
IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

SUIT NO.462/2021

Plaintiffs : Hayat Muhammad Sher Pao and others,
through Mr. Umair Bachani, advocate.

Defendants : Mukhtyarkar, Gulzar-e-Hijri Scheme 33, District
East and others,
through Mr. Ghulam Shabbir Shaikh advocate
for Board of Revenue.

Date of hearing : 21.12.2021.

Date of announcement : 22.02.2022.

J U D G M E N T

1. By this judgment I intend to dispose of the instant suit filed by the plaintiffs against the defendants for declaration, permanent injunction recovery of damages with the following prayers:

“a. Decree be passed by declaring that the plaintiffs are lawful owners and in possession of the property viz 2-20 acres (12100 square yards) land out of the piece of land H-5-0 Open Commercial Land situated in Sector 6-B, KDA Scheme No.33, Karachi by virtue of Sale deed bearing Registered at Serial No.2350 bearing Registration No.2706 executed/presented before Sub-Registrar on 26-03-2015 and stand registered on 06-04-2015 and entitle to retain the possession of the suit property without any obstacle/hindrance from the defendants.

b. A declaration that the actions of the defendants for demolishing the boundary of property viz 2-20 acres (12100 square yards) land out of the piece of land H-5-0 Open Commercial Land situated in Sector 6-B, KDA Scheme No.33, Karachi by virtue of Sale deed bearing Registered at Serial No.2350 bearing Registration No.2706 executed/presented before Sub-Registrar on 26-

03-2015 and stand registered on 06-04-2015 are illegal and liable to be restrained.

c. A Decree by awarding the Damages to the plaintiff against the defendant No.1 @ Rs.3 millions on account of illegal demolishing of the boundary wall of the suit property and further damages of Rs.20 millions on account of the irreparable loss, mental stress, agony, fatigue and inconvenience caused to the plaintiffs making the total of Rs.23 millions.

d. A permanent injunction by restraining the defendants, their sub ordinates, agents, attorney or anybody else acting under them or through them from dispossessing the plaintiff from the suit property viz 2-20 acres (12100 square yards) land out of the piece of land H-5-0 Open Commercial Land situated in Sector 6-B, KDA Scheme No.33, Karachi, without due course of law.

e. Any other relief which this Hon'able court may deem fit and proper in the circumstances.”

Plaintiffs have pleaded themselves to be lawful owners and in possession of 02-20 acres (12100 square yards) piece of land out of plot of land H-5-0 admeasuring 5 acres open commercial land situated in Sector 6-B, KDA Scheme No.33, Karachi, (*referred as suit property*) by virtue of registered sale deed dated 06.04.2015 followed by entry in *Deh* Form-II; suit property is a sub-divided piece of land out of total plot of 12.20 acres in NC 63, *Deh Songal* owned/acquired by Mst. Khalida and other legal heirs of Saeedullah vide entry No.70 dated 25.06.2014 in *Foti Khata* of deceased Saeedullah who in turn had purchased the land from one Hassan Ali vide entry No.18 dated 05.05.1992 in VF-II *Deh Songal*; plaintiffs entered into an agreement for purchase of suit property from aforesaid legal heirs of Saeedullah, NOC for sale was issued by Mukhtiarkar concerned on 08.09.2014, publication was effected in newspapers and conveyance deed was executed on 26.03.2015. It was pleaded that said 12-20 acres of land was transferred to said legal heirs to the extent of their shares jointly

owned by them, land was undivided, however; co-owners of the land namely Rana Shamim and others applied for sub-division of said 12-20 acres, publication was effected and sub-division was approved by Assistant Commissioner concerned on 18.06.2014, one of the co-owners applied for approval of layout plan for 5 acres, Deputy Commissioner East furnished the report to the Senior Director, Master Plan Department, SBCA, Karachi on 24.10.2014 confirming the ownership of plot of land of 12-20 acres, required challan fee was paid on 30.01.2017 and master plan for plot No.H measuring 5-00 acres from total 12-20 acres was approved by Master Plan Department of SBCA. All of sudden on 26.01.2021 Mukhtiarkar concerned with help of police started demolishing the boundary wall on land of plaintiffs without any notice and even failed to reason for such action, though said boundary wall was constructed around 5 acres of land consequent to permission granted on 12.09.2014 by the Mukhtiarkar. Later on it was learnt that said Mukhtiarkar after receiving huge illegal gratification joined hands with Ruffi Builders, demolished the wall on their behest, damaged heavy machinery marked therein and took away costly parts of that machinery, it was all to get the land vacated illegally, hence the plaintiffs filed present suit.

