

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

IIND APPEAL No. 4 of 2017

M/s. Adam Holding Limited.Appellant

Versus

Province of Sindh and others.Respondents

1. For hearing of CMA No.775 of 2021
2. For hearing of CMA No.171 of 2017
3. For hearing of main case.

IIND APPEAL No. 49 of 2019

M/s. Huffaz Seamless Pipe Industries (Ltd).Appellant

Versus

Province of Sindh and others.Respondents

1. For hearing of CMA No.779 of 2021
2. For orders on CMA-2058 of 2016
3. For orders on CMA-2059 of 2016
4. For orders on CMA-2060 of 2016
5. For hearing of main case.

Date of hearing : **25.04.2022**

Date of judgment : **19.05.2022**

For Appellant in IInd Appeal No.04 of 2017 and respondent No.3 in IInd Appeal No.49 of 2019 : **Mr. Parkash Kumar, Advocate**

For appellant in IInd Appeal No.49 of 2019 and for respondent No.2 in IInd Appeal No.04 of 2017 : **Mr. Shamail Sikander, Advocate**

For official respondents : **Mr. Muhammad Ismail Bhutto, Additional Advocate General, Sindh**

Applicant/Intervener Rehmatullah Jakhro : **Present in person**

J U D G M E N T

Salahuddin Panhwar, J.- Since both the captioned IInd Appeals involve common questions of facts, circumstances, issue and point of law, therefore, I would like to dispose of these appeals by this common judgment.

2. Through captioned IInd Appeal No.04 of 2017, the appellant (M/s. Adam Holding Limited) has challenged the judgment dated 18.10.2016, passed in Civil Appeal No.25 of 2012 in the case of (*M/s. Adam Holding Limited V Province of Sindh and others*); whereas through IInd Appeal No.49 of 2019, the appellant therein (M/s. Huffaz Seamless Pipe Industries [Ltd]) have assailed the legality and propriety of the judgment dated 18.10.2016, passed in Civil Appeal No.17 of 2012 in the case of (M/s. Huffaz Seamless Pipe Industries (Ltd) V Province of Sindh and others) .

3. Relevant facts of the case in IInd Appeal No.04 of 2017 are that, appellant (M/s. Adam Holding Limited) had filed Suit No.53 of 2007, stating therein that they are a body corporate duly registered under the companies ordinance. In the year 1985, they purchased a land bearing old survey No.27 consisting of 17-01 acres, situated at Deh Kalo Khohar, Taluka Thano Bula Khan. The said land is situated in Nooriabad. Thereafter, on 02-09-1985 they moved an application before the Deputy Commissioner Thana Bulla Khan for issuance of certificate that the said land is situated in the Industrial Zone which is located in between 88-89 Kilo Meter from Karachi on right side of Super Highway. The proposed piece of land of Deh Kalo Khohar falls within the parameter of Kalo Khohar Industries Area/Estate as notified vide Notification No.A.D (EC) I-6-82 dated 12-04-1983; the appellant purchased the said land from its previous owner namely Amin Bhai S/o Rahim Bhai. The entry in the Dakhil and Kharij register was made on 03-07-1985 vide book No.13402

leaf No.42, it was in actual and physical possession of the said land and the said land was mutated in the record of rights entering new survey Nos. 17/1, 47/1 (0-23, 48/2 (1-10), 89/2 (2-26), 90/1 (1-28), 128/1 (1-24), 129/2 (2-4), 170/2 (1-36), 170/1 (1-24), 213/1 (1-26), 214/2 (2-0) totaling 17-01 acres of land. Appellant's plot is situated adjacent to respondent No.2's factory as shown in annexure-B. The respondent No.2 (M/s. Huffaz Seamless Pipe Industries [Ltd]) is bent upon to garb the appellant's land with malafide intention and in this regard many times it tried to dispossess the appellant from said land. The respondent No.2 put pressure on the guards of appellant to vacate the land in question, as such; the matter was reported to local police but due to the influence of respondent No.2 over police no action against the respondent No.2 was taken. Appellant/plaintiff further stated that they are in possession of the said land since 1985 but the respondent No.2 malafidely blocked the access of land when in the month of March 2005, appellant erected a wall on road side, therefore, appellant is entitled for the mesne profit at the rate of Rs.200,000/- per acre per annum which comes to Rupees 3.4 million per annum for 17.1 acres till restoration of possession, hence the suit with the prayers mentioned therein.

