

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.2299 of 2016

Maqbool Ahmed Solangi  
Versus  
Board of Revenue & others

Date	Order with signature of Judge
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1. For hearing of CMA No.15240/2016
2. For hearing of CMA No.15768/2016

**Dated: 03.11.2022**

*(Order on CMA No.15240/2016)*

Mr. Abdul Wahab Baloch for plaintiff.

Mr. Shaharyar Mehar, Assistant Advocate General.

Mr. Dhani Bakhsh Lashari for Sindh Building Control Authority/  
defendant No.2.

Mr. Muhammad Yasin Azad along with Barrister Muhammad  
Sarmad Khan for defendant No.7.

Mr. Zia-ul-Haq Makhdoom along with M/s Fatima Ashfaq and Kanza  
Usman for defendants No.9 to 12.

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**Muhammad Shafi Siddiqui, J.**- This is an application under order XXXIX Rule 1 & 2 CPC filed by plaintiff Maqbool Ahmed Solangi through Mr. Abdul Wahab Baloch Advocate. Suit is for declaration, cancellation of documents and permanent injunction in relation to a property identified as FT-2/10, McNeil Road, Frere Town, Karachi. Entire plot comprises of 4227 sq. yards out of which plaintiff claimed right over approximately 900 sq. yards, as argued. Mr. Baloch insisted for hearing of injunction application in view of the fact that he is out of possession.

2. It is plaintiff's case, as presented by Mr. Baloch, Advocate that his predecessors were in "possession" of a portion of the subject property since partition. They got the utility connections and were paying all such bills respectively. However, defendants have dispossessed them under

the garb of a conveyance deed (sought to be cancelled), executed in their favour and hence plaintiff has filed this suit for some interim relief. It is his case that an interim order was operating since 17.11.2016 and in consequence of such there were some alleged violation for which a contempt application has also been filed but he did not disclose if that has already been disposed off, as no such application is fixed today.

3. Mr. Makhdoom however has taken me to the history of litigation in respect of the entire property and also as to how the title was derived by defendants No.9 to 12.

4. I have heard learned counsel for parties and perused material available on record.

5. In the instant suit an order was passed on 05.12.2018 which is relevant for the purpose of reaching to a factual conclusion for the assessment of party's claim, when cognizance of a petition pending, was taken, which order is reproduced as under:-

*“Counsel holding brief for Mr. Muhammad Nadeem Khan, advocate for plaintiff states that he has since been appointed as Assistant Attorney General. Under the circumstances let intimation notice be issued to the plaintiff directly for the next date. Counsel for the defendant No.7 points out that C.P. No.D-3630/2016 had been filed in relation to the said property, wherein the present plaintiff was respondent No.6. He submits that in that petition, SBCA and Pakistan Railway were directed in terms of an order made on 07.09.2018 to take appropriate action in accordance with law for the removal of the illegal construction/encroachment as pointed out in the petition. He submits that suit has become infructuous. By way of indulgence and in the interest of justice, let notice be issued to the plaintiff directly with a note of caution to ensure appearance or proper representation on the next date, failing which the aspect of maintainability would be determined on the basis of such representation as is forthcoming. To come up on 20.12.2018.”*

6. Somewhere on 11.03.1961, in respect of this compound measuring 4227 sq. yards, (subject property), a lease was executed between one Sahibzada Syed Muhammad Mateen Mirza and the president of Pakistan,

the transferee and the transferor respectively, being an evacuee land. This conveyance deed also provides a schedule of property, which described it as a land measuring 4227 sq. yards available as Frere Town Quarters beyond Karachi Cantonment Station.

7. The matter went up to Hon'ble Supreme Court as there was a dispute between Sahibzada Syed Muhammad Mateen Mirza above lessee and Jehangir R. Rustomji in relation to their respective portions of the land in question. The Hon'ble Supreme Court concluded the dispute of entire land of 4227 sq. yards as under:-

*“The result is that the appeal partly succeeds in so far as it declares that the transfer to Rustomji was without lawful authority. As regards the claim of the appellants to have any area in excess on three times the plinth area on the basis of the notification dated 9-1-1960 is concerned that fails. He will be entitled only to the transfer of the bungalow and out-houses measuring 655 sq. yds. plus three times the plinth area namely 1965 sq. yds. i.e. in all to 2620 sq. yds., the figure accepted by both sides (see order of the Additional Settlement Commissioner dated 19-6-1973).*

*The net result is that the case is remanded to the appropriate authorities who will be at liberty to deal with and dispose of the excess area, namely, 1607 sq. yds., which has become available as a result of this order in accordance with law relevant and applicable to cases of the present type. The parties herein will be at liberty to prefer their claims to the transfer of this area on grounds other than those which have already been decided above by us. There appeals stand disposed of in the above terms. No order as to costs.”*

8. In pursuance of aforesaid remand, a portion of land out of 4227 sq. yards was then made available, to be dealt with in accordance with law. The authorized officer as directed above, under Evacuee Property & Displaced Persons Laws of 1975 entitled and enabled Sahibzada Syed Muhammad Mateen to purchase the excess area of the bungalow i.e. leftover portion as defined above measuring 1607 sq. yards on payment of prevailing market value under the provisions of Section 19 of Settlement Scheme No.I read with Section 12 of Settlement Scheme

No.V. Other contestants i.e. late Jehangir R. Rustomji's application was rejected. By this way entire compound, as defined above, came in lawful occupation/possession and entitlement of predecessor of defendants No.9 to 12. The lease of the subject property however expired and it was renewed by the Land Utilization Department, Government of Sindh, when the Deputy Commissioner South was ordered by the Secretary to the Government of Sindh, Land Utilization Department to recover ground rent as well as arrears, if not already recovered which amount was then paid through challan dated 03.09.2012 and the property was transferred as renewed lease, in the name of successors of Sahibzada Syed Muhammad Mateen Mirza.

