

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

R.A No.116 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of MA-1239/19
For hearing of main case

15.04.2022.

Mr. Sartar Iqbal Panhwar advocate for applicants.

Mr. Zeeshan Malik advocate for respondent.

Mr. Wali Muhammad Jamari, Asstt. A.G a/w Mohsin Chandio,
Mukhtiarkar, Umerkot.

Zulfiqar Ahmad Khan, J. For the present purposes, controversy began when a third Class Civil Suit No. 12 of 2007 was filed in the Court of Civil Judge & Judicial Magistrate-I, Umerkot by the plaintiff Leela Ram for declaration, possession, mandatory and permanent injunction against defendants Dr. Khushal Das and Teekam Das (both sons of Wagho Mal) alleging that the plaintiff owned a residential plot bearing City Survey No.870 admeasuring 272-7 sq. yards, situated in Umerkot Town, and about three months ago Eastern boundary wall of the plaintiff's plot had fallen down on account of heavy rains during the period he was outside Umerkot and the defendants taking benefit of his absence, unlawfully occupied a portion of 4-1 x 17-2 feet from his plot and constructed a wall around that excess area. The suit was well defended by the present petitioners, where Issue No.1 as to "whether the suit property an area 4 x 17 feet was part of the house of the plaintiff on which defendant has made illegal construction" was answered in affirmative, and the suit was decreed with no orders as to costs. It could be noted that the learned trial Court appointed a Commissioner who opined that defendants were in possession of an area of 2,245 sq feet instead of 2,150 sq. feet. A decree was accordingly drawn, however, the petitioners chose to challenge the said judgment and decree through Civil Appeal No.11 of 2012

before the Additional District Judge, Umerkot, which was decided by judgment dated 04.12.2013 where the learned appellate Court, appointed another Commissioner, who conducted the site inspection in the presence of Mukhtiarkar / City Survey Officer, Umerkot who also opined that the report submitted by Mr. Jaideve Sharma Advocate was in line with the earlier report submitted by Mr. Kirpal Das and reached to the conclusion that trial Court's judgment did not suffer from any illegality and irregularity and dismissed the appeal with the cost of Rs.25,000/-. It appears that against the said judgment, a revision was preferred in this Court which was decided by my learned brother through order dated 06.11.2017 in Revision Application No. 61 of 2014 in terms of which the said revision application was also dismissed. It appears that after such dismissal, the matter went to the Executing Court, which commenced execution of the judgment and decree passed by the trial Court and resultantly the Execution Application No.01 of 2015 was allowed on 07.04.2018 for the reasons detailed here under:-

