

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

Civil Revision No. 43 of 2017

Date	Order with signature of Judge
------	-------------------------------

**Applicant:** **Ghulam Rasool & Others**, through Mr. Noor Ahmed Chadhar, Advocate.

**Respondents:** **Fauji Fertilizer Company & Others** through Mr. Abdul Rasheed Kalwar, Advocate

**Date of hearing:** 22.09.2017

**ORDER**

**YOUSUF ALI SAYEED, J.** Vide this Revision, the Applicants have assailed the Order of the learned IVth Additional District Judge Mirpur Mathelo dated 04.03.2017, allowing Civil Misc. Appeal No.01/2017 filed by the present Respondent and setting aside the Order dated 20.01.2017 made by the learned Senior Civil Judge Mirpur Mathelo, granting interim injunction in favour of the Applicant on an Application under Order 39 rule 1 & 2 CPC (the “**Injunction Application**”) filed within the framework of FC Suit No.04/2017 (the “**Underlying Suit**”), whereby the Respondents Nos.1 and 2 were restrained, for a period of six months, from interfering with the possession of the suit land and from carrying out construction of a wall thereon.

2. Learned counsel for the Applicants submitted that the Applicants are the owners and in possession of immovable property admeasuring (15-22) acres out of land bearing B.No.138/3(4-00) acres, 139/3(4-00), 139/4(4-00), 140/3(4-00), 140/4(4-00), 142/1(02-27) acres, 144/1(4-00) acres, 144/3(1-09) acres, 145/2(4-00) acres, 144/2(4-00) acres, 143/1(4-27) acres, 143/2(4-12) acres, 144/4(1-36) acres, 145/3(2-15) acres total (49-06) acres, situated in deh Was Bakro taluka Mirpur Mathelo District Ghotki, since 1974, and referred to the photo copy of the sale deed and Form-VII in that regard. He submitted that the land

of the applicant is on one side of the National Highway whereas land of the respondent No.1 fell on the other side, nonetheless the respondent was interfering in the possession and enjoyment of the applicant hence the underlying suit, wherein injunction application was filed and interim relief was granted accordingly. He submitted that the appellate court had failed to duly appreciate the legal right and possession of the Applicants whilst adjudicating on the matter and submitted that the Order in Appeal ought to be set aside and the Respondents be restrained from interfering with the Applicant's possession of the suit land, as had been ordered by the learned trial court.

3. Learned counsel for the Respondents strongly controverted such submissions made on behalf of the Applicants and drew attention to the pleadings in the Underlying Suit. He pointed out that whilst the Applicants claimed to have acquired ownership of land measuring 49-06 acres out of the survey numbers specified in the plaint, they had admittedly sold some part of the land and now espoused a claim to ownership over a residual area of 15-22 acres, which they had not identified. He also pointed out that an earlier suit bearing F.C. Suit No.68/2014 had been filed by the Applicant against the present Respondents, which had been dismissed for non-prosecution on 28.3.2016, wherein, with reference to the same survey numbers, the Applicants had then pleaded to be in ownership and possession of a residual portion of only 12 acres and 17 ghuntas as opposed to the greater area now being claimed. Learned counsel for the Respondents pointed out that this contradiction remained un-reconciled and further submitted that even if it was assumed for the sake of argument that some land remained with the Applicants, the particulars of such land had not been pleaded with any specificity so as to properly identify the same. He also drew attention to the Injunction Application and pointed out that inexplicably the relief sought in terms thereof was nonetheless in relation to the entire area of 49-06 acres, and that that the affidavit filed in support thereof was completely bereft of any particulars whatsoever.

4. Learned counsel for the Respondents submitted that the land of the respondents fell on both sides of the National Highway, as was said to be evident from the official map as well as record of rights. He submitted that the land was qabooli land, which had been acquired through due process for Pak Saudi Fertilizers under the Land Acquisition Act 1894, and that the said company had subsequently been amalgamated with the Respondent No.1 through a scheme of amalgamation sanctioned vide judgment dated 21.11.2002 passed by this Court in J. Misc. Petition No.51/2002 in exercise of its jurisdiction under the Companies Ordinance 1984. He argued that a Hospital, Public School and other buildings had long since been constructed and were in existence on the strip of land owned by the Respondent No.1 company on the side of National Highway towards which the Applicants claimed their land fell. He further submitted that it was part of the land of the Respondent No.1 from such strip that had subsequently been acquired by the National Highway Authority under the Land Acquisition Act for certain roadworks and compensation paid in that regard to the Respondent No.1, thus further evincing the title of the Respondent No.1.
  
5. Having considered the Impugned Order in light of the arguments advanced at the bar and the material available on record, it is evident that the Applicants have not described the land said to be owned by them with any degree of specificity in the plaint filed in the Underlying Suit. Furthermore, as pointed out, the Injunction Application itself incongruously exceeds the scope of the 15-22 acres of land said to be under their ownership, and the supporting affidavit is even otherwise bereft of any foundation for the grant of an interim injunction. On a query being posed in that regard, learned counsel for the Applicants was unable to provide any explanation or otherwise identify the 15-22 acres being claimed.

6. Accordingly, it is clear that that the very land sought to be brought under the protective umbrella of the injunction remains unascertained, and under such circumstances it is evident, as observed by the learned ADJ, that the Applicants have failed to make out a prima facie case and establish the necessary ingredients for the grant of an interim relief. Thus, it is apparent that no illegality or material irregularity has been committed by the Appellate Court in setting aside the Order of the Court below.
  
7. As such, the Impugned Judgment clearly does not warrant any interference through the instant Revision, which is therefore dismissed along with the listed Application, with no order as to costs.

JUDGE