9. In the year 2016 Mst. Huzoor Jan Begum then filed a petition bearing No.D-3630 of 2016 against defendants No.10, 11 and 12, (reference made above) the current title holder of the property and also plaintiff as respondent No.6, that they may be restrained from raising construction on the subject plot. In the aforesaid petition following order was passed:-

*"... Specific directions were given to the respondents No.1 and 11 vide order dated 07.09.2018 to remove the illegal construction/encroachment as pointed out in the petition and submit compliance report within 30 days time. On perusal of the record it appears that respondent No.1 has filed compliance report dated 20.01.2018 in this case. We are not satisfied with such report. Respondent No.1 is directed to comply with directions as referred to above and submit fresh compliance report. Concerned Director of SBCA should be present on the next date of hearing."*

10. Subsequently, it is claimed that on removal of encroachment, petition was withdrawn.

11. Hon'ble Supreme Court vide order dated 15.06.2021 dismissed Civil Petition No.273-K of 2019 filed by respondent i.e. respondent No.6 of CP No.D-3630 of 2016, referred above, as no interference was

required, as considered by Hon'ble Supreme Court. This respondent No.6 is the plaintiff of this suit.

12. This property was acquired by defendants No. 9 to 12 from successors of late Sahibzada Syed Muhammad Mateen Mirza vide conveyance deed which was executed on 02.11.2012 and registered on 12.02.2013 i.e. after the renewal of lease in favour of successors of Sahibzada Syed Muhammad Mateen Mirza. The property as derived by defendants No.9 to 12 is identified in the schedule of conveyance deed measuring 4227 sq. yards in Survey No.10, Sheet FT-2 (Old Survey No.J-1/10) which in fact is a complete bungalow with courtyards and out area on the ground floor situated at Frere Town Quarters. Plaintiff in the instant suit sought cancellation of a conveyance deed which prima facie was registered on 12.02.2013, the Urgent Microfilming fee was deposited on 20.02.2013 and scanning was done on 27.02.2013 being MF Roll No.U 12008/8348.

13. The only plea of plaintiff is that an inquiry was conducted by the Land Utilization Department on 09.03.2017 when the legal adviser of the Board of Revenue opined that Deputy Settlement Commissioner had no jurisdiction and authority under Act 1975 *ibid* to deal with this property, as they did. This could hardly form a basis to re-form a concrete view when not only the predecessors of the defendants were given title on entire land of 4227 sq. yards but the title was renewed on 18.09.2012 as well and defendants No.9 to 12's predecessor were identified as lawful transferee being the successors of Sahibzada Syed Muhammad Mateen from whom defendants No.9 to 12 derived their title.

14. Hon'ble Supreme Court in the initial round litigation also scrutinized the status of land and portion of it, excluding 1607 sq. yards was held to be a lawful transfer against claim and rest was "remanded" to the authority to be dealt with in accordance with law.

15. Nothing in this suit challenges the title being drawn by the predecessors of defendants No.9 to 12 including the one (part of it) that was rendered lawful by Hon'ble Supreme Court whereas rest of the portion of 1607 sq. yards was acquired on payment of market value as determined by Settlement Department at the relevant time. When the title of predecessor of defendants No.9 to 12 is not challenged, nor it could be, being determined lawfully earlier, how then, a subsequently derived title of the same lineage could be challenged?

16. The subject property was an evacuee property and under the Displaced Persons Laws of 1975, it was available in the pool of properties for a treatment as given. The plaintiff agitated only on the count that they (defendants) without any title were in occupation and plaintiff should not have been dispossessed without compensation. I am afraid without any convincing arguments as to their own entitlement i.e. in the absence of any right, neither such protection could be given to the plaintiff for reacquiring possession, which was taken over, but also to the claim of compensation. The title was acquired and materialized after a long drawn litigation. Plaintiff cannot succeed on the strength of their solitary argument that he was in occupation and dispossessed from his portion despite conclusion of Hon'ble Supreme Court in the ibid judgment against them, whereby only claim that was approved was that of Sahibzada Syed Mateen Mirza whereas rest of the portion was made available for a treatment to be given by the Settlement Department which it did and the entire property came in the domain of defendants No.9 to 12's predecessor from whom present set of defendants acquired the title. If the plaintiff is of the view that settlement department was not the competent authority, they should have agitated that matter in the first round when Hon'ble Supreme Court decided which plea in fact deemed to have been repelled. Defendants only acquired title from their

predecessor in the year 2012 whereas Sahibzada Syed Muhammad Mateen Mirza acquired in the year 1961 which was renewed on requisite payment through challan dated 03.09.2012, followed by letter dated 18.09.2012 confirming the renewal which is annexed as Annexure D/1 at page 379 of the file, in favour of successors/legal heirs of Sahibzada Syed Mateen Mirza. Copies of paid challan and mutation/extract from the property register are annexed as Annexure D/2 and D/3 at pages 381 and 383 respectively. Defendants No.9 to 12 are thus bonafide purchasers of property.

17. Plaintiff thus has no prima facie case in his favour and since defendants have registered instruments in their favour and have acquired the title after a long drawn litigation, the other two ingredients for grant of injunction i.e. balance of inconvenience and irreparable loss also does not exist in plaintiff's favour.

18. Above being the situation and the chronological disclosure of the events in respect of the property in question, the injunction application merits no consideration and is accordingly dismissed.

CMA No.15768/2016

Adjourned.

Dated:

**J U D G E**