

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
C. P. No. D – 4002 of 2020

DATED: ORDER WITH SIGNATURE OF JUDGE.

For orders as to maintainability of petition.

06.09.2021

Mr. Raj Ali Asghar, Advocate for the Petitioner.

Through Suit No.993 of 2018 (the “**Suit**”) preferred before the VIth Senior Civil Judge, Karachi West, the Petitioner espoused a claim of ownership to Plot No.1267, Sector 12-E, Saeedabad, Baldia Town Karachi measuring 80 Sq. Yards (the “**Property**”), alleging that the same was originally allotted to one Saeed Khan, then sold under an oral agreement by said allottee to one Mohammad Siddiq, who similarly sold it onward to one Mohammad Afzal, from whom the Petitioner purchased it vide a Sale agreement dated 12.03.1998 against a consideration of Rs.40,000/-, documented through a receipt dated 12.03.1998, with the aforementioned seller having handed over vacant possession thereof.

The sole defendants to the Suit were the father and siblings of the Petitioner, with the case set up by the Petitioner as against them through the plaint proceeding on his averment that they had been living with him in the Property with his permission until the year 2011, when they in league with each other forcibly dispossessed him on 19.12.2011, whereafter he took up residence in a rented premises, where he had since remained. As such, the cause of action was stated by the Petitioner to have accrued in the year 1998, when he purchased the Property, in the year 2000, when he raised construction, and on 19.11.2011, when the defendants prepared forged documents and dispossessed him therefrom, and on different unspecified dates since, when they failed to vacate the same. In this backdrop, the Petitioner had prayed *inter alia* that he be declared the sole and exclusive owner of the Property and those defendants be directed to vacate the same and hand over its possession to him.

The defendants moved an Application under Order 7 Rule 11 CPC, seeking rejection of the Plaint, which was dismissed by the trial Court, however, Civil Revision No. 63 of 2019 preferred by them in the matter was allowed vide Order dated 19.12.2019, whereby the Order of dismissal made by the trial Court was set-aside and the plaint was rejected. The relevant excerpt from the Order of the Revisional Court reads as follows:

“The plaint further reveals that the defendant/Appellant No.1, is the real father and defendant No.2, 3 & 4 are the real brothers and sisters of the plaintiff. According to the plaintiff, the defendants forcibly dispossessed him from the suit property on 19.12.2011. He then filed a complaint U/S 3/4 of Illegal Dispossession Act 2005, against the defendants. Per Plaintiff the case was proceeded and the Defendants were convicted. The defendants No. 1 to 3 filed appeal in the Hon’ble High Court of Sindh, which was allowed. It appears that the plaintiff in parallel did not invoke civil remedy till filing of present suit. The cause of action accrued to the plaintiff to file the suit on 19.12.2011, when he was allegedly dispossessed from the suit property. The Limitation provided for filing the suit for possession U/S 9 of the Specific Relief Act 1877 being six months from the date of dispossession; while U/S 8 of the Specific Relief Act 1877 being 12 years as provided U/A 142 of the Limitation Act 1908. However, the suit for possession U/S 8 of the Specific Relief Act is not maintainable without title documents. As stated above that the plaintiff has not filed any title documents in support of his claim therefore, the suit of the plaintiff is barred under the law.”

Being aggrieved, the Petitioner filed an Application under Section 114 CPC, seeking review of the aforesaid order dated 19.12.2019, however such Application was dismissed on 05.03.2020 in the following terms:

“It is pertinent to mention here that the scope of review is limited to the extent of some mistakes or error apparent on the face of record. The aggrieved party may apply for the review of the judgment and order of the court or erroneous assumption of the facts. I have also gone through the order of this court dated 19.12.2019 passed in Civil Revision No.63/2019. Apparently no mistake or erroneous of the facts has been pointed out in the said order which needed to be reviewed. The order dated 19.12.2019 is very much specific as to the facts alleged in the plaint that the suit property was originally allotted to one Saeed Khan and thereafter it was sole to one Muhammad Siddique, who sold to it to Muhammad Afzal under oral agreements of sale from whom the plaintiff purchased under sale

agreement dated 12.03.1998. Admittedly there is only a sale agreement under which the plaintiff has invoked civil rights in respect of the suit property but it is a fact that the seller Muhammad Afzal having no title document in respect of suit property. Similarly Muhammad Siddique who has sold it to Muhammad Afzal was also having no title documents. The original allotment is in the name of Saeed Khan son of Murad Khan and all subsequent oral transaction having no legal value. The order dated 19.12.2019 has been very much specific on the point that suit for Possession U/S 8 of the Specific Relief Act is not maintainable without title documents. Similarly the relief of declaration as to the ownership is also not maintainable. So far the relief of damages is concerned i.e. the ancillary to the main relief claimed in the suit.

On query posed as to what error or irregularity afflicted the Orders dated 19.12.2019 and 05.03.2020 made by the Revisional Court, learned counsel for the Petitioner was found wanting. When called upon to show what documents the Petitioner possessed to demonstrate the purported chain of title, learned counsel was unable to point to any material on record and conceded that the Petitioners claim to the Property was based on a series of oral transactions, culminating in the Sale Agreement dated 12.03.1998, and neither the vendor through whom the Petitioner claimed to have purchased, nor the person shown as the original allottee, nor the allotting authority, had even been made parties to the Suit.

Under the given circumstances, we find no force in the instant Petition, which is accordingly dismissed *in limine*, but with no order as to costs.

Chief Justice

Judge

TariqAli/PA