

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

R. A. No. S – 118 of 2019
R. A. No. S – 119 of 2019

Date of hearing	Order with signature of Judge
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Hearing of case (priority)

- 1. For orders on office objection No.4 & 6 at Flag-A
- 2. For hearing of main case
- 3. For hearing of CMA No.607/2019 (Stay)

06-11-2020

Mr. J. K. Jarwar, Advocate for the applicants.
Mr. Abdul Qadir Khanzada, Advocate for respondents No.1 & 2.
Mr. Shahryar Imdad Awan, Assistant Advocate General Sindh.

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These two revisions have been filed in respect of concurrent findings as determined by the learned trial Court as well as the learned appellate Court in the proceedings of a suit though titled for possession, declaration and permanent injunction, but substantially for partition of agricultural property to which it was alleged that despite private partition in presence of revenue officials having taken place the defendants had encroached in the area of the plaintiffs. The title / entitlement of the parties found not in issue/dispute, the preliminary decree in the matter was passed where after on considering the dispute of the parties, following issues were framed and evidence was also led by them:

- 1. *Whether the suit is not maintainable at law?*
- 2. *Whether the plaintiffs are owners of suit property?*
- 3. *Whether the private defendants Ali Sher and others have encroached agricultural land admeasuring 0-35 acres of plaintiff illegally as per survey report dated 22.8.2017?*
- 4. *Whether the plaintiffs are entitled for the relief claimed?*
- 5. *What should the decree be?*

They were determined as under:

Issue No.1. *Negative*
Issue No.2. *Affirmative*
Issue No.3 *Affirmative*

Issue No.4 *Affirmative*

Issue No.5 *Affirmative*

The suit of the plaintiffs stands decreed with no order as to costs.

After hearing the parties as above the learned trial Court determined that 0-35 acres of the defendants' area was to be handed over to the plaintiffs. The said proceedings were challenged before the learned appellate Court, wherein not only points of determination were framed, the issues were also referred to and the evidence was re-appreciated resulting in the dismissal of the appeal.

2. Learned counsel for the applicants at the inception states that the respondent No.1 is an absconder, and in this regard he presents certified copy of an order from the Court of learned IIIrd Additional Sessions Judge, Naushahro Feroze in A.B.A. No.1427/2018. The participation of the said respondent No.1 at this stage for personal appearance is however found immaterial to this Court, as this Court is to look into the propriety of the civil proceedings challenged in these civil revisions. It is further observed that due course of law for any legal action in respect to respondent No.1 as available is not found hampered by hearing of this matter in the present circumstances.

Learned counsel for the applicants contended that the present applicants are in possession of the land since their ancestors and on account of the partition, as said to have been present but allegedly not made with their participation, the same is not available. It is further contended that the present applicants undertake to hand over the possession of land to which they are not entitled in the matter. Learned counsel while concluding his arguments agreed that the real dispute between the parties is in respect of specific area dividing their lands and that of the applicants. That where their participation in this regard is available they will have no ground to object to the same.

3. Learned counsel for the private respondents, however, contends that the learned trial Court had examined the relevant officials and thoroughly examined the record where after the specific determination has been made and that the private respondents shall have no objection to the participation of the applicants at the time of handing over of the possession.

4. Learned AAG present states that the record establishes that the participation of the applicants was present at the earlier partition which was said to have been denied but has been determined otherwise by the learned trial Court and that no ground has been shown to disturb the concurrent findings.

5. Learned counsel for the applicants in rebuttal concedes that the only matter required for the applicants is participation to the proceedings.

6. Having heard the learned counsels and gone through the record, it is observed that the learned trial Court has properly conducted the matter by considering the entitlement of the parties, as to the division of agricultural property, the same required to be conducted by the revenue officials, is also found present. Applicants have not shown any ground that the concurrent findings which are specific in nature duly discussed are liable to be disturbed, as such these revisions having no merits stand **dismissed** accordingly with costs throughout. However, the participation of the applicants in the execution proceedings, as is otherwise available in law be considered accordingly which is provided/available under the C.P.C.

Office is directed to place a signed copy of this order in the captioned connected revision application.

J U D G E

Abdul Basit