4. The appellant further stated that after service of notices, the respondent No.2 filed written statement wherein he denied all the allegations leveled against him claiming that suit of the appellant is not maintainable under the law and, hence is liable to be dismissed.

5. Earlier, the respondent No.2 (M/s. Huffaz Seamless Pipe Industries [Ltd]) also filed a suit bearing F.C Suit No.05 of 2005 against Province of Sindh and others for declaration and permanent injunction stating therein that they are manufacturers of Seamless Pipe Steel Tube was exclusive, sole and lawful owner of 96-04 acres land situated at Deh Kalo Kohar,

Taluka Thano Bula Khan, District Jamshoro, constructed factory over part of above said land, while, some remaining land was being used by them for purpose of storage of raw material and some portion of the land was open for the purpose of parking of vehicles of company. They further stated that previously the above said land was numbered bearing Khet Nos.77, 90, 269, 270, 313, 323, 333, 461, 42 and 501 admeasuring 95-37 acres and the officials of the office of Mukhtiarkar Revenue had demarcated the land of the respondent assigning the survey numbers to their land for which they had paid Rs.24,675/- in N.B.P. Thano Bula Khan vide receipt No.40 dated 26.02.2003 as survey and settlement charges which had been deposited in Government account. Thereafter, respondent's name was mutated in the record of rights and Robkari and agricultural Pass Book of the suit land was issued by Mukhtiarkar in favour of the respondent. They also stated that defendant/appellant (M/s. Adam Holding Limited) allegedly purchased the land Survey No.27 and 496 and intended to occupy the land of the respondent/plaintiff forcibly with the help of questionable persons who came at the site and try to occupy their land but could not succeed. Thereafter, appellant/defendant No.3 sent legal notice to appellant/plaintiff stating therein that he is the owner and occupant of the plot consisting of 17-01 acres bearing survey No.27, situated at Deh Kalo Kohar, Taluka Thano Bula Khan, hence appellant/plaintiff filed above suit.

6. Upon service of notice, respondent (M/s. Adam Holding Limited) filed written statement, denying all the allegations leveled against him claiming that suit of the appellant/plaintiff is not maintainable under the law and hence is liable to be dismissed.

7. Both the aforementioned suits were consolidated and issues from the pleadings of the parties were settled accordingly. Thereafter, evidence

of both parties was recorded and after hearing the final arguments of the parties, the learned Senior Civil Judge, Kotri passed judgment dated 30.04.2012 whereby both the suits were dismissed.

8. Being aggrieved, appellants in the captioned IInd appeals preferred their respective civil appeals bearing Civil Appeals No.25/2012 and 17/2012, respectively. After service of notices, respondents appeared and learned appellate Court having heard the learned counsel for the respective parties dismissed the appeals and maintained the impugned judgments. Hence these appeals.

9. Mr. Parkash Kumar, learned counsel for appellant/respondent No.3 (M/s. Adam Holding Limited) Learned counsel for the appellant/respondent No.3 has contended that trial Judge has committed illegality while observing that registered sale deed is not stamped by the Registrar and that marginal witnesses of the sale deed were not examined; whereas, this was the suit for possession and marginal witnesses are not required to prove a registered document/instrument. Further, he contends that respondent (M/s. Huffaz Seamless Pipe Industries [Ltd]) have dispossessed the appellant and evidence as brought on record was sufficient to decree the suit of the appellant; whereas, appellate Court only stamped the judgment of the trial Court in mechanical manner. He has relied upon the cases of **Arshad Khan V Mst. Resham Jan and others** (2005 SCMR 1859), **Manzoor Ahmad and 4 others V Mehrban and 5 others** (2002 SCMR 1391) and **Muhammad Yar (Deceased) through L.Rs. and others V Muhammad Amin (Deceased) through L.Rs. and others** (2013 SCMR 464). He next submits that respondent M/s. Huffaz Seamless Pipe Industries challenged order of the Revenue Officer, whereby their land was cancelled, by filing F.C Suit No.42 of 2005; however, same was withdrawn without permission, hence fresh suit filed by them was barred under Order XXIII Rule 1 (3) C.P.C; respondent No.2 failed to adduce