2. The defendant No.4 filed written statement pleading that the "brief facts" and "facts" need no reply by the answering defendant being factual aspects of the matter based on the record. However, this Court is competent to adjudicate upon the same, after hearing the parties at issue. The defendant No.4 has further pleaded that the then Member (L.U), Board of Revenue Sindh (Mr. Khalid Mehmood

Soomro), while summing up the Case No.SROR-173/2005, filed by Respondent No.1, observed in his Order dated 07.09.2006, that the applicants (Respondent No.1) did not have a clear title over the land in Deh Narathar at the time of making request to the chief Minister for allowing them exchange with government land in Scheme-33, therefore, were not entitled to get government land in exchange, and with the connivance of the Revenue functionaries and Land Utilization Department managed to get approval of the competent authority for exchange with the government land, thus order of the Land Utilization Department dated 27.06.1994 allowing exchange of land in Scheme-323 government in favour of applicants was declared void and illegal. Accordingly, the District Officer (Revenue) Karachi, was directed to resume the Scheme-33 land involved in the Order of the Land Utilization Department dated 27.06.1994 and mutate the same in favour of Government of Sindh, and take over possession of the said land, excepting the disputed S.Nos.124 to 131 of Deh Songal, falling in various sectors of Scheme-33, measuring about 26-10 Acres mutated in favour of the Respondents whose title has already been maintained by upholding order of the EDO (Rev) Karachi dated 08.12.2005 vide his Judgment in Appeal SROR No.21/2006 dated 27.07.2006. The said Order also declared Entries No.1384 and 1435 of Deh Narathar illegal and are therefore set aside. In the said order further directions were issued to the Land Utilization Department that since the order dated 27.06.1994 has been declared illegal and void hence should not be acted upon in the terms of Section 4 of the Ordinance No.III of 2001 i.e. the Government Land in Scheme 33 should not be regularized in favour

of applicants as it stands resumed. As per Revenue record there is no adverse entry in respect of 12.20 Acres in Sector 6-B Na Class 63 Deh Songal except in Favor of Shamim Siddiqui & Others inclusive Plaintiffs. the above order was set-aside in the Review (Case No.S Review 11/2007) filed by Respondent No.1, by the Successor Member, Land Utilization, BOR Sindh, in the Order dated 31.07.2008, according to which the Order of allowing exchange of the land admeasuring 134-24 acres from Sectors No.6-B, 6-C, 19-B, 21-B, 24-A, 30 and 32 of Deh Songal Corridor area Scheme-33 Karachi, had already been cancelled vide Sindh Ordinance No.III of 2001 and had not been regularized so far under the same Ordinance, therefore, the above quoted order of the Member (Land Utilization) will have no standing in the eyes of law and only the competent forum for consideration of the order of exchange and further regularization or otherwise rests with the committee notified under the said Ordinance, therefore, order dated 07.09.2006 has been set-aside. In view of above legal position the order of exchange already stand cancelled and required no further action excepting authorized by the said Ordinance. One Mr. Hassan Ali S/o Sohrab purchased land admeasuring 12-20 acres out of NC No.63 Deh Songal from Mr. Allah Dino S/o Mangi Lado vide Entry No.53 dated 13.07.1943 VF-VII, Deh Songal. Thereafter, Hassan Ali S/o Sohrab sold out the said land measuring 12-20 acres to Saeedullah S/o Abdul Rasheed vide Entry No. 18 dated 05.05.1992 VF-II, Deh Songal. Saeedullah then sold out land admeasuring 04-00 acres through registered Sale Deeds to (i) Mst. Rana Shamim Siddiqui W/o Mr. Shamim Ahmed Siddiqui (01-00 acre), (ii) Mueez Ahmed Siddiqui S/o Shamim Ahmed Siddiqui

(01-00 acre). (iii) Shamim Ahmed Siddiqui S/o Shakoor Ahmed Siddiqui (01-00 acre) and (iv) Taha Ahmed Siddiqui S/o Shamim Ahmed Siddiqui (01-00 acre) as per Entries No.046, 047, 048, 049, 050 and 051, dated 10.09.2012 VF-II, Deh Songal. As per Entry No.070, dated 25.06.2014 VF-II, Deh Songal, the Foti Khatta of Mr. Saeedullah S/o Abdul Rasheed was made in favour of his legal heirs, namely, Mst. Khalida Wd/o Saeedullah, Muhammad Aslam S/o Saeedullah, Mst. Zahida D/o Saeedullah, Muhammad Rasheed S/o Saeedullah, Muhammad Khaliq S/o Saeedullah, Mst. Zubaida D/o Saeedullah. Thereafter as per Entry No.99 dated 02.07.2015 VF-II Deh Songal, Mst. Khalida Wd/o Saeedullah and other legal heirs of deceased Seedullah sold out land measuring 02-20 acres from Survey No.63 to the plaintiffs No.1, 2 and 3, namely, Hayat Muhammad Sherpao, Bilal Mehsood and Dost Muhammad Khan, through Registered Sale deed. The defunct Executive District Officer (Revenue) CDGK had cancelled the basic entry viz. Entry No.53 dated 13.07.1943 and Entry No.18, dated 05.05.1992, while deciding Case No.14/2009, vide Order dated 21.10.2009, with the verdict that the lease file of the above land was managed caused loss to the Government Exchequer and the entries in favour of Allah Dino s/o Mangi Ladho and Hassan Ai S/o Sohrab are fake/fictitious hereby cancelled. After that Moiz Ahmed Siddiqui filed appeal before Board of Revenue Sindh in Case No. SROA 108/2011 challenged the order of EDO Revenue and the said order was set-aside by the order dated 06.03.2012 by the then Member Land Utilization, Board of Revenue Sindh and such Note of cancellation of Entry No.53 dated 13.07.1943 put on the orders of EDO Revenue Karachi was removed by putting

Note in respect of order of Member Land Utilization Department, Board of Revenue. It is further pleaded in the written statement that in view of the comments, as submitted supra, this Court may pass any order as may be deemed appropriate in the facts and circumstances of the case.

