

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 124 of 2009**

**(Imam Dino & others v. Gaman & others)**

**Hearing of Case**

1. For hearing of main case
2. For hearing of CMA 496/2009 (Stay)

Date of hearing: **28-03-2022**

Date of Decision: **28-03-2022**

Mr. Nisar Ahmed Bhanbhro, Advocate for Applicants.  
Mr. Sohail Ahmed Khoso, Advocate for the private Respondents.  
Mr. Mehboob Ali Wassan, Assistant Advocate General-Sindh

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**J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicants have impugned Judgment dated 12.10.2009, passed by II-Additional District Judge, Khairpur in Civil Appeal No.84 of 2009 (**Gaman and others v. Imam Dino and others**), whereby, while allowing Civil Appeal, Judgment dated 24.06.2009, passed by II-Senior Civil Judge, Khairpur in Civil Suit No.163 of 2002 (**Imam Dino and others v. Gaman and others**) through which the Civil Suit of the Applicants was decreed, has been set aside.

**2.** I have heard both the learned Counsel and perused the record.

**3.** The Applicants had filed a Civil Suit for declaration and injunction seeking the following prayer:

“(a). That this Hon’ble Court may graciously be pleased to declare that the plaintiffs are owners of the suit land of an area of 10-20 Acres from S. Nos: 653, 656, 657, 658, 659, 660 and 654 respectively and defendant No:1 have no concerned whatsoever over the suit land and further be declared that the act of defendant No:1 to 5 is illegal, null, void and abinitio.

(b). To issue permanent injunction restraining the defendants not to interfere with the peaceful possession and enjoyment and not to dispossess the plaintiffs from the suit land by themselves, through their sub-ordinate, agents, well-wishers in any manner whatsoever.

(c). To award the costs of the suit.

(d). Any other relief deemed fit and proper by this Hon’ble Court”.

**4.** The Suit was though decreed by the Trial Court on the ground that the Applicants had proved the existence of oral sale agreement /

Qabooliat, whereby land in question was purportedly purchased by the Applicants; however, the Appellate Court has been pleased to set aside the Judgment of the Trial Court and the relevant finding of the Appellate Court is as under:

“14. The suit for specific performance of contract and the suit for declaration or and different it is well settled principle of law that the suit is to be decreed or dismissed as prayed plaints or prayer made in the plaint and here the respondents No.1 to 3/ plaintiffs have prayed for relief of declaration on the basis of statements recorded before Mukhtiarakar Revenue Nara and the Revenue entries No.149 dated 22.02.1994 and 150 dated 02.4.1994 having been taken place before the issuance of T.O. Form.

15. If the respondents No.1 to 3/ plaintiffs had any cause of action it was for specific performance of contact and not for declaratory suit on the basis of entries No.149 dated 22.02.1994 and 150 dated 02.4.1994.

16. For the reasons recorded in preceding paragraph No. 9 to 15, I am of the considered view that transfer of the land through the Revenue entries No.149 dated 22.02.1994 and 150 dated 02.4.1994 respectively is not valid and accordingly point No.1 is replied in negative”.

**5.** The above finding of the Appellate Court appears to be just and legal inasmuch as a party cannot seek a declaration on the basis of an agreement; but can only take recourse to a Suit for specific performance; hence, the Trial Court had committed an error, which has been properly rectified by the Appellate Court. It is settled law that no title or ownership could be claimed merely on the basis of an agreement, even if the possession has been handed over. Reliance may be placed on the case of **Falak Sher v Province of Punjab (2017 SCMR 1882)**. In that case the suit for declaration was not maintainable as the Applicant by himself had no title in his favor; hence, it was hit by section 42 and 56 of the Specific Relief Act, 1877. Notwithstanding this, it has also come on record that even otherwise; the Respondents were not in a position to execute any sale agreement or any other instrument as the land had not been fully transferred in their names by way of any Transfer Orders.

**6.** In view of above, no case for indulgence is made out; hence, this Civil Revision Application is hereby **dismissed**.

**J U D G E**

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