substantial evidence to establish their legal character; Photostat copy of the registered deed as placed on record is not revealing the survey numbers of their civil suits and hence have no nexus with the subject matter land/property.

10. In contra, Mr. Shamail Sikander, the learned counsel for M/s. Huffaz Seamless Pipe Industries (Ltd.) (respondent No.2 in IInd Appeal No.04 of 2017 and appellant in IInd Appeal No.49 of 2019) contends that they are in lawful possession; they received property through registered sale deed and then established factory on subject matter land; respondent/appellant are owners of 400 acres of land. Learned counsel though admits that their earlier suit was withdrawn but in subsequent suit they sought declaration with regard to 400 acres of land and they established their case.

11. Heard the learned counsel for respective parties and perused the record. Besides, in order to reach at right conclusion, a report was called from Deputy Commissioner Jamshoro, who submitted such report and confirms that mutation entry in favour of the appellant/respondent No.3 is genuine. The report of Deputy Commissioner Jamshoro being relevant is reproduced as under:-

"I have honor to submit that this Office has conducted a detailed inquiry in compliance of order dated. 14.01.2022. The requisite report with regard to the subject land is submitted as below:

LAND. PERTAINING TO M/S UNITY JUTE & SYNTHETIC LIMITED

1. *The record of rights at entry No. 505 of Form VII-A 1985-86 of Deh Kalo Khohar Thano Bula Khan Dist. Jamshoro (Annexure-A) shun/7, that old survey/khet No. 496 area admeasuring 20-00 acres is entered in the ownership of M/S Unity Jute & Synthetic limited which he purchased from Abdul Latif as shown in the prescribed in column No. 05 of Form VII-A Book. This entry is intact and genuine.*
2. *Subsequent entry No. 76 dated. 20.02.1988 of VF-VII-B shows that new survey No.46/2, 91/2, 127/2, 171/2, 172/1, 212/1, 213/2 total area admeasuring 20-00 acres are shown formed out from old khet No. 496 vide Ghat Wadh from No. 6 by the Director Settlement Survey land Records Sindh. A corresponding note over entry shows that this entry and ghat wadh form has been cancelled for the reasons that the*

formation of new survey numbers are not in existence and available with Land Record Office and the same are bogus (Annexure-B). Thus the entry No: 505 relating to title of M/S Unity Jute & Synthetic Limited is intact and genuine. However, entry No. 76 related to ghat wadh form in case of title of M/S Unity Jute & Synthetic limited admeasuring 20-00 acres not exist and has been cancelled. Furthermore, the on ground position is uncertain as they do not have on ground possession.

LAND PERTAINING TO M/S ADAM S/O LOUNG INDUSTRIES LIMITED

3. The record of rights at entry No. 28 of Form VII-A 1985-86 of Deh Kalo Khohar Thano Bula Khan Dist. Jamshoro (Annexure-C) shows that old survey/khet No.27 area admeasuring 17-01 is entered in the ownership of M/S Adam s/o Loung industries Limited which was transferred by purchase from Amin Bhai S/o Raheem Bhai through registered document. This entry is intact and genuine.
4. Subsequent entry No. 75 dated. 20.02.1986 of VF-VII-B shows that new survey 47/1, 48/2, I 89/2, 90/1, 128/1, 129/1, 170/2, 171/1, 213/1, 214/2 area 17-01 are shown formed out from old khet No. 27 vide ghat wadh from No.8 by the Director Settlement Survey land Records Sindh. A corresponding note over entry shows that this entry and ghat wadh form has been cancelled for the reasons that the formation of new survey numbers are not in existence and available with Land Record Office and the same are bogus (Annexure-D). However, entry No. 75 related to ghat wadh form in case of title of MIS Adam s/o Loung industries Limited admeasuring 17-01 acres not exist and has been cancelled. However, the on ground position is uncertain as they do not have on ground possession.