3. A cautious perusal of the written statement of the defendant No.4 reveals that not a single word of '**denial**' is mentioned with regards to the averments of plaint. It is mentioned in the written statement that the "**brief facts**" and "**facts**" need no reply by the answering defendant being factual aspects of the matter based on the record. The defendant No.4 has not questioned or disputed the ownership and possession of the plaintiffs over the suit land but has supported the contention/claim of the plaintiffs. The pleadings of the plaintiffs when put in juxtaposition to the written statement of defendant No.4 (competent authority), it appears that claim of the plaintiffs stood admitted and no cause of action was left with the plaintiffs. Thus, it is evident from the aforesaid written statement that the defendants did not resist the suit but have supported the claim of the plaintiffs with regard to their ownership and possession. Hence from the written statement of the defendant No.4, it is clear that the parties are not at issue on any question of law or fact. In this situation the provisions of **Order XV Rule 1 CPC** have come into play and the suit can be decreed. Regarding the prayer clause 'b' the written statement is silent. The defendant No.4 has also pleaded in the written statement that "**in view of the comments, as submitted supra, this Court may pass any order as may be deemed appropriate in the facts**

and circumstances of the case.” By pleading so, the defendants have set the plaintiffs and their suit at the adrift of this Court. Order XIV Rule 1 (5), of the Code of Civil Procedure, 1908 provides that “*At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend*”. However, as per provisions of Order XV Rule 1, of the Code of Civil Procedure, 1908, “*Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment*”. For purpose of ascertaining the facts to the extent that upon what material propositions of fact or of law, the parties are at variance, or the parties are not at issue on any question of law or of fact, the pleadings of the parties are to be read. Reference may be made to the Case of **Directorate Of Small Industries, Government Of Balochistan through Sales Manager, Karachi Airport, Karachi v. Civil Aviation Authority through Director General and another (1993 MLD 1836)**. The registered sale deed produced by the Plaintiff has not been challenged by the Defendants in the written statement, nor by instituting a Suit for Cancellation of the said registered sale deed. In Case of **Anjuman-e-Khuddam-ul-Qur’an, Faisalabad through President Qur’an Academy v. Lt. Col (R) Najam Hameed and 3 others (PLD 2020 Supreme Court 320)**, it has been propounded by the Honourable Supreme Court of Pakistan that “*It is a settled principle of law that a registered*

document has sanctity attached to it and strong and cogent evidence is required to rebut its genuineness". In Case of **Rasool Bukhsh and another v. Muhammad Ramzan (2007 SCMR 85)**, it has been observed by the apex Court *"It is pertinent to mention here that the registered document is not only binding to the parties in the document but is equally applicable to the 3rd party. See Gosto Beharidas's case AIR 1956 Kalkata 449"*.

4. It has been held in case of ***Muhammad Wasil Khan Sherwani v. Ehsan-ul-Haque Sethi reported as 2006 CLC 1161*** that:-

"It flows therefrom that when the suit was fixed before the learned trial Court, the respondent did not contest the same and the parties were not at issue on any of the questions of law and facts, therefore, under the provisions of Order XV, Rule 1, C.P.C., the Court should have at once, pronounced judgment, thereby passing a decree."

5. The provisions of Order XV Rule 1 CPC is not mandatory in nature. There is discretion vesting with the Court to pass a decree. Satisfaction of the Court is necessary. Reliance can be placed on case of ***Asghar Ali and others v. Muhammad Sadiq through L.Rs and others reported as 2013 MLD 431.***

6. From the material available on record it appears that the contention of the plaintiffs is unrebutted and on careful examination of the pleadings of the parties, it appears that there is no material proposition of fact or law, which may require this Court to frame issues and record evidence of the parties, who are not at variance in their pleadings to the extent of registered sale deed in respect of the Suit Property. Thus, the provisions of **Order XV Rule 1 CPC** are

attracted to the case of the plaintiffs and there is no prejudice to the defendants if the suit of the plaintiffs is decreed.

7. Upshot of the above discussion, I am of the view that the parties are not at dispute over any material proposition of law and facts. Hence the suit of the plaintiffs is decreed with regard to the prayer clauses 'a', 'b' and 'd', while the prayer clause 'c' is declined in the circumstances of the case. The parties shall bear their own costs. Office shall prepare decree accordingly.

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