

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-6098 / 2014

Date	Order with signature of Judge
------	-------------------------------

- 1) For orders on Misc. No. 14230/2015.
- 2) For katcha peshi.
- 3) For hearing of Misc. No. 31595/2014.

2.6.2015.

Mr. Muhammad Azam Makhdoom Advocate for petitioner.

Through instant petition the petitioner has sought declaration that Plot No. 242 admeasuring 7500 square yards situated at Gharro, Taluka Mirpur Sakro, District Thatta, belonging to the petitioner cannot be occupied under the garb of order dated 21.8.2014, passed by the respondent No. 2, whereby the application filed by the petitioner seeking demarcation of the said plot has been dismissed.

Learned Counsel for the petitioner submits that the petitioner is owner of the aforesaid plot and is in peaceful possession, whereas, the respondents No. 4 to 6 in collusion with respondents No. 7 & 8 and also with the help of respondent No. 9, are trying to dispossess the petitioner on the basis of order dated 21.8.2014. Per learned Counsel the petitioner had made an application dated 7.2.2013 to respondent No. 2 for demarcation of the petitioner's property in question, and, respondent No. 2 vide order dated 21.8.2014 has dismissed the same. Learned Counsel submits that the impugned order dated 21.8.2014 passed by respondent No. 2 is in respect of Plot No. 241, whereas, the petitioner is in possession of, and, seeking demarcation of Plot No. 242, hence, the petitioner cannot be dispossessed from the property in question under the garb of the impugned order dated 21.8.2013.

We have heard the learned Counsel, perused the record and so also the impugned order dated 21.8.2014 which reflects that on the directions of respondent No. 2, the Mukhtiarkar Mirpur Sakro, reported vide letter dated 18.3.2013, that according to the report of Tapedar of beat one Tahir Pathan was in possession of the plot in question who submitted that he has been put into possession by one Malik Bilal Abbas (Respondent No.6) with whom the original documents of the plot in question are also available. Thereafter notice was issued to Respondent No.6 who appeared before respondent No. 2 and contended that the claim of the petitioner in respect of the said plot is not maintainable as it is based on false and managed documents, whereas, the Form II

produced by the petitioner reflects that the plot was purchased from Ali Muhammad S/o Haroon and 8 others on the basis of statement dated 16.2.1972, whereas, one Shoukat S/o Ali Muhammad and two others, being the previous owners of the plot in question, had filed a Civil Suit bearing No. 2 of 2011 against respondent No. 6, before the Civil Court Mirpur Sakro, Gharro which was dismissed vide judgment and decree dated 6.1.2012. Impugned order further reflects, that after dismissal of the Suit, the said owners, once again filed another F.C. Suit No. 16/2012 in respect of the same dispute before the Senior Civil Judge Thatta without disclosing dismissal of earlier Suit, which was also dismissed vide judgment dated 31.5.2011 and decree dated 7.6.2011, whereas, the record further reflects that the petitioner was never in possession of the Suit plot. On consideration of these facts, the respondent No. 2 has come to the conclusion that respondent No. 6 Malik Bilal Abbas is in possession of the plot in question, whereas, the petitioner could not prove his boundary marks in any manner and it is further evident from the record that the petitioner had purchased the said plot from Ali Muhammad and others, and legal heirs of Ali Muhammad and others had filed Suit before the competent Court against respondent No. 6 and such Suit was dismissed on the basis of these facts, the application for demarcation has been dismissed through the impugned order.

Though we are of the firm view, that the controversy as raised by the petitioner through instant petition, requires adjudication of disputed facts which can only be resolved by a Civil Court after recording evidence of the contesting parties, as ownership and possession of property is in dispute, however, on perusal of the impugned order, it is noticed that respondent No. 2 has claimed ownership and possession of **Plot No. 241** which was allotted to one Ibrahim S/o Pir Muhammad which was purchased by Respondent No.6 from previous owner by way of Registered Deed dated 22.1.1995 and mutated in records of right vide entry No. 578/241, whereas, the petitioner is claiming ownership and possession of **Plot No. 242**. In view of such position, while putting the learned Counsel for the petitioner on notice to satisfy this Court, as to how instant petition is maintainable requiring adjudication of disputed facts, we would also issue a fresh notice to respondents No. 2 & 3 with directions to be present in Court on the next date of hearing along with record in respect of **Plots No. 241 & 242**, Gharo, Taluka Mirpur Sakro, District Thatta. Notice to AAG as well for the next date.

Adjourned to 10.6.2015.

J U D G E

J U D G E