

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No.115 of 2012.

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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For katcha peshi.
2. For hearing of C.M.A-716 of 2012.

15.05.2018.

Mr. Wali Muhammad Jamari, Assistant A.G.

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None present for the applicant. Similar case was on the last two consecutive dates of hearing.

2. This revision filed against concurrent findings of the Courts below not attended by the counsel for the applicant after 04.03.2013, when by consent, the matter was adjourned to 25.03.2013. The controversy between the parties commenced in the year 2010, when respondent No.1 (Allah Bux) filed F.C. Suit No.03 of 2010 against the applicant and other respondents for declaration, possession, mandatory as well as permanent injunction, which was decreed by the trial Court vide its judgment dated 02.03.2011, against which applicant filed appeal being Civil Appeal No.30/2011, which was dismissed through impugned judgment dated 14.04.2012, thus the instant revision.

3. Brief facts as narrated are that respondent No.1 owned and possessed agricultural land measuring 17-37 acres (details are available at page-19 of the Court file), situated in Deh Loon Khan Tapo Loon Khan, Taluka Khipro, District Sanghar and same was mutated in his name vide entry No.174 dated 12.02.2009. In block No.46 area 01-31 acres, there is village Loon Khan situated. Respondents No.2 to 5 illegally claimed the applicant No.5 has sold out suit block No.46 area 01-31 acre (village side) to them, one side of suit block No.48/2 area 02-00 acres to respondents No.2 and 3 while its other side to respondents No.4 and 5, therefore, they threatened the respondent No.1 to vacate the suit blocks, whereas respondents No.2 and 3 have forcibly occupied block No.48/2 area 02-00 acres, thus respondent No.1 filed the

aforementioned suit for declaration, possession, mandatory and permanent injunction. Defendants No.5 and 6 filed their written statement, whereas written statement filed by the defendant No.5 was adopted by the defendants No.2, 3 and 4. Defendant No.5 stated that father of the plaintiff had sold out 2-00 acres from Survey No.48/2 to him and handed over its possession. In block No.46 measuring 01-3 acres, there is village Loon Khan in existence since last 100 years, wherein houses of plaintiff and their haris were situated. Thus from the entire holdings of plaintiff these 03-31 acres land is deducted, which fact is in knowledge of plaintiff. In additional plea defendant No.5 stated that the suit was not maintainable in law and undervalued.

4. After concluding the evidence and hearing the parties counsel trial Court decreed the suit of the respondent No.1. Against the said judgment, the applicant preferred Civil Appeal No.30/2011, which was dismissed by the appellate Court's judgment dated 14.04.2012, thus this Revision has been filed against concurrent findings.

5. I have had an opportunity to go through the judgments of the Courts below and find that the same were rendered after considering all material aspects as well as the evidence and other material available on record. Both the learned Courts have passed well reasoned, speaking and conclusive judgments, which need no interference in revisional jurisdiction.

3. Being cognizant of the fact that in the exercise of revisional powers, it is not the duty of the High Court to enter into the merits of the evidence as it has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of the revision, and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order. That's why if someone invokes the jurisdiction under S. 115, C.P.C. he must show not only that a jurisdictional error has been committed by the court below, but also that the interests of justice call for interference by the High Court, as the powers of the Court under S. 115 of the Code are purely discretionary, which are to be exercised in the interests of justice alone where the High Court could legitimately hold that the court below

had exceeded its jurisdiction or had refrained from exercising a jurisdiction vested in it or it acted illegally or with material irregularity in the exercise of that jurisdiction, i.e. committed an error of procedure or of a mandatory procedure and that such an error had resulted in failure of justice. The words 'acted illegally' have been interpreted to mean *acting in breach of some provisions of law* and the words 'acting with material irregularity' are interpreted to mean *committing some error of procedure and in the course of proceedings, which is material in the sense that it may have affected the ultimate decision.*

4. A review of the judgments of the Courts below shows that neither any of these Courts decided the case perversely, nor it could be said that they acted illegally or with material irregularity in the exercise of their jurisdiction. Where a lower Court passes an order in exercise of its jurisdiction, the High Court is not to interfere with it in revision unless the order (being sought revision), if allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury, which is not the case at hand. In the absence of any defect in the concurrent findings of both the Courts below, interference of High Court in civil revision as held by Apex Court in **2006 SCMR 50**, amounts to improper exercise of revisional jurisdiction.

5. In the given circumstances as well as in the light of the above cited judgment of the Apex Court and other judgments delivered on the same point being **2006 SCMR 1304** and **2010 CLC 528**, the instant revision preferred against the concurrent findings of the Courts below for the reasons detailed, merits no consideration and the same is accordingly dismissed alongwith pending application.

JUDGE

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