

**IN THE HIGH COURT OF SINDH,**  
**Bench at Sukkur**

**C. P. No. D – 947 of 2007**

Dinal (deceased) through his Legal Heirs.....Petitioners  
Versus  
Mian Raza Muhammad (deceased) through his Legal Heirs and others.  
Respondents

**Before:**

Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Zulfiqar Ali Sangi

Date of Hearing: **09-02-2022**  
Date of Decision: **09-02-2022**

Mr. Muhammad Asim Malik, Advocate for the Petitioners.  
Mr. Sarfraz A. Akhund, Advocate for the Respondents No.4 to 6.  
Mr. Mehboob Ali Wassan, Assistant A.G-Sindh.

**ORDER**

**Muhammad Junaid Ghaffar, J.** – Through this Petition, the Petitioners have impugned Judgment dated 29.09.2007, passed by Additional District Judge, Gambat in Civil Revision No.24 of 1993 (Old No.01 of 1989), whereby while dismissing the Civil Revision, Judgment dated 27.08.1989, passed by Senior Civil Judge, Gambat in F.C Suit No.91 of 1983, has been maintained, through which the Suit of the Respondent No.1 was decreed.

2. Learned Counsel for the Petitioners has argued that the learned Trial Court had erred in settling the issues as the main issue regarding Suit of the Respondent No.1 being time barred, was never settled and decided; whereas, the Petitioners own the disputed property pursuant to an agreement with the predecessor-in-interest of Respondent No.1 and were admittedly holding possession; hence both the Courts below have erred in law and facts; therefore, by allowing the Petition, impugned Judgments may be set aside and matter be remanded to the Trial Court for deciding the controversy afresh.

3. No one has appeared on behalf of the private Respondents to contest this Petition.

4. We have heard the learned Counsel and perused the record.

5. It appears that Respondent No.1 filed a Suit for possession under Section 9 of the Specific Relief Act, 1877, on the ground that the property was owned by the said Respondent No.1 as per the revenue record and was even holding possession of the same when on 7.1.1983 it was forcibly taken over by the Petitioners; hence, the Suit with a prayer for handing over of the possession. As to the ownership of Respondent No.1, there appears to be no dispute; rather the same was admitted insofar as the present Petitioners are concerned. However, the Suit for possession was resisted on the ground that there was some Agreement/Qabooliat (Exh.89) between the predecessor-in-interest of the Petitioners as well as of Respondent No.1, pursuant to which purportedly the possession was handed over to the said predecessor-in-interest and since the same was against consideration, therefore, possession of the Petitioners was lawful. It was further pleaded that Respondent No.1 had no right to seek possession from the Petitioners.

6. Learned Trial Court as well as Revisional Court have examined this aspect of the matter and have come to the conclusion that insofar as the ownership of Respondent No.1 is concerned, it has not been seriously disputed, whereas, no evidence has been led as to the claim of owning it by the Petitioners except reliance on the purported Agreement or Qabooliat. Not only this, both the Courts below have even come to a finding of fact that even otherwise the said Agreement has not been proved; whereas, the defence of the Petitioners has been contradictory; hence no reliance can be placed. Notwithstanding this finding of fact, we are of the view that even otherwise, in a Suit for possession filed by Respondent No.1, the said agreement by itself could not have been considered so as to justify the possession of the Petitioners. For that the Petitioners apparently ought to have availed its own independent remedy, and if there was an agreement, as contended, then in law specific performance of the same was required to be sought. This admittedly was never done; rather the possession was held on such basis. By merely, relying on an Agreement of sale, a party cannot hold possession until and unless the said party has approached the Court within limitation for specific performance of the Agreement on the basis of which the possession was being held. Now if the property was purchased by the predecessor in interest of the Petitioners, as contended, then why they never sought transfer of the same in their name from the seller; or by way

of a suit for specific performance in their lifetime is a question which remains unanswered. It is settled law that no title or ownership could be claimed merely on the basis of an agreement, even if the possession has been handed over. Mere prolonged possession even with title documents in hand does not establish the claim of ownership until and unless the sale is proved<sup>1</sup>. Taking such defence in a Suit for possession by the opposing party under Section 9 CPC does not *ipso facto* justify holding of the possession, and therefore both the Courts below have arrived at a correct and just conclusion; rather have even given leverage to the Petitioners inasmuch as even merits of the agreement have been dealt with and a finding of fact has been answered against the Petitioners.

7. In view of hereinabove facts and circumstances, it appears that the Petitioners have no case, as we are unable to convince ourselves with the contention raised on their behalf, as we do not see any mis-reading and or non-reading of the evidence; or even otherwise any illegality in the impugned Judgments of the two Courts below; and therefore by means of a short order passed in the earlier part of the day, this Petition was ***dismissed*** and these are the reasons thereof.

J U D G E

J U D G E

Ahmad

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<sup>1</sup> Sadruddin v Sultan Khan (2021 SCMR 642)