

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Present:

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Zulfiqar Ali Sangi.

C.P.No.D- 941 of 2015

1. For orders on office objection.
2. For hearing of MA 4632/2015.
3. For orders on MA 5632/2015.
4. For orders on MA 5636/2015.
5. For orders on MA 4889/2017.
6. For hearing of main case.

Date of hearing: 12.09.2019.

Date of order: 19.09.2019.

Mr. Muhammad Arshad S. Pathan, Advocate for petitioner alongwith petitioner.

Mr. Jagdish R. Mullani, Advocate for respondent No.7.

Mr. Allah Bachayo Soomro, Additional A.G.

Mr. Noorul Amin Sipio, Advocate for intervener.

ORDER

MUHAMMAD IQBAL KALHORO, J: Petitioner is an advocate by profession and has filed this petition alleging encroachment on an old graveyard situated at Dargha Murad Shah near Noori Masjid Taluka Kotri mainly by respondents No.7 to 9 who are private persons. He has further alleged that he approached relevant district authorities including the Deputy Commissioner, SSP etc. against the encroachment but to no avail, hence this petition.

2. In response to notice, respondent No.7 has filed comments questioning maintainability of this petition. He has further stated that old graveyard is situated in Survey No. 316 and 385 Ward 'C' Kotri city, whereas Survey No.317 and 318 are separate plots which have been further subdivided in several small plots as per plan issued by the City Surveyor Kotri. Survey No.317 was purchased by Muhammad Juman respondent No.9 vide sale deed dated 22.12.2004 which subsequently he transferred to his daughter Mst. Ghulam Qaloom who is his wife through a declaration of oral gift dated 14.10.2008. Survey No.318 was also purchased by Muhammad Juman through a registered sale deed dated 28.03.1991, which he

subsequently transferred to his daughter Mst. Ghulam Qalsoom through a declaration of oral gift dated 14.10.2008 and thereafter necessary changes in the record of rights in respect of aforesaid survey numbers have been made. He has denied encroaching any area of the graveyard, and in support of his case has filed multiple documents including the sale deeds, Extract From the Property Register Card of ward `C`.

3. We have heard learned counsel for the parties who in their arguments have mainly reiterated the facts as narrated above. Further learned counsel for petitioner in order to strengthen his case relied upon the case law reported as PLD 1987 Karachi 38, 1995 CLC 1173, 1993 MLD 2529, PLD 2011 Lahore 483, PLD 1973 Note 38, PLD 1973 Note 39.

4. It may be mentioned that vide order dated 10.06.2015 Additional Registrar of this court was appointed as Commissioner to inspect the site and submit his report. He has filed report on 20.06.2015. Para No.6 hereof which is relevant is reproduced hereunder:-

“What has been stated above, it is quite clear that Pacca wall was constructed between C.S. Nos.385 (Graveyard Syed Murad Ali Shah) and C.S. No.318, whereas, another boundary wall was also available between the C.S.Nos. 316 (Graveyard Umed Shah) and 317. However, no any grave was found behind the above said walls due to plain leveled earth adjacent to the walls. But, it was observed that some Katcha and Pacca houses are available within the limits of the graveyard. To resolve such controversy, it would be appropriate to make minutely demarcation of the land in question related to the above said City Survey Numbers with the help of expert technical staff of Directorate of Settlement and Survey Department.”

As per above recommendation, demarcation was ordered on 07.07.2015 and in compliance Administrative Officer of Director Settlement, Survey and Land Records Sindh Hyderabad has filed a report showing that the first date for inspection of the site was fixed on 04.08.2015 but due to objection raised by petitioner it was postponed and fixed on 11.08.2015. But even on that date the advocates for the parties raised objection, yet demarcation was carried out and following chart / table reflecting position on ground of each survey number was prepared:-

C.S No.	Name of owner	Area of C.S No.	Area as per Sheet	Area under Grave yard	Area encroached by Mst. Kalsoom	Area under Jungal	Area encroached by Aslam Soomro	Ghulam Murtaza Bhatta	Total
316	Grave Yard, Umed Ali Shah	6398	-	5675	108	-	615	-	6398.
317/1	Mst. Kalsoom	1696	3391	2388	1003	-	-	-	3391.
317	G. Hussain & others	3391	1696	1486 open Plot	-	-	212	-	1696
318/3	Mst. Kalsoom	11300	10215	90	8079	295	118	1740	10215
318	-	51223	-	1070	4969	44224	192	768	51223

5. Learned A.A.G. while making his submissions referred to the above chart and documents filed by respondent No.7 alongwith his counter affidavit and stated that these documents sufficiently show that respondents 7 to 9 have encroached area of graveyard. Explaining the same, he stated that copies of very Extracts of City Survey No.317 and 318, in which respondent No.7 claims to have purchased some area through registered sale deeds, reflect the area as 'encroached' and further the sale deeds bear interpolation in respect of the area shown therein which would sufficiently establish respondents' manipulation in preparing documents to claim ownership on the area, which has been reserved for graveyard. In line with his submissions, we have noted that in relevant Extracts the area is shown as encroached. When we asked learned counsel acting on behalf of respondent No.7 to explain as to how in respect of encroached area the transitions have been allowed and duly recorded by the Authority concerned, we met deafening silence. We have further noted that respondent No.7 has not filed the original record in respect of City Survey No.317 and 318 to establish undisputed track record of ownership leading to Amir Bux Shah from whom his father in law Muhammad Juman purportedly purchased the land and gifted to his wife.

6. In any case, it is apparent from the material available on record that this petition involves several questions pertaining to factual controversy viz-a-viz right / title of respondents No.7 to 9 over the land, said to be reserved for graveyard, in terms of alleged sale deeds, etc. Such disputed questions of fact admittedly cannot be sorted out under the constitutional jurisdiction. In such circumstances, the parties would be better advised to approach the relevant forum for redressal of their grievances, if any, and which, if availed, shall however be dealt with independent of this order. But at the same time, we cannot ignore the above chart revealing certain chunks of the land encroached by or in possession of private respondents plus submissions made by learned AAG relating to Extracts of City Survey Nos. 317 and 318 Ward 'C' indicating the land as encroached, and yet its constant transfer in favour of different people allowed by the relevant authorities. We therefore while disposing of this petition refer the matter to the Commissioner Hyderabad who either himself or through Deputy Commissioner, Jamshoro, but under his supervision, conduct a thorough probe in respect of City Survey Nos.316, 317, 318 and 385 Ward 'C' Kotri city, for determining their original status, actual area, transactions thereon, if any, any encroachment, etc. and correct the wrong, if there is any, and further take action in accordance with law against a person including any person official or otherwise arrayed in this petition as party or not who is found to have committed or furthered in commission of such wrong. He shall complete such exercise and submit the report

within three (3) months from today for which period the parties shall maintain the status-quo.

The petition stands disposed of in above terms alongwith listed applications.

JUDGE

JUDGE

Tufail/PA