LAND PERTAINING TO M/S HUFFAZ SEAMLESS PIPE INDUSTRIES (LTD)

5. The record of rights at entry No. 176 of Form VII-A 1985-86 of Deh Kalo Khohar Thano Bula Khan Dist. Jamshoro (Annexure-E) shows that old survey/khet No. 42 & 133 area admeasuring 24-19 acres is entered in the ownership of Raza Muhammad S/o Muhammad Ali. Whereas entry No. 177 of same register shows that old Khet No. 72 in the ownership of 6.02.2003 Bhai s/o Habib Bhai and others (Annexure-F). But subsequent entry No.04 dated Raheem of VF-VII-B shows that old khet No.42 which is shown above at (2) entry No. 176 in the name of Raza Muhammad S/o Muhammad Ali has been transferred by Raheem Bhai S/o Habib Bhai to one M/S Huffaz Seamless Pipe Industries (Ltd) on the behest of order of Deputy District Officer (Revenue) Thano Bula Khan vide No. 119 dated 23.11.2002 as shown in column No.6 of the entry No.04 *ibid*. This act of Deputy District Officer (Rev) Thano Bula Khan to transfer title of non party in khet No.42 is violation of the law and is illegal. Thus cancellation note over entry No. 176 and 177 is maintained. Hence the entry No.04 dated.06.02.2003 of VF-VII-B in the name of M/S Huffaz Seamless Pipe Industries (Ltd) is null and void beyond jurisdiction of DDO(R) and thus have no legal sanctity as the entry has been shown transferred from Raheem Bhai which is illegal.
6. Moreover, survey Nos. 43,44,45,46/1-2, 47/1-2, 48/1-2, 49/1-2, 89/1-2, 89/1-2, 90/1-2, 94, 95, 96,121, 122, 126, 127, 128/1-2, 129/1-2,130 admeasuring an-area 96-04 Acres (subsequent formed out from old Khet No. 50, 461, 333, 313, 270, 269, 90, 77(74-28 acre) reveals the entries have

been cancelled by the EDO Revenue vide Suo-Moto order dated. 11-03-2005 which is also mentioned in consolidated Judgment passed by the Honorable Senior Civil Judge Kotri.

7. *In view of above, the position of entries in tabular form is given below for ready reference:*

S#	Entry No.	Old S.No./ Khet With area	New S.No.	Name of present owner	Title in conformity with VF-VII-A	Title not in conformity with VF-VII-A	Remarks
1.	76 of VF-VII-B Read with entry No.505 of VF-VII-A.	496 (20-00 acres)	46/2, 91/2, 127/2, 171/2, 172/1, 212/1, 213/2	M/S Unity Jute & Synthetic limited which he purchased from Abdul Latif	In conformity with entry No.505	--	Detail as submitted in comments at para 1 and 2 above
2	75 of VF-VII-B Read with entry No.28 VII-A.	27 (17-01 acres)	47/1, 48/2, 89/2, 90/1, 128/1, 129/1, 170/2, 171/1, 213/1, 214/2	M/S Adam s/o Loung industries Limited which was transferred by purchase from Amin Bhai S/o Raheem Bhai through registered	In conformity with entry No. 505		Detail as submitted in comments at para 3 and 4 above
3	04, 06 of VF- VII-B Read with entry No., 123 176 & 177 of VF- VII-A.	42 (shown in the title of Raza Mohd) 50, 461, 333, 313, 270, 269, 90, 77 96-04 acres	43 44 45 46/1-2 47/1-2 48/1-2 49/1-2 89/1-2 89/1-2 90/1-2 94 95 96 121 122 126 127 128/1-2 129/1-2 130 admeasurin g an area	M/S Huffaz Seamless Pipe Industries (Ltd).		Not in conformity	Detail as submitted in comments at para 5 and 6 above

