

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

R.A No.290 of 2019

DATE ORDER WITH SIGNATURE OF JUDGE

For orders on CMA-2289/21
For orders on CMA-264/20
For orders on CMA-1072/20
For hearing of main case

16.05.2022

Mr. Pir Bux Leghari advocate for respondent No1.

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This is second call. None is in attendance on behalf of the applicants. Counsel for applicants was present on the last date of hearing where such conduct of the applicants was recorded and she was given last and final opportunity to proceed with the matter. Learned counsel for respondent No.1 submits that this revision application has been filed against concurrent findings of the courts below in a suit for declaration, possession, mandatory and permanent injunction where the trial Court after framing issues and relying upon the evidence has passed just, proper and speaking judgment, where reasoning on issues No.1 to 7 has been reproduced as under:-

ISSUES.

1. Whether the suit is not maintainable in the law?
2. Whether plaintiff is entitled for possession as claimed?
3. Whether the plaintiff approached to the Taluka Mukhtiarkar with application for revocation of illegal possession of 10/15 ghuntas but Mukhtiarkar is not taking action against the defendants?
4. Whether the defendants has purchased the suitland along with the R.S. No.140 admeasuring 04-00 acres situated in Miranpur, Taluka Bulri Shah Karim, District Tando Muhammad Khan and paid Rs.300,000/- as sale consideration to the plaintiff?
5. Whether the plaintiff has no cause of action?
6. Whether the plaintiff is not entitled for the relief claimed?
7. What should the decree be?

REASONS.

“ISSUES No. 01 & 05: Both these issues are legal issues. However the burden of proving of these issues lies upon the plaintiff. The plaintiff in his plaint has mentioned that he is owner of the suit land, the defendants have illegally occupied his land, they have constructed their houses and are not vacating the suit land. It is the only Civil Court who can entertain likewise cases in which the possession of the suit land has been

claimed. As per contention of the plaintiff, the suit land is his land hence he has rightly approached this Court by filing suit for possession, hence the suit of plaintiff is maintainable and cause of action is accruing in his favour. Both these issues are answered in negative.

ISSUE No. 02: Burden of proving of this issue lies upon the plaintiff. The plaintiff in his plaint has mentioned that he is owner of the suit land. Similarly the plaintiff in his evidence has deposed that the land bearing S. No. 140 area 04-00 acres was purchased by him. He has further deposed that about 5/6 years back the defendant came to him and requested to reside on his land which he allowed. The plaintiff has annexed the copy of Deh Form VII-A, along with his plaint which is showing that the land bearing S. No. 140 area 04-00 acres is maintained in the name of plaintiff along with other land. Admittedly the plaintiff has failed to produce this entry in original in his evidence. But there is admission of the defendant No. 01 in respect of the suit land that the suit land is the property of the plaintiff because the defendant No. 01 has mentioned he had purchased the suit land from the plaintiff through an agreement, which shows that the plaintiff is owner of the suit land, and this contention of the defendant No. 01 make the plaintiff entitled for possession of the suit land. Hence the plaintiff is entitled for the possession of the suit land. I, therefore, answered this issue in affirmative.

ISSUE No. 03: Burden of proving of this issue lies upon the plaintiff. The plaintiff examined himself and his two witnesses. However, in the plaint the plaintiff stated that he approached the Mukhtiarkar for revocation of illegal possession over 10/15 ghuntas but Mukhtiarkar did not took action, hence he filed suit. Here the evidence of the plaintiff and his witnesses is concerned. The plaintiff in his evidence has not deposed a single word to show that he approached for Mukhtiarkar for revocation of the land and the Mukhtiarkar did not took any action into the matter. Besides this the plaintiff has failed to examine any witness from the Office of Mukhtiarkar or the Mukhtiarkar in person to prove this issue. However, the plaintiff has annexed a simple copy of an application along with his plaint allegedly addressed to Mukhtiarkar concerned but his application is not bearing the receiving or official seal of the Mukhtiarkar Office to show that actually the plaintiff approached the Mukhtiarkar concerned for redress of his grievance. The plaintiff has failed to prove this issue, hence I answered this issue in negative.

