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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Civil Revision No.S-29 of 2017.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For orders on C.M.A.No.222/2017.
3. For orders on C.M.A.No.223/2017.
4. For Hearing of main case.

08.12.2017.

Mr. Imdad Ali Mashori, advocate for the applicants.
Mr. Rab Nawaz Soomro, advocate for the respondent No.1.
Mr. Abdul Rasheed Soomro, State Counsel.

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This Civil Revision Application under section 115 of C.P.C is directed against the judgment and decree dated 16.03.2017, passed in Civil Appeal No.44/2005, whereby the learned Additional District Judge-I, Shahdadkot, setting aside the judgment and decree dated 07.01.2003 and 09.01.2003 respectively passed by the learned III-Senior Civil Judge, Larkana, in F.C Suit No.34/2002 remanded the said suit after framing of additional issues for its decision afresh after recording additional evidence.

2. Briefly stated, the facts of the case are that the applicant herein filed the afore-stated civil suit for declaration and permanent injunction alleging therein that he was allotted in the year 1987 a plot admeasuring 2400 sq. ft by Town Committee Miro Khan, the possession thereof, he was already holding and such allotment order was issued in his favour and entry was recorded in relevant record. Thereafter, the applicant spent an amount of Rs.20,000/- to develop the plot. Subsequently, the then Taluka Nazim TMA, Miro Khan, now Chairman TMA respondent No.01 moved an application to Deputy Commissioner Kamber-Shahdadkot at Kamber and SHO PS Miro Khan, the respondent No.2 and 3 respectively for his dispossession from suit plot. They called the applicant/plaintiff and forced him to vacate the suit

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plot, else he would be ejected, without considering his allotment documents. Hence the applicant/plaintiff filed the present suit with the following prayers.

(a) Declare that plaintiff is allottee of plot measuring 2400 sq. Feet situated near new Bus Stand Town Committee Miro Khan.

(b) Grant permanent injunction against the defendants No.01 to 03, restraining them not to interfere in any way with the possession of the plaintiff over the plot measuring 2400 sq. feet situated at new bus stand Town Committee Miro Khan, or to dispossess him illegally, forcibly excepting in due course of law.

3. After admission of suit, summons/notices were issued and respondents/defendant No.01 filed his written statement, the remaining defendants adopted the same written statement. The respondent/defendant No.01, in his written statement denied the claim of the applicant/plaintiff that he was allottee of the suit plot and stated that he is in illegal possession of the suit plot and the allotment documents are false, fabricated, managed, manipulated. It was also alleged that the applicant/plaintiff did not pay even a single rupee towards so called allotment of suit plot to the Town Committee Miro Khan. It was further alleged that the suit plot was the property of Town Committee/Municipal Committee and it was under the supervision of Local Government, through answering defendant. It was also pleaded that only Town Officer, Taluka Municipal Officer and the answering defendant are competent to allot a plot to the persons under the limits of the Town Committee/Municipal Committee, Taluka Municipal Committee, not the Mukhtiarkar or any other Revenue Officer. The answering defendant also stated in the written statement that the applicant/plaintiff had encroached the public property of the Local



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Government hence the answering defendant was fully competent to act in accordance with law.

4. From the pleadings of the parties, the learned trial Court framed the following issues :

1. *Whether the plaintiff was allotted plot of 2400 sq feet by Town Committee Miro Khan in the year 1987 ?*
2. *Whether the documents of allotment are false, fabricated and manipulated as alleged by defendant No.01 ?*
3. *Whether the possession of the plaintiff over suit property is illegal ?*
4. *Whether the suit is not maintainable ?*
5. *Whether plaintiff is entitled to the relief ?*
6. *What should the decree be ?*

5. In order to prove their case, both the parties examined their respective witnesses before the learned trial Court and produced their supporting documents. After hearing the final arguments of the parties, learned trial Court decreed the suit of applicant/plaintiff vide judgment and decree dated 07.01.2003 and 09.01.2003, respectively in his favour. The respondent/defendant No.1 being dissatisfied with the said judgment and decree of the trial Court preferred Civil Appeal No.44/2005 before the District Judge, Kamber-Shahdadkot @ Kamber which was heard by the learned Additional District Judge-I, Shahdadkot and allowed as stated in para No.1 above. It is, thereafter, the applicant/plaintiff preferred this Civil Revision Application against the order of the appellate Court.

6. Heard the learned counsel for the parties and perused the material available on record.

7. The learned appellate Court in its judgment, while observing that the trial Court did not discuss and resolve the issue of legal entitlement of the plaintiff, who claimed the alleged allotment

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order issued by the Chairman, Town Committee, Mirokhan legally in lieu of payment which he made to Town Committee, and the competency of then Chairman, Town Committee, Mirokhan for allotting the suit plot to him, framed following additional issues:-

ADDITIONAL ISSUES.

- 01/A. Whether the allotment order in favour of plaintiff, regarding the suit property issued by the then Chairman, Town Committee, Mirokhan is in accordance with law?
- 01/B. Whether Chairman, Town Committee, Mirokhan, was competent to allot the suit property to plaintiff?
- 01/C. Whether any payment was made by the plaintiff to Town Committee/Municipal Committee, Mirokhan or any other department, in terms of said allotment order regarding allotment of suit property?
- 03/A. Whether any legal action was taken by defendant No.01, for taking over the possession of suit property from the plaintiff?

8. It appears from the pleadings of the parties that the applicant/plaintiff claims his right over the suit property on the strength of allotment order dated 28.3.1987 allegedly issued by the then Chairman, Town Committee, Mirokhan, issuance thereof has been denied by the respondents, hence there arises two questions in respect of said allotment order; first, regarding the genuineness of the said allotment order for which the trial Court has already framed issue No.3, and the second, with regard to the competency of the then Chairman of said Town Committee and observing of relevant law; and ancillary ~~point~~^{of} point arises with regard to payment of cost of plot by the applicant/plaintiff, if it appears that the said allotment was made in favour of applicant/plaintiff by the competent person and after observing all the legal formalities. For latter part, the trial Court has not framed any issue, hence the learned appellate Court has rightly observed the fact that the learned trial Court while passing the judgment did not discuss the issue of competency of the then Chairman, Town Committee, Mirokhan and fulfilling of condition of allotment with regard to the payment of cost of the suit plot.

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9. Provision of Order XLI, Rule 25, CPC circumscribes the powers of the Appellate Court to frame an issue and refer the same for trial to the Court below, if need be, by taking additional evidence, and permit it to adopt this course if; (i) the trial Court had omitted to frame an issue, (ii) try an issue, (iii) to determine any question of fact which appears to the Appellate Court essential to the right decision of the suit upon the merits. However, there appears no justification to remand the case for all other issues, which have already been decided by the trial Court. The appellate Court, after framing such issues, should have followed provision of Order XLI, Rule 25, CPC, that provides that the trial Court shall proceed to try such issues and shall return the evidence to the appellate Court together with its findings thereon and the reasons. Accordingly, this civil revision is disposed of setting aside the impugned order to the extent of remanding entire case to trial Court with observations that appeal would be deemed to be pending before the appellate Court awaiting findings of trial Court on the additional issues.

10. Civil revision application stands disposed of in above terms.


JUDGE