

Bohri Compound, Hali Road Hyderabad, which falls within the area declared as Katchi Abadi.

3. The relationship between the Applicant and private Respondents is not disputed, but, according to pleadings of private Respondents as mentioned in their written statement filed in the above mentioned suit, which is available at Page-129 of the case file, inter alia, that the present Applicant has already received her share in the inheritance left by the deceased parents of the parties hereto, while not disputing in Paragraph-8 of the written statement, status of Plaintiff as a legal heir and co-owner of the suit property.

4. The learned Counsel Mr. Aqeel Ahmed Siddiqui, who is representing the Applicant, vehemently argued that both impugned decisions of the Courts below suffer from material irregularity, inter alia, as they have misapplied the provisions of Katchi Abadi in the present case. According to him, sections 38 and 39 of Katchi Abadis Act, 1987 as relied upon by the learned Appellate Court for dismissing the Civil Appeal No.157 of 2012 of the present Applicant has resulted in gross miscarriage of justice. According to him, these barring provision, which is contained in every Statute, relates to functionaries of an authority performing functions under that Statute. As per Mr. Siddiqui, above referred Sections 38 and 39 (Katchi Abadis Act, 1987) provide a protection to the officials of Sindh Katchi Abadi Authority in respect of their official acts done in good faith and the same cannot be pressed into service against the Applicant, who is merely claiming her right of inheritance in the estate left by her deceased parents and all the more when her status being a legal heir of the deceased parents is not disputed, rather admitted by the private Respondents, who are her real

brothers and near family members. When queried, the learned Counsel replied that the official Respondents No.7,8 and 9, who are officials of Sindh Katchi Abadi Authority and Province of Sindh, have been impleaded considering the fact that in the event if the decree is passed in the suit, these officials are the competent authority to execute such a decree. Applicant's Counsel has cited the following case law to augment his arguments:-

- (i) 2011 CLC 884(Karachi)
- (ii) PLD 2002 (Karachi) 408
- (iii) PLD 2004 (Karachi) 269
- (iv) 2012 CLC 1445
- (v) 2009 YLR 1827 (Karachi)
- (vi) 2008 CLC 1409.

5. On the other hand, Mr. Allah Bachayo Soomro, learned A.A.G has opposed the present Civil Revision Application on the ground that both the Courts below have handed down the decisions in accordance with law and since the ownership rights are not devolved upon the private parties hereto in respect of the suit property, therefore, the present Applicant lacks legal character under Section 42 of the Specific Relief Act for bringing such a proceeding. Learned A.A.G has also argued that the above mentioned 1st Class Suit No. 98 of 2010 is also hit by Order 2 Rule 2 of C.P.C., as on the same cause of action, admittedly the earlier 2nd Class Suit No.04 of 2010 was also decided and the plaint whereof was rejected by the Trial Court while exercising its suo moto power mentioned in Order 7 Rule 11 of C.P.C. He has relied upon a judgment of Honourable Supreme Court reported as 2007 SCMR 741.

6. In rebuttal Mr. Aqeel Ahmed Siddiqui has argued that he has filed an application under Order 6 Rule 17 of C.P.C. for making

amendments in the pleadings of the subsequent suit (1st Class Suit No. 98/2010), but the same was dismissed by the learned Trial Court. The said application is available at Page-77 of the case file and the order passed thereon, which is of 23.12.2016, is available at Page-89. It has been further contended by the Applicant's side that there is number of judgments in which the Superior Courts have held that even if a single prayer clause can be granted by the concerned Court, then the plaint cannot be rejected in piecemeal. He further argued that neither the Order 2 Rule 2 of C.P.C. nor Section 11 of C.P.C. (res judicata) is applicable to the present case, as the Courts below throughout have misapplied the above provisions of Katchi Abadis Act, 1987 and non-suited the Applicant on the ground that she has no legal character in terms of Section 42 of the Specific Relief Act, as she has failed to file a title document in respect of the property in question.

7. Arguments of Counsel for the parties have been heard and with their able assistance the record of the proceedings has been examined.

8. The record of the case shows that first order was passed on 15.05.2010 by the learned III-Senior Civil Judge, Hyderabad in 2nd Class Suit No. 4/2010, and while exercising suo moto powers as mentioned in Order 7 Rule 11 of C.P.C., the learned Judge rejected the plaint of the present Applicant primarily on two grounds; (i) that she lacks the legal character to bring a proceedings of the nature under Section 42 of the Specific Relief Act, as the suit property in which she is claiming her share has no title document but only Fard-e-Haqiyat (Slip of Entitlement) exists in favour of her deceased father, and (ii) the afore referred (earlier) suit was time barred and