ISSUE No. 04: Burden of proving of this issue lies upon the defendant No. 01 & 02. The defendant No. 01 & 02 filed their joint written statement stating therein that the plaintiff is not the owner of the suit land, the plaintiff sold out 07-00 acres land to the defendants through an agreement and the sum of Rs. 350,000/-, the plaintiff has received the sale consideration and had delivered possession of the suit land to the defendant No. 01, now the plaintiff has turned dishonest and has filed instant suit. Defendant No. 01 Raza Muhammad in his evidence has deposed that the plaintiff has sold out 07-00 acres land to him through sale agreement in consideration of Rs. 50,000/- per acre total Rs. 350,000/- out of which he has paid an amount of Rs. 300,000/- to the plaintiff. He deposed that such agreement was reduced in writing before the witnesses namely Abdul Karim and Khalique Dino and he produced the sale agreement dated 18-08-2018. He further deposed that he is lawful owner of the land bearing S. No. 140 area 04-00 acres and S. No. 7LA & 7LB total area 03-00 acres of Deh Miranpur. Needless to mention here that the contention of the defendant No. 01 that he has purchased the suit land from the plaintiff, the defendant has failed to prove this version because the defendant has not examined the marginal witnesses of the agreement to sell. Besides this, if the plaintiff had sold out the land to him and now he is denying his right over the sold out land then the

defendant No. 01 ought to file the suit before Specific Performance of Contract and Permanent Injunction but the defendant has failed to avail the legal remedy available for him under the law. Hence in my opinion the defendant No. 01 & 02 have failed to prove this issue. I, therefore, answer this issue in negative.

ISSUE No. 06: What has been discussed above, I am of the view that the plaintiff has established that he is owner of the suit land because there is admission of the defendant No. 01, that the defendant No. 01 is owner of the suit land and he had purchased the suit land from the plaintiff through an agreement, hence the plaintiff is entitled for the relief claimed. This issued is answered in negative.

ISSUE No. 07: In view of above discussion and circumstances of the case I am of the view that the plaintiff is owner of the suit land and he entitled for possession of the suit land. I, therefore, decree the suit of the plaintiff with no order as to costs. Let the decree be prepared accordingly.”

It is also the case that the appellate Court upheld the findings of the trial Court after application of mind. I have also gone through both the judgments. The trial Court in the suit has considered all aspects of the case in a methodical manner and relying on the evidence of the plaintiff brought to the Court in the form of deh Form VII-A showing land in the name of the plaintiff upheld his title. Such fact was also admitted by the defendant that the land belonged to the plaintiff, whilst he claimed that he has purchased 07-00 acres of the land from the plaintiff through sale agreement dated 18.08.2018, but he failed to produce any of the marginal witness of the said agreement nor did he file any suit for specific performance against the plaintiff. The Hon'ble Supreme Court in the cases reported as 2004 SCMR 489, 2002 SCMR 1089 and High Courts in various cases reported as PLD 1995 Lahore 395, 2017 CLC 70, PLD 2017 Lahore 727 and 2018 YLR 253 has held that according to Article 79 of the Qanun-e-Shahadat Order, 1984 agreement to sell cannot be used as evidence until at least two attesting witnesses had been called for the purposes of proving its execution, if the two attesting witnesses were alive and subject to process of Court and capable of giving evidence. It is an established fact that an agreement to sell mandatorily requires compulsory attestation of two witnesses. Courts have even held that an agreement of sale is not required to be registered, but its execution must be proved under Qanun-e-Shahadat 1984. Courts in the above cases has also held that an agreement to sell creates financial and future obligations when reduced to writing, hence it is required to

be attested by two men or one man and two women who be brought to the witness box. Defendant in his evidence did not produce nor offered any explanation as to why these two witnesses were not produced. It is also an established legal position that under section 41 of the Transfer of Property Act, 1882, burden of proof rests on the shoulders of the beneficiaries to show that ingredients of the said provision of law have been complied with, which the defendant has failed to discharge, and that sanctity of any agreement where no witnesses have been examined is always shrouded in doubt.

A review of the record shows that the instant revision has been filed against the concurrent findings of the Courts below. A perusal of the judgments impugned shows that the same have been passed after considering the entire evidence available on record and hearings both the sides, no illegality or irregularity seem to have been committed by these Courts, and in the absence of any defect in the concurrent findings of the Courts below, interference of High Court in civil revision as held by Apex Court in **2006 SCMR 50 (b)**, amounts to improper exercise of revisional jurisdiction.

In the given circumstances as well as in the light of the above cited judgment of the Apex Court and other judgments delivered on the same point being **2006 SCMR 1304** and **2010 CLC 528**, in the presence of the above quoted distinguishing facts the instant revision merits no consideration and the same is accordingly dismissed alongwith pending applications.

JUDGE