1. ON GROUND POSSESSION OF LAND M/S UNITY JUTE & SYNTHETIC LIMITED.

M/S Unity Jute & Synthetic Limited does not hold possession in survey/Id-let No.496 area admeasuring 20-00 acres.

2. ON GROUND POSSESSION OF LAND M/S ADAM HOLDING LIMITED

M/S Adam Holding Limited does not hold possession in survey/khet No. 27 area admeasuring 17-01 acres.

3. ON GROUND POSSESSION OF LAND M/S HUFFAZ SEAMLESS PIPE INDUSTRIES (LTD).

M/S Huffaz Seamless Pipe Industries (Ltd) has occupied land admeasuring 419-25 acres. In view of their entries, their possession is illegal and is required to be retrieved."

12. Here appellants are only relying upon the entries and correspondence between Revenue Forum(s). Admittedly, appellant/respondent No.2 (M/S Huffaz Seamless Pipe Industries Ltd.) has failed to establish that on what source(s) they derived the title of the respondent. The detailed report of the Deputy Commissioner Jamshoro is very much clear that entry No. 176 of Form VII-A 1985-86 of Deh Kalo Khohar Thano Bula Khan, District Jamshoro shows that old survey/khet No. 42 & 133 area admeasuring 24-19 acres was entered in the ownership of Raza Muhammad S/o Muhammad Ali, whereas; entry No. 177 of same register shows that old Khet No. 72 in the ownership of Rahim Bhai s/o Habib Bhai and others. But subsequent Entry No.04 of Raheem of VF-VII-B shows that old khet No.42 which is shown above at (2) entry No. 176 in the name of Raza Muhammad S/o Muhammad Ali has been transferred by Raheem Bhai S/o Habib Bhai to one M/S Huffaz Seamless Pipe Industries (Ltd) on the behest of order of Deputy District Officer (Revenue) Thano Bula Khan vide No. 119 dated 23.11.2002 of the entry No.04 ibid. This act of Deputy District Officer (Rev) Thano Bula Khan to transfer title of non-party in Khet No.42 is violation of the law and is illegal. Thus cancellation note over entry No. 176 and 177 is maintained. Hence the entry No.04 dated 06.02.2003 of VF-VII-B in the name of M/S Huffaz Seamless Pipe Industries (Ltd) is null and void beyond jurisdiction of DDO(R) and thus have no legal sanctity as the entry has been shown transferred from Raheem Bhai which is illegal. The report further indicates that M/S Huffaz Seamless Pipe Industries (Ltd) has occupied land admeasuring 419-25 acres. In view of their entries, their possession is illegal and is required to be retrieved.

13. It is a well settled principle of law that mere mutation entry in the revenue record does not create any title or vested right, as such, the plaintiff

cannot claim his right of ownership on the basis of the revenue record over the subject land. Reliance is placed on PLD 2021 Balochistan 157. In the instant matter appellant/respondent No.2 (M/S Huffaz Seamless Pipe Industries Ltd.) is relying upon those entries that have already been cancelled and their occupation over the land is illegal and is liable to be retrieved. Nothing is available on record that when the entries in favour of appellant/respondent No.2 (M/S Huffaz Seamless Pipe Industries Ltd.) have been cancelled then what action has been taken for retrieval of the land. The report of the Deputy Commissioner Jamshoro is also silent in this regard. However, in such a situation it was incumbent upon the Revenue Authorities i.e. including the Board of Revenue to rectify the revenue record by reverting the land in favour of Government but the concerned revenue authorities have failed to perform their part of obligation.