relief of partition cannot be granted to present Applicant. Subsequently, another suit being 1st Class Suit No. 98/2010 was filed, which also met with the same fate by the impugned order of 20.03.2012 with an additional ground that in terms of the barring provision mentioned in the preceding paragraphs the suit is not maintainable. While passing the impugned order, the learned Judge has also mentioned that since the earlier order of 15.05.2010 rejecting the plaint has attained finality, which, in fact, is a decree, therefore, subsequent suit (F. C. Suit No.98/2010) is also barred. Though in the impugned order learned Trial Court has discussed the effect of Order 7 Rule 13 of C.P.C. in which it has been mentioned that rejection of a plaint shall not by its own force preclude the plaintiff from presenting a fresh plaint, but the learned Trial Court did not give much credence to the import of said provision, which has been explained in the reported decision of the Hon'ble Apex Court relied upon by the learned Judge himself (mentioned below). The learned Trial Court has cited two reported judgments of Honourable Supreme Court and High Court, viz. 2009 SCMR 1079 and SBLR 2003 Sindh 511, respectively, in order to justify its decision.

9. Both the cited decisions of Honourable Supreme Court and of this Court, on which the learned Trial Court has purportedly taken guidance from, are not applicable to the facts of the present case. Section 42 of the Specific Relief Act has been liberally interpreted and expounded by various judicial pronouncements and one of which is PLD 2004 (Karachi) 269 (of learned Division Bench), which has been cited by the Applicant's side. Secondly, the Honourable Supreme Court in the above mentioned judgment, which has been reproduced in the impugned order of the Trial Court itself has

given solution and guidance to the Courts with regard to subsequent plaint and applicability of Order 7 Rule 13 of C.P.C., which guidance both the Courts below have not even considered, rather I would say, they have turned a blind eye to the pronouncement of Honourable Supreme Court. Similarly, the other case law relied upon by the learned Trial Court is also not applicable, as admittedly the nature of proceedings instituted by the Applicant is to seek her share in the inheritance, which is her substantial right recognized not only by the law of land but also Islamic Law relating to the Inheritance, which is on a higher pedestal.

10. With due deference, I am constrained to observe that the perversity of the impugned decisions of the Courts below is of such a degree that it requires interference in this revisional jurisdiction, notwithstanding that concurrent findings are against the Applicant, not on facts but on point of law. One of the material irregularities has been discussed hereinabove. As far as the earlier order of 15.05.2010 passed in the earlier 2nd Class Suit No. 4/2010 is concerned, the same is void, as it has wrongly applied the Section 42 of the Specific Relief Act to the issues at hand, which relate to a share in the inheritance. The second illegality in the earlier order is that it non-suited the present Applicant on the ground that her claim is time barred and she cannot seek a decree for partition. It is a well entrenched rule that in such matters the limitation will not run as cause of action in favour of a legatee continues if he/she continues to be deprived of his/her share in the inheritance. Thirdly, with regard to possession, it is also a settled principle that every legal heir is deemed to be in constructive possession in respect of an inheritable estate. Resultantly, the earlier order being a void one

cannot be allowed to operate against the present Applicant. Therefore, neither the limitation nor any other barring provision will be applicable to such an order of 15.05.2010.

11. Adverting to the above mentioned barring provisions; Sections 38 and 39 of Sindh Katchi Abadis Act, 1987, its language itself explains its object and spirit. These barring provisions cannot be invoked by the Courts below in order to disqualify the Applicant from claiming her share in the inheritance, particularly after filing of written statement by other family members/present private Respondents, who have not disputed her status. These barring provisions provide a protection to the officials of the Katchi Abadis Authority in respect of their bona fide acts and functions. This is a standard statutory protection which is invariably exists in every such type of statute. After insertion of the Article 10-A in the Constitution of Islamic Republic of Pakistan, 1973, the effect of 'legal character' as envisaged in Section 42 of the Specific Relief Act, has to be interpreted liberally and particularly, the Courts below should be careful in passing such type of impugned orders; rather a fair opportunity should be given to all the parties to the proceedings for proving their respective claims and counter claims. As far as the judgment cited by the learned A.A.G, it is clearly distinguishable, as the Hon'ble Apex Court though has held that it is the duty of the court to reject the plaint if the contents whereof attract the provisions of Order 7, Rule 11 of CPC, but, in the cited case the main distinguishing factors were that the petitioner filed the suit without fulfilling the conditions of a representative suit and secondly, there was an issue of ownership as well, as the land in dispute in the cited case was in Shamlaat

Deh, which is owned by each and every owner of the village for establishing graveyard.

12. The upshot of the above is that instant Revision Application is allowed by setting aside both the impugned decisions of the Courts below and the case is remanded to the Trial Court for afresh adjudication. Consequently, 1st Class Suit No. 98 of 2010 stands revived and the learned Trial Court will proceed with the case in an expeditious manner. The adjournments with an object to delay the proceedings shall not be granted without imposing a heavy cost. The learned Trial Court it is expected will decide the entire suit within two months from today, as written statements of the contesting parties/private Respondents have already been filed. The parties are left to bear their own costs.

JUDGE