

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-2712 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case

18.03.2020

Mr. Atta Hussain Gaddi Pathan advocate for petitioner.

Mr. Mumtaz Ali Shah advocate for respondent No.1.

Mr. Muhammad Hamayoon Khan, D.A.G.

Mr. Allah Bachayo Soomro, A.A.G. along with Qamaurddin Rahupoto, Mukhtiarkar Shahdadpur.

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Through a suit bearing No.83/2017 respondent No.1 sought declaration being owner of the subject property. Though he claimed to have acquired this property by virtue of a sale deed from his predecessor who himself acquired this property in 1960s, it appears that subsequently, this property was declared as Evacuee Trust Property in terms of a notification available at page 85. Inadvertently or for the reasons best known to respondents this notification is not challenged in the suit. The determination of a title of a property *prima facie* under general law is always vested with the civil court, however, there is a special law to govern the status of the property which is attached to the charitable institute such as Evacuee Trust Property.

We, therefore, in the interest of justice deem it appropriate to direct the trial court to frame an issue as to whether under the circumstances when a notification is not challenged do they enjoy the jurisdiction in the absence of an objection taken in the written statement regarding jurisdiction. Both impugned orders of 05.07.2018 and 20.09.2017 are set-aside.

The trial court as such may frame an issue as to maintainability of the suit and the parties may be permitted to record evidence if they so desire on this preliminary issue alone. In the meantime, if it is so desired by the respondents, they may move an application for amendment of the pleadings which shall be decided in accordance with law. With these observation, the petition is disposed off.

JUDGE

JUDGE