14. Admittedly, earlier suit (F.C. Suit No.42 of 2005), whereby; order of the revenue officer was challenged, was withdrawn without seeking permission to file afresh suit. The plaintiff has the right to withdraw his suit whenever he desires but cannot file a fresh suit on the same subject matter. Plaintiff can withdraw the suit during the proceedings of the case at any stage without permission of Court but if he intends to institute fresh suit he cannot do so on the same subject matter or such part of the claim. The relinquishment of claim in earlier suit will cause his suit hit by Order II Rule 2 CPC. Reliance can be placed on *2013 CLC 1417 and 2014 MLD 78*. The plaintiff withdrew his suit simpliciter within the meaning of Order XXIII Rule 1 CPC which would amount to dismissal as withdrawn and finally disposed of the suit. The plaintiff has filed second suit not only in violation of Order XXIII Rule 1 (3) CPC but Order II Rule 2 CPC, which precluded the plaintiff from filing a fresh suit. Order XXIII Rule 1 (3) CPC provides as under:-

“(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.”

The plaintiff has withdrawn his earlier suit without permission referred in Sub Rule 2 of Order XXII of CPC. Hence the second suit filed by them was barred under Order XXIII Rule 1(3) C.P.C. and respondent/appellant cannot claim any legal character over the subject matter land. In this regard reference can be made to the case reported as **2013 SCMR 464** (Supra), in which it is observed that Sub Rule (3) of Rule 1 of Order XXIII C.P.C. entitles the plaintiff of a case to withdraw his suit and/or abandon his claim or a part thereof, against all or any one of the defendants, at any stage of the proceeding and this is his absolute privilege and prerogative. And where the plaintiff has exercised his noted privilege he shall be precluded from instituting a fresh suit on the basis of the same cause of action in respect of the same subject matter and against the same defendant(s) and this bar is absolute and conclusive, which is so visible from the mandate of sub-rule (3). Reliance in this regard can also be placed on the case of **Shahbaz Khan v. Additional District Judge, Ferozewalla and others** (2017 SCMR 2005).

15. The Honourable Supreme Court, while dealing with somewhat like issue in the present suit, in the case of **Azhar Hayat v. Karachi Port Trust through Chairman and others** (2016 SCMR 1916), has observed as under:

"6. We shall first deal with the legal objections taken by the learned counsel for the respondents. The petitioner had filed C. P. No. D-2602/2014 which was "not pressed" on 19th August 2014 and then filed the suit on 26th August 2014 (which was converted into a petition) wherein the earlier petition filed by the petitioner was mentioned in paragraph 13 by stating that, "the same has been withdrawn by the Plaintiff as fresh cause of action has accrued to the Plaintiff." The respondents had objected to the subsequent filing of the suit-petition as the requisite permission had not been obtained from the court when it was not pressed and dismissed. The impugned order took notice of this fact, but the learned judges did not non-suit the petitioner on this ground even though he could have been because sub-rule (3) of Rule 1 of Order XXIII of the Code stipulates that where the plaintiff withdraws from a suit without being given permission to institute a fresh suit in respect of the same subject-matter or such part of claim he would be precluded from doing so ---."

16. Here the claim of appellant/respondent No.3 (M/s. Adam Holding Limited) is concerned, no doubt their claim is also based on revenue entry coupled with the registered sale deed being purchased from Amin Bhai son of Raheem Bhai, which is intact and genuine. This claim is also supported by the report of Deputy Commissioner, Jamshoro.

17. In his report, the Deputy Commissioner has submitted that according to record respondent/appellant (M/s. Huffaz Seamless Pipe Industries (Ltd.) have no title and their possession on the subject matter land is unlawful. Besides, they have failed to establish any legal character over the said land, hence both i.e. the learned appellate as well as the trial Court have failed to examine and decide the actual facts on record.

