

(11)

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Application No.12 of 2020

Date of hearing	Order with signature of Judge
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1. For orders on office objection "A".
2. For orders on C.M.A.No.59/2020 (E/A).
3. For hearing of Main Case.

19.03.2020


Mr. Zafar Hussain Mahesar, Advocate for the Applicants.
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**ORDER**

**ZAFAR AHMED RAJPUT, J.-** This Civil Revision Application is directed against the Judgment and Decree dated 15.11.2019 and 20.11.2019 respectively, whereby the learned IInd Additional District Judge, Mehar while dismissing Civil Appeal No.76/2018, maintained the order dated 23.10.2018, whereby the learned Senior Civil Judge, Mehar rejected the plaint under Order VII Rule 11 C.P.C. in F.C. Suit No. Nil of 2018, filed by the applicants.

2. Heard learned counsel for the applicants and perused the material available on record.

3. It appears that the plaintiffs filed a Civil Suit No. Nil of 2018, for declaration, cancellation, mandatory and permanent injunction in respect of agricultural land bearing Surveys No.93 and 94, situated in Deh Rojhan, Taluka Mehar, District Dadu, claiming that Survey No.93 was originally owned by their great grandfather while Survey No.94 was jointly owned by Savo and Dost Muhammad, the grandfather of the plaintiffs to the extent of 50 paisa share each. It is further alleged that in the year 2014, defendants No.1 to 9 came at the suit land and tried to



dispossess the plaintiffs by disclosing that they were the owner of the suit land, hence they rushed to the office of Mukhtiarkar (Revenue), Mehar, where on enquiry it was transpired that the suit land was mutated in the names of defendants on the basis of their registered sale deeds. On coming to know of the above situation, the father of the plaintiffs Muhammad Yousif filed Miscellaneous Application No.11 of 2014, before the learned Assistant Commissioner, Mehar, challenging the revenue entries and registered sale deeds in favour of the private defendants, but the same was disposed of vide order dated 13.11.2014 on the ground that he had no jurisdiction to interfere with the registered sale deeds and thereafter the plaintiffs' father filed F.C.Suit No.114 of 2014 for declaration, cancellation, mandatory and permanent injunction; however, the plaint in the suit was rejected by the Court of Senior Civil Judge, Mehar vide order dated 27.06.2018 on the ground that the Suit was barred by Section 42 of the Specific Relief Act, under Article 120 of the Limitation Act and under the provisions of Land Revenue Act and whereafter instant suit was filed by the plaintiffs, seeking declaration of the registered Sale Deeds dated 08.07.1969, 03.08.1987, 23.06.2005, 09.05.2007, 23.01.2009, 10.10.2009, 19.05.2011 and 01.11.2008, in the names of Dadal Khan, Anwar Ali and others and the Sale Deeds dated 07.12.1996 and 23.05.2011 are forged and fraudulent documents being not executed by the ancestors of the plaintiffs and the entries maintained in the revenue record in respect of the suit land in the names of the defendants be also declared false and forged.

4. The learned Trial Court rejected the plaint in the suit while observing that no doubt Order VII Rule 13 C.P.C does not contemplate that rejection of plaint shall not on its own force preclude the plaintiff

from presenting a fresh plaint, for instance if a plaint under order VII Rule 11 C.P.C is rejected on the ground of the relief being undervalued or failure to affix proper court fee stamps, a fresh plaint could always be presented upon rectifying the defects within the prescribed period, but herein the matter is entirely different. In the instant second plaint, the plaintiffs have averred in their pleadings that suit land belonged to one Dost Muhammad, their great grandfather and after his death suit land was inherited by their respective legal heirs. The plaintiffs however, have failed to produce any relevant record and copy of record of rights in the names of their great grandfather. Without producing any title document in the name of Dost Muhammad, the plaintiffs cannot claim to be owners of the suit land. Hence the plaintiffs have no legal character or status in terms of Section 42 of the Specific Relief Act or even no *locus standi* to maintain a Civil Suit. The learned Trial Court has also rightly observed that instead of challenging the order of the Assistant Commissioner, Mehar under revenue hierarchy, the plaintiffs approached directly to the Civil Court without exhausting available remedy and therefore suit was barred under Sindh Land Revenue Act, 1956.

5. The assessment of the learned Trial Court on above legal proposition appears to be correct. The learned counsel for the applicants failed to rebut the same in his arguments; hence this Civil Revision Application is dismissed in limine alongwith listed applications.

  
JUDGE