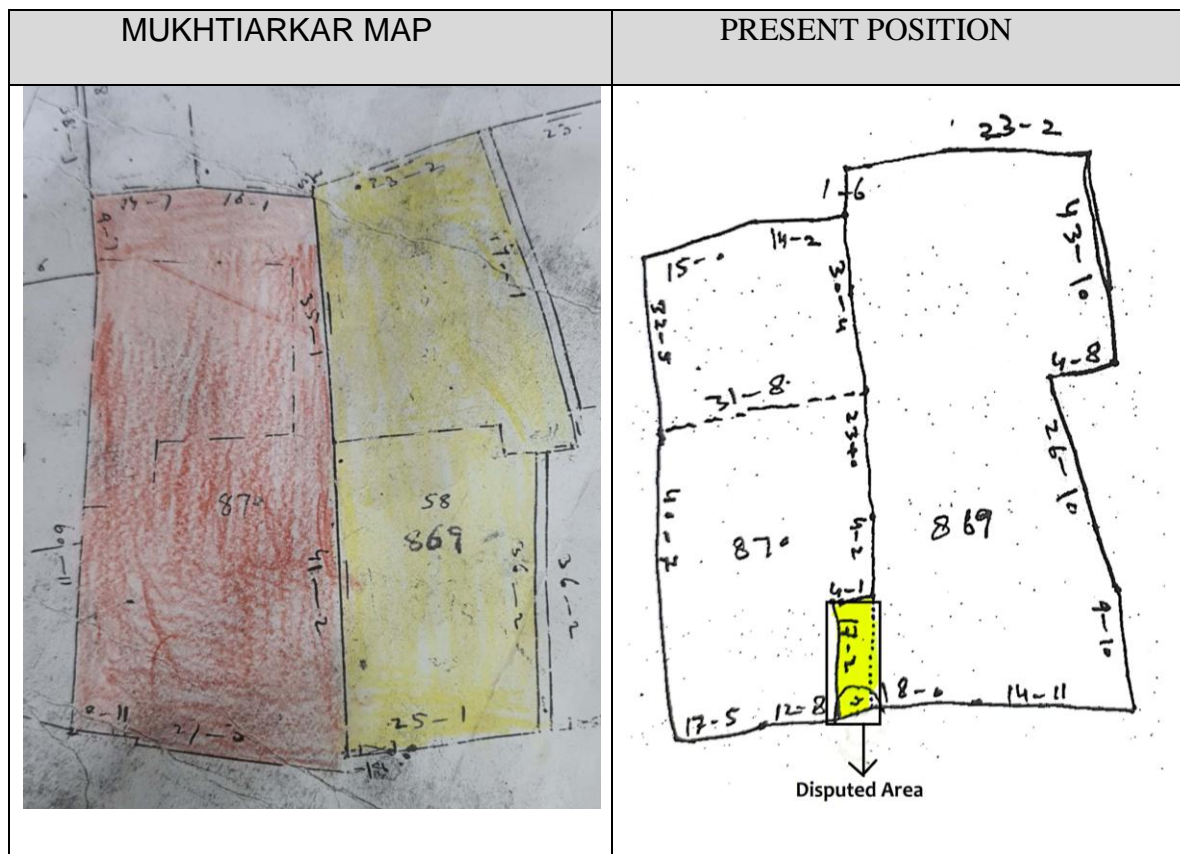
“In view of the foregoing discussion, this execution application filed by the decree holder / plaintiff is hereby allowed as per the judgment and decree dated 31.01.2012 passed by this Court. There is no order as to cost.”

2. Against the above order of the Executing Court, an appeal was preferred by the present petitioners in the Court of District Judge, Umerkot being Misc. Civil Appeal No.01 of 2018, which was decided by judgment dated 24.04.2019, which maintained Executing Court's order dated 07.04.2018. In this background, instant civil revision has been filed against the orders of learned Executing Court as well as the orders passed by the learned appellate Court in the above mentioned appeal.

3. Learned counsel for petitioners submits that all the courts below have made factual error with regards to the issue that petitioners had usurped the respondent's area from plot No.870. Though this Court was not mandated to determine the factual controversy, but still to bring an end to the agitation posed by the petitioners, concerned Mukhtiarkar was called, who is present in the Court today and has produced a City Survey sheet of both the plots

(reproduced hereunder). A perusal of which reflects that the petitioners being owner of plot No.869 have extended their plot boundaries to an area of 4-1 x 17-2 sq. feet from the respondent's plot No.870. Being posed with such an obvious picture, the counsel as a last resort submitted that in fact the petitioners were was not given their area in toto, and they have adjusted it from the neighbour's plot. Such assertion of the learned counsel for petitioners, at the face of it, appears to be illegal and vandalizing. If the petitioners' felt that their accurate area has not been given to them, they could have approached the concerned authorities for redressal of their grievance, rather than eating a slice out of land from their neighbours plot. No one can be judge, jury and executioner at the same time nor one can be judge in his own case.

5. Since *imago valet mille* (meaning a "picture is worth a thousand words"), boundaries of both the Plot Nos 869 and 870 are reproduced hereunder which clearly show a piece of Plot No. 870 having been encroached by Plot No. 869.



6. In view of above, instant revision application filed against concurrent findings of the Courts below where this Court has already decided the *lis*

between the parties through Civil Revision Application No.61 of 2014, the instant revision application that appears to be a serious abuse of the process of law, is dismissed with costs of Rs.50,000/- payable to the Library of the High Court Bar, Hyderabad.

J U D G E

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