his grievance."*

26. This Court has reached the considered view that the applicant, through the subject application, has failed to demonstrate any fraud, misrepresentation or want of jurisdiction in respect of the Impugned Judgment.

27. It is well settled law that mere allegations of fraud and misrepresentation, devoid of any corroboration, would not warrant an investigation in each case.

28. The case of *MESSRS DADABHOY CEMENT INDUSTRIES LTD. & 06 OTHERS V/S. NATIONAL DEVELOPMENT FINANCE CORPORATION KARACHI,* reported as *PLD 2002 Supreme Court 500,* fortifies the aforementioned principle and stipulates as follows:

> *"6. We have heard the learned counsel for the parties and have gone through the material available on record. Obviously, the parties at their own free-will and consent, entered into a compromise vide MOU dated 19.12.1997 which was signed by the parties and their counsel and both the Suits No.416 of 1996 and 1430 of 1997 were disposed of in terms of the said compromise except para. 7 thereof, which was substituted by the Court. The Court after verifying the signatures of the parties and their counsel, who admitted*

the execution of the compromise, examined the terms of compromise and found para. 7 thereof to be unreasonable, as such, it was substituted and on its satisfaction that the compromise was voluntary and genuine, accepted the same with substituted para. 7 and decreed the suit in terms thereof, which attained finality as it was not challenged in appeal. In pursuance of the compromise decree, the petitioners paid 4 quarterly installments but thereafter stopped payment and filed two applications under section 12(2) C.P.C. and on the other hand, the respondent filed two applications for the execution of the said decree.

7. As far the allegations, that the compromise decree was obtained by fraud, coercion and misrepresentation, the petitioners failed to substantiate the same as no particulars of details thereof had been given in their application under section 12(2), C.P.C. and mere allegation not supported by any material, would not invariably warrant inquiry or investigation in each case. It is for the trial Court to see whether the facts and circumstances of the case require further probe into the allegations or not. Where the Court finds that further inquiry is required, it would frame issues and record evidence of the parties and if it is of the opinion that no inquiry is required, it can dispense with the same and proceed to decide the application. So, it is not incumbent on the trial Court to frame issues in each and every case but it depends upon the facts and circumstances of each case. the argument that the respondent by adding further interest/mark-up on the amount on which interest/mark-up had already been paid, played fraud, has no substance, for, this fact was already in the knowledge of the petitioners as they had agreed to pay the same on rescheduling of the outstanding amount, which has been admitted by the petitioners in their Suit No.416 of 1996, as such, they being the privy to the rescheduling of the loan, cannot turn around to say that further mark-up was fraudulently charged. It is settled law that where allegation of fraud is leveled, it must be specified and details thereof should be given. The contents of MOU were mutually agreed upon between the parties and there is nothing to suggest that the same as executed by fraud, misrepresentation or under duress or coercion.

8. As far the question of maintainability of the applications under section 12(2), C.P.C is concerned, it may be noted that consent decree was passed in pursuance of the compromise arrived at between the parties. The compromise decree was acted upon by the petitioners as they deposited four quarterly installments as agreed upon in the compromise and thereafter they defaulted in payment of further installments. Had the petitioners been aggrieved of consent decree, they would have challenged the same in appeal. Since, no appeal was filed against the consent

> *decree, hence, it attained finality. It appears that the petitioners, in order to avoid payment of remaining installments filed afterthought applications with mala fide intentions. The consent decree did not suffer from fraud, misrepresentation or want of jurisdiction, therefore, the same was not amenable to challenge under section 12(2), C.P.C. Thus the allegations were not maintainable as none of the ingredients for challenging the validity of decree as contemplated in section 12(2), C.P.C. was available to the petitioners.*
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> *9. So far application of the provisions of Corporate and Industrial Restructuring Corporation Ordinance, 2000 (Ordinance L of 2000) to the present case is concerned, it may be noted that this law came into force on 22-9-2000 whereas the consent decree in pursuance of the compromise, had been passed on 18.2.1998, as such, the date on which decree was passed, had been passed on 18-2-1998, as such, the date on which decree was passed, the force during the pendency of the application under section 12(2), C.P.C., yet its provisions could not be pressed into service as the applications under section 12(2), C.P.C. were found to be incompetent and thus, not maintainable and the consent decree was held to have been lawfully and validly passed.*
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> *10. For the foregoing reasons, we are of the view that the learned Division Bench of the High Court has exhaustively dealt with each and every point alleged before it and we see no ground to interfere with the well-founded judgment. Consequently, finding no merit in these petitions, the same are dismissed and leave is refused."* (Underline added for emphasis.)

29. It is also the finding of this Court that the applicant has failed to establish his entitlement to agitate his claim on the basis of documentation purportedly favoring a third party.

30. In view of the foregoing this Court came to the conclusion that the subject application was devoid of merit and hence the same was dismissed vide short order dated 02.03.2018, content whereof is reproduced herein below:

> *“After having heard the learned counsel at the considerable length to which the Court is grateful to each of them for their assistance rendered. It is the finding of the Court that for the reasons to be recorded, an application U/S 12(2) CPC being CMA No.166/2010 is hereby dismissed.”*

31. These are the reasons for the short order dated 02.03.2018, wherein subject application was dismissed.

32. It is hereby recorded that the observations made herein are of tentative nature and shall not cause prejudice upon the adjudication of any dispute between the parties before a forum of appropriate jurisdiction.

JUDGE

Shahid