18. The learned trial Court framed issues and the issues No.3, 5 & 6 are concerned with the claim of the plaintiff of F.C. Suit No.53/2007 (M/S Adam Holding Limited). In support of his claim, the plaintiff led evidence and produced original conveyance deed dated 16-06-1985 at Ex.163. He also produced attested copy of Entry No.42 at Ex.164, attested copy of Entry Ex.55. The findings of the learned trial Court on the issue No.3 is being reproduced as under: -

“In the sale deed it is mentioned at page No.2 that the predecessor in title of defendant No.3 has acquired the piece of land bearing s. No.27 by way of oral transfer from one Azam s/o Ghulam Ali and Waloo s/o Ishaque on 09-06-1984 but question is that whether on the basis of such reference is it is proved that land claimed by the defendant was actually owned by the predecessor title or defendant No.3. Defendant No.3 has not produced scribe of the sale deed or any witness before this Court nor he produced the reference entries in respect of the previous owners of S. No.27. It is also noticed that defendant No.3 is failed to satisfy the court as to how in the sale deed survey numbers mentioned for an un-surveyed land. I have also noticed the that letter Ex.167 dated 12-02-2007 issued by the Mukhtiarkar to defendant No.3 whereby verification has been called from the Mukhtiarkar office in respect of the land claimed by defendant No.3 as his own. Filing suit before a Civil Court regarding certain entry or any other matter in issue with regard to entries is not a proper act of defendant as he has to first exhaust remedy before Revenue Forum but once he filed suit before the court then he should have to patiently wait for the decision of the case on merits.

However, in present consolidated suits, I have observed that both the parties were trying to approach revenue authorities in one way or another and succeeded in obtaining surprising verifications in their favour which are not beneficial either for them nor affected the merits of the case, rather indicating the mal practice of parties. In my humble view defendant No.3 is failed to prove his ownership for survey No.27 admeasuring 17-01 acres, therefore issue in hand is replied as "Negative".

19. The above finding of the trial Court is not based on proper appraisal of the material in shape of evidence and documents available on record. For these findings of the trial Court with regard to disbelieving the sale deed and the revenue entries are based on presumption and conjectures. The trial Court has mentioned that *"I have also noticed the that letter Ex.167 dated 12-02-2007 issued by the Mukhtiarkar to defendant No.3 whereby verification has been called from the Mukhtiarkar office in respect of the land claimed by defendant No.3 as his own"* and after this nothing is mentioned with regard to verification which shows non-reading of the material available on record.

20. The trial Court has also failed to consider the fact that the plaintiff of the leading suit has pleaded that *"the defendant No.3 is a rich man and influential persona and the alleged purchased the land survey No.27 and 496, so also he intend to occupy the land of plaintiff forcibly."* It is further pleaded that *"the defendant No.3 sent legal notice to the plaintiff through his advocate in which he stated that the defendant No.3 is the owner and occupant of the plot consisting of 17-01 acres bearing s. No.27 situated at Deh Kalo Kohar, Taluka Thano Bula Khan."* These pleadings of the plaintiff M/S Huffaz Seamless Pipe Ltd. show that prior to filing suit the ownership of M/S Adam Holding Ltd. was in their knowledge but they have not challenged or questioned the sale deed of (M/S Adam Holding limited), which is an admission on part of M/S Huffaz Seamless Pipe Ltd. towards ownership of M/S Adam Holding Ltd. In this situation, there was no need to prove the sale deed by examining scribe or any other witness of the sale deed. The report of the Deputy Commissioner Jamshoro, confirms the revenue entry on the basis

of sale deed in favour of (M/S Adam Holding limited) to be genuine, hence on this score the findings of the trial Court on the issue No.3 are liable to be modified.

