

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
CP No. D- 1636 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
16.03.2016	<ol style="list-style-type: none">1. For Orders on MA 3527/162. For Orders on Office Objection3. For Katcha Peshi4. For hearing of MA 9160/145. <u>For hearing of MA 10142/14</u>

Mr. Muhammad Hashim Bajeer, Advocate for petitioner
Mr. Muhammad Sulleman Unar, Advocate for respondent No.5
Mr. Allah Bachayo Soomro Addl.A.G.

Petitioners are aggrieved by the order dated 7.7.2014 passed by learned District Judge, Badin in Civil Revision Application No. 13 of 2014 filed by respondent No.5 impugning the order of learned Senior Civil Judge Badin passed on his application filed under Order XIV Rule 5 CPC r/w Section 151 CPC for amendment of issues in F.C. Suit No. 07 of 2011 instituted by him for Declaration, Possession, Mesne Profits, Permanent and Mandatory Injunction. Record reveals that his application was dismissed by the trial court on 20.3.2014, however, learned District Judge Badin set aside the order of trial court and held that issue Nos. 8 and 10 were not relevant to the controversy and not needed to be framed and struck off these issues whereas issue No.9 which was formulated in negative form was ordered to be mutated and framed in positive form so that the burden should be on the petitioners to prove the same as such assertions have been made by them in their written statement.

We have heard both the learned counsel today. After arguing at some length both have agreed that if issue No.8 is framed in succeeding manner that is “*whether the suit land was purchased by the plaintiff from Mst. Mehrunisa, if yes its effect*”, they both

would be satisfied and would have no objection to it. And regarding issue No.10 which reads as “*Whether the infra structure of the suit land on the basis of so called claim of Mst. Mehrunisa is illegal, void and not binding upon the suit land and the defendants*”. Learned counsel have agreed that this issue does not appear to be essential and the controversy therein is covered by issue No.8 as stated above. Regarding issue No.9 which reads as “*Whether the suit land was not in existence in the name of Hindu lady Shama Bai upto 1988-89 when the same was converted into a village?*”, it has been admitted by the counsel for the petitioners that they have taken such stance in their written statement that the suit land was in the name of Hindu lady Shama Bai in 1988-89, we are of the view that the burden lies upon the petitioners to prove their claim and it shall be framed in positive as ordered by the Revisional Court. We dispose of this petition by setting aside both the orders below, and direct the trial court to formulate the issues 8 and 9 in the terms as stated above, whereafter it shall expedite the trial and conclude as early as possible. The remaining issues as framed by the trial court are not disputed by the parties as such the same shall remain intact.

This petition in these terms stands disposed of along with pending applications.

JUDGE

JUDGE

Karar/-

