

IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Jawad Akbar Sarwana

**Constitution Petition No.D-3210 of 2022**

Shan son of Sohail William  
Versus  
Roshan and others  
.-.-.-.-.-.

Date of hearing: 07.12.2023  
Date of Short order: 07.12.2023  
Date of Reasons: 12.12.2023

M/s. Naeem Ahmed Rana, Naveed Anjum and Noreen S. Rao, Advocates for the petitioner.

Mr. Javed Ahmed Rajput, Advocate for Respondent No.2  
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**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.-** A suit under Section-9 of the Specific Relief Act, 1877 was filed by the petitioner, which on conclusion of the trial, was dismissed followed by dismissal of Civil Revision Application No.49/2022.

2. Brief facts of the case are that the petitioner filed a suit under Section-9 of the Specific Relief Act, 1877 for possession of a House bearing No.35, measuring 60 sq. yards out of 142 sq. yards, situated in Katchi Abadi Hindu Para, New Iqbalabad, Drigh Road, Shah Faisal Town, Karachi, purchased by him on the strength of an agreement of 15<sup>th</sup> April, 2016 from one Raju Muni Lal son of Muni Lal. The suit was contested and the following issues were framed:-

1. *Whether the suit of the Plaintiff is not maintainable?*
2. *Whether the Plaintiff was in possession of the suit property?*

*3. Whether the Plaintiff has been forcibly dispossessed from the suit property.*

*4. Whether the Plaintiff is entitled for the relief claimed?*

*5. What should the decree be?*

3. In consideration of the issues, evidence recorded by the parties and/or their witnesses, the suit was dismissed and consequently the Revision too. The suit was filed by the petitioner through his attorney Waseem Akhtar, who filed his affidavit-in-evidence. The plaintiff through attorney was also subjected to cross-examination. Petitioner's witness Raju Muni Lal (seller) filed his affidavit-in-evidence and was also subjected to cross-examination. Defendant No.2/Respondent No.2 Bansi Lal contested the suit by filing his affidavit-in-evidence wherein he relied upon his written statement for the sake of brevity. Bansi Lal, defendant No.2 was also subjected to cross-examination by plaintiff's counsel.

4. This petition is filed against the concurrent findings of two courts below and the scope of the suit was confined only to the extent of unlawful dispossession in terms of Section-9 of the Specific Relief Act and seeks restoration of his possession as he (plaintiff/petitioner) claimed to have been dispossessed without due process of law.

5. The primary issues are issues No.2 and 3 i.e, whether he (plaintiff/petitioner) was in possession of the suit property and was forcibly dispossessed by the defendants. Petitioner, being plaintiff of the suit, recorded his evidence through witness/attorney (Waseem Akhtar), who was resident of House No.115/2, Camp No.5, P.A.F Base Faisal, Karachi. In the entire affidavit-in-evidence, he does not disclose as to how the facts of plaintiff's dispossession

came to his knowledge, since he was not resident of the said area. It is not even alleged that petitioner/ plaintiff Shan son of Sohail William has passed on any information to his attorney. Nonetheless, the said attorney was subjected to cross-examination and on 25.03.2019 when he was being cross-examined, he agreed to a suggestion that plaintiff (petitioner here) did not reside in suit property and that for such unlawful dispossession, the plaintiff had not made any complaint to police station.

6. The other witness Raju Muni Lal son of Muni Lal, from whom the petitioner/plaintiff acquired the property, was also subjected to cross-examination, who has given a contradictory statement that the plaintiff Shan after purchase of the property was residing at the suit property since 2016 and resided in the suit property for about 1 to 1<sup>1</sup>/<sub>2</sub> years, whereas, this was not stated at all by the attorney of the plaintiff, in fact it is stated that he did not reside in the suit property.

7. Bansi Lal, defendant No.2/respondent No.2 filed his affidavit-in-evidence and was also subjected to cross-examination by the plaintiff's counsel. It was "suggested by the counsel" to Bansi Lal that the act of dispossession was communicated by the neighboring people, yet except Raju Muni Lal, who otherwise is an interested party being seller, no other important witnesses were produced. This evidence, that was recorded before the trial court, was appreciated by the trial court as well as by the appellate/ revisional court and they have reached to a conclusion that it is not the case of illegal dispossession wherein a relief could be granted under Section-9 of the Specific Relief Act.

8. This constitution petition has been filed against the concurrent findings of two courts below. Although we have attempted to find out if any of the piece of evidence has been missed out which could have, if read by the two forums below, could have altered the relief, but we found nothing inspiring to interfere. When we asked learned Counsel for the Petitioner to take us to the best piece of evidence that could show that the Petitioner was dispossessed, Counsel relied on a Sindh Katchi Abadis Authority, Government of Sindh, Provisional Challan dated 25.04.2008 in respect of Plot No.35/A measuring 44.45 sq. yds. ("Ex.-P3"), and an unregistered Sale Agreement dated 16.04.2016 for a Plot bearing no.35 measuring 60 sq. yds. out of 142 sq. yds. ("Ex.-P2"). But these do not inspire confidence regarding either possession or dispossession. It is not the jurisdiction of this court to reappraise the evidence under Article-199 of the Constitution of Islamic Republic of Pakistan. Had there been a glaring deviation from law or if any jurisdictional error has been performed by the two courts below, this court would have exercised its jurisdiction, but that is not the case here. No interference as such is required.

9. The two forums below have exercised their jurisdiction and consequently dismissed the suit; however, we may observe that the findings of the two forums below are only to the extent of Section-9 of the Specific Relief Act, which only embarks upon the illegal dispossession without the involvement of title. In case, as claimed by the petitioner that the title is being regularized, we may observe that any suit or legal proceedings initiated on the strength of any title, including but not limited to regularization, the conclusion and the observations drawn in this proceeding would not come in the way.

10. In view of the above, the instant petition was dismissed by a short order dated 07.12.2023 and these are the reasons for the same.

Dated:-12.12.2023

JUDGE

JUDGE

Ayaz Gul