

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No.52 of 2002

Wali Muhammad	V/s	Muhammad Anwar
Applicant	:	Through Mr. Suresh Kumar, Advocate
Respondent:	:	Arbab Ali Hakro
Date of hearing	:	19.08.2019
Date of Judgment	:	19.08.2019

J U D G M E N T

MAHMOOD A. KHAN, J: This Revision Application has been filed in respect of concurrent findings of two courts below, wherein the suit of the respondent for possession and injunction was decreed after recording of evidence and thereafter in appeal also the findings were not disturbed. The Courts in the matter had based their findings upon the evidence as coming forward wherein the “sanad” of Goth Abad was relied upon by the respondent and following issues were considered by both the courts below:-

- 1. Whether the plaintiff is residing in Pak Colony Tando Allahyar?*
- 2. Whether the Sanad produced by the plaintiff pertains to the suit property?*
- 3. Whether the suit property is situated in Pak Colony Tando Allahyar?*
- 4. Whether the plaintiff has got fraudulently issued two different Sanads in his favour in collusion with the Revenue Staff?*
- 5. Whether the defendant has encouraged upon the property of the plaintiff?*
- 6. Whether the land/plot in possession of the defendant is legal?*
- 7. Whether the plaintiff has no cause of action to file this Suit?*
- 8. What should the decree be?*

2- The said issues were discussed in the judgment of the trial Court and the learned appellate Court had also appreciated the said judgment as well as relying upon other aspects preset on record.

3- Learned counsel for the applicant contends that the suit was for possession and injunction only, as such, the same is not maintainable. It is further contended that the area claimed by the respondent was not amenable to an allotment of the Katchi Abadi and in this respect reliance is made to the entry of the property claimed by the appellant through the property registration card as well as evidence of the officials of the Municipal body. It is also contended that the documents and the record of Katchi Abadi in respect of the subject property was never brought before the Court by the respondent, as such, the respondent had failed to prove the entitlement. He further contends that the respondent had filed another suit earlier claiming the "Sanad" at a different location. Learned counsel has relied upon the case laws reported as Province of Punjab v. Syed Ghazanfar Ali Shah (2017 SCMR 172), Sultan Mahmood Shah & others v. Muhammad Din & others (2005 SCMR 1872) and Muhammad Aslam v. Mst. Ferozi & others (PLD 2001 Supreme Court 213). This Court has also observed that maximum area as available under the Goth Abad Scheme being two (02) ghuntas i.e 240 square yards concluding to 2160 square feet is less than the area claimed by the respondent being 7067 square feet. It was also called upon by this Court as to whether any demarcation was brought before the Courts below.

4- Conversely, learned counsel for the respondent however, contended that the proviso of Section 3 of Sindh Goth Abad Scheme wherein the area available is specified provides for as much as well as room for and before the enactment of the Sindh Goth Abad (Housing

Scheme) Act, 1987 in possession of a person and as such the question of permissible limit would not apply as no material in this respect is present on record and considered by the trial Court or the appellate Court. As to the demarcation, learned counsel for the respondent contended that the same was not challenged on account of specific admission of occupation by the applicant himself as he has admitted that he was in possession of plot No.39 i.e the subject plot. It is also contended that the element was not required to be proved as in para No.2 of the written statement the defendant had denied the same for want of knowledge and no actual challenge was made. Irrespectively the question of declaration was looked into by the learned trial Court as well as learned appellate Court by the specific issues and were duly answered in the matter. It is further contended that Rubkari of the subject property, as relied upon by the appellant was admittedly issued by the officials of Goth Abad and as such it cannot be denied that such property is within the limits amenable to Goth Abad authority. It is also contended that other suit as referred was in respect of a different defendant and that also been discussed in para No.9 of the appellate Court's judgment.

5- Learned counsel for the applicant in rebuttal contended that the element of the possession as claimed by the respondent was never brought on record and that two "Sanads" are not available to a party and that no material is present as to which scheme the 'Sanad' was issued.

6- Having heard the learned counsels and gone through the record. The subject property dispute is between two private persons. The claim of the respondent is based upon "Sanad" whereas the applicant (who is defendant in the proceeding) has based right on the basis of municipal record. It seems that the subject property is on the border of such an

area where the municipal limit may be touching the Goth Abad scheme area and all the required elements have already been discussed by the learned trial Court as well as appellate Court. Nothing has been shown to cause disturbance to the concurrent orders present in the matter. It may however, observed that the respondent cannot claim any entitlement in adversity to the government authorities as no material is present to determine the entitlement in this respect.

7- With the above observation, the revision application stands dismissed being meritless with costs of this revision.

JUDGE

Fahad Memon
19-08-2019