21. The trial Court has disbelieved the registered sale deed mere on the fact that the scribe of the sale deed or any other witness has not been examined. The trial Court has mentioned that the plaintiff has not exhausted remedy before the revenue forum but failed to consider the fact that the claim of the plaintiff (M/S Adam Holding limited) is based on sale deed and then revenue entries hence the plaintiff (M/S Adam Holding limited) had rightly filed suit before the trial Court. With regard to the findings of obtaining verification of plaintiff (M/S Adam Holding limited) the learned trial Court erroneously disbelieved. However, the entry in favour of the plaintiff (M/S Adam Holding limited) is supported with report of Deputy Commissioner Jamshoro and affirms the evidence led by (M/S Adam Holding limited), hence the plaintiff (M/S Adam Holding limited) has rightly prayed for possession being owner. The perusal of the judgment of appellate Court shows that the findings of the appellate Court on the issue No.3 is the copy of the judgment of the trial Court and no specific finding has been given by the appellate Court, hence such finding of the trial Court on this issue need interference and findings on this issue is answered in affirmative.

22. The plaintiff (M/S Adam Holding limited) himself pleaded that the defendant No.2 malafidely blocked the access of his land, thereby he has been dispossessed from his land and the said land came in possession of defendant No.2 M/S Huffaz Seamless Pipe Industries Ltd. The findings of the issue No.3 have been modified as "affirmative" hence the findings of the issues No.5 & 6 are also modified as affirmative and entitles the plaintiff (M/S Adam Holding limited) for possession of the suit land viz 17-01 acres land.

23. Now reverting to the claim of M/S Huffaz Seamless Pipe Industries Limited. In this regard the trial Court framed issues No.1 & 2. To prove this issue the plaintiff M/S Huffaz Seamless Pipe Industries Limited examined five witnesses and produced various documents as mentioned in the judgment of the trial Court. The trial Court in its findings on the issues No.1 & 2 has rightly held that the certificate issued by Mukhtiarkar Thano Bula Khan on 10-02-2005 wherein he verified the area of 112-04 acres vide Entry No.96 & 97 of Form VII-B, but the same is useless because the same has been verified without verification of previous record. The trial Court while relying the material produced by M/S Huffaz Seamless Pipe Industries Limited has referred the evidence of PW Abdul Hafeez who in his evidence has admitted that he has not produced the sale deed in respect of property of 57-37 acres and voluntarily stated that the same was purchased on affidavit. He further admits that he has not produced the record of previous owners. The trial Court has rightly disbelieved the evidence of PW Abdul Hafeez because he deposed wrong facts with regard to dismissal of earlier suit. The trial Court has rightly disbelieved the evidence brought on record by M/S Huffaz Seamless Pipe Industries Limited and has rightly answered the issues No.1 & 2 as negative and the findings of the trial Court on these issues need no interference.

24. In view of above discussion and circumstances, the captioned IInd Appeal No.04 of 2017 (M/s Adam Holding Limited V Province of Sindh and others) is allowed and the impugned judgment dated 18.10.2016, passed by learned Ist. Additional District Judge, Kotri in Civil Appeal No.25/2012 with regard to maintaining the consolidated judgment of the trial Court in respect of dismissal of the F.C Suit No.53 of 2007 (M/s. Adam Holding Limited V Province of Sindh and others) is set aside and as a result thereof the said suit is decreed to the extent of possession. Whereas the IInd Appeal No.49 of 2019 (M/s. Huffaz Seamless Pipe Industries (Ltd.) V Province of Sindh and others)

is dismissed and the impugned judgment dated 18.10.2016, passed by the learned appellate Court in Civil Appeal No.17 of 2012 (M/s Huffaz Seamless Pipe Industries (Ltd) maintaining the judgment of the trial Court in respect of dismissal of F.C Suit No.05 of 2005 (M/s. Huffaz Seamless Pipe Industries (Ltd) V Province of Sindh and others) is maintained.

25. With regard to applications filed by intervener under Order I Rule 10 C.P.C, bearing C.M.A Nos.775/2021 (IInd Appeal No.04 of 2017) and 779/2021 (IInd Appeal No.49 of 2019), admittedly he has failed to approach both forums below and the documents attached with the said applications are not supporting that he is proper and necessary party, hence both the aforementioned applications are misconceived and accordingly dismissed.

JUDGE

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