

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D - 1633 of 2021

Date of hearing	Order with signature of Judge
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Fresh case

1. For orders on office objections at Flag-A
2. For orders on CMA No.7905/2021 (Ex./A)
3. For orders on CMA No.7906/2021 (S/A)
4. For hearing of main case

02.05.2023

Mr. Tariq G. Hanif Mangi, Advocate for the petitioner.

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1. The agricultural land bearing U.A. No.03, admeasuring 9-28 acres, situated at Deh Arore, Taluka Rohri, District Sukkur was initially granted to the petitioner's father, namely, Muhammad Bakhsh son of Abdul Majeed in the year 1974-75 on lease for a period of five (05) years up to 1980-81 under certain terms and conditions by respondent No.4 (*Colonization Officer, Sukkur Barrage, Hyderabad*). After expiry of the said lease period, the subject land was granted to fathers of private respondents No.8 & 9 vide order(s) dated 07.06.1993 by respondent No.4, however, vide order dated 29.05.1994, the said grant was cancelled by the Revenue authorities, which order the fathers of private respondents impugned in Constitutional Petition No. D-1091 of 1994 before this Court, however, the same petition was withdrawn by them as the said order was withdrawn by the Government of Sindh vide order dated 18.02.1997; therefore, the petition stood dismissed on being infructuous vide order dated 21.05.1997. Subsequently, the petitioner impugned the grant of land to fathers of the private respondents in a Land Grant Appeal, which was dismissed by the Executive District Officer (Revenue), Sukkur vide order dated 27.03.2004. Against that order, the petitioner preferred Revision Application under Section 164 of the Sindh Land Revenue Act, 1967 being Case No. SROR-146/2004, which was dismissed by respondent No.2 vide order dated 15.06.2010. Against that order, the petitioner preferred Review Petition being Case No. S.Review-

16/2011, which was also dismissed by the respondent No.2 vide order dated 09.04.2012. Against that order, the petitioner preferred Constitutional Petition No. D-3089 of 2012, which was dismissed for non-prosecution by this Court vide order dated 31.01.2017. It is thereafter, the petitioner preferred instant Constitutional Petition on 15.11.2021.

2. Heard and record perused.

3. Under Order IX, Rule 9, C.P.C., a petitioner is precluded from bringing a fresh petition in respect of the same cause of action where his earlier petition was dismissed in default. However, he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the petition was called on for hearing, the Court should make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit.

4. Admittedly, in the instant matter, the petitioner, after dismissal of his earlier petition for non-prosecution vide order dated 31.01.2017, did not approach the Court for setting aside said dismissal by moving an application under Order IX, Rule 9, C.P.C; hence, this petition is not maintainable in law.

5. It may further be observed that the impugned order was passed on 09.04.2012 and if the fact that the petitioner's earlier petition was dismissed for non-prosecution is ignored, the instant petition, which has been filed on 15.11.2021, badly suffers from laches.

6. Accordingly, this petition being not maintainable in law is **dismissed in limine** along with listed applications.

JUDGE

JUDGE

Abdul Basit