

# IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-4052 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

1. For order on Misc.No.22812/24
2. For order on office objection
3. For hearing on Misc.No.17909/24
4. For hearing of main case.

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25.02.2025

Mr. Zahid Hussin, advocate for the petitioner.

Mr. Muhammad Daud Narejo, advocate for Respondent No.2 a/w Kamran Ali advocate.

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## J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- Respondents filed a suit for declaration, possession, mesne profits, damages, and permanent injunction with consequential reliefs in the court of VII Senior Civil Judge at Karachi East against the appellant seeking following reliefs:-

- i) To adjudge and declare that plaintiff is lawful owner of suit property viz. Plot No. 205, situated at Rustam Zikri Goath, Deh Safoora, admeasuring 240 square yards, Taluka East, Karachi as per details given in para-2 of the plaint.
- ii) To direct the defendants Nos. 5 to 15, their men, agents, attorneys, representatives to handover peaceful and vacant possession of suit property viz. Plot 205, situated at Rustam Zikri Goath, Deh Safoora, admeasuring 240 square yards, Taluka East, Karachi, to the plaintiff.
- iii) To direct the defendants Nos. 5 to 15 to pay Rs.30,000/= per month to the plaintiff, as mesne profit of suit property from the month of December, 2018 till satisfaction of decree, as the defendants have deprived the plaintiff from the fruit of his property.
- iv) To declare and adjudge that the suit property comes in Katchi Abadis.

- v) To direct the defendants Nos. 5 to 15 to pay special damages as well as general damages of Rs.50,00,000/= to the plaintiff as mentioned in plaint.
- vi) To grant permanent injunction in favour of the plaintiff, thereby restraining the defendants from harassing, pressurizing or issuing any threats to the plaintiff and they may be further directed not to give possession of suit property to anyone except the plaintiff. They may also be directed not to create third party interest over the suit property till decision of the suit.
- vii) Grant costs of the suit.

2. After service, respondents had filed an application u/o VII Rule 11 CPC for rejecting the plaint on the ground that the suit lacks cause of action and this court had already decided the same controversy in C.P.No.D-3902 of 2014 and C.P.No.D-5456 of 2016 reported as PLD 2020 Sindh 451. This application was allowed by the learned Senior Civil Judge vide order dated 15.09.2022 holding mainly that in Scheme No.36 of Gulistan-e-Jauhar belonging to KDA. There exists no Goth and possession of people there is illegal and their status is established as encroachers. Hence, the plaintiff had no locus standi to file the suit. Respondents filed a civil revision application against the said order, which vide impugned judgment dated 31.07.2024 has been allowed and learned revisional court has remanded the matter to the Senior Civil Judge to frame the issues, record evidence and decide the case on merits. Petitioner has challenged this order by means of this petition.

3. Learned counsel for the petitioner has argued that there exists no Goth regarding which plaintiffs/respondents are seeking a declaration to be the owner of property in. This court in 2020 in C.P.No.D-3902 of 2014 and C.P.No.D-5456 of 2016 has already declared that the scheme No.36 belongs to KDA and there is no Goth in it and the people residing there are nothing but encroachers. Learned counsel has next argued that against the order passed under order VII Rule 11 CPC revision application was not maintainable and the respondents ought to have filed an appeal. On the contrary, learned counsel for Respondents has supported the impugned order.

4. We have heard the parties and perused material available on record. The plaintiff had filed a suit seeking declaration about a specific property i.e. Plot No.205 situated at Rustam Zikri Goth, Deh Safoora, admeasuring 240 Sq.Yards Taluka East, Karachi. Whereas in the judgment of this court cited by learned counsel for the petitioner, there is no mention of such property or the name of the Goth. The said judgment does not reflect either that any

declaration in respect of said plot or eviction therefrom was sought by the petitioners, or that the same Goth has been declared as an encroachment. There is no declaration by any court of law in favour of the petitioner that he is the owner of the same specific property. Learned counsel for the petitioner has still emphasized that he is the owner of the said property and is in occupation thereof. To support it, he has referred to a document available at Page No.343. However, a look at the said document shows that it is in respect of a different plot, numbered as 340 and is in Block/Sector No.11 Gulistan-e-Jauhar, which prima-facie has nothing to do with the subject property regarding which the suit has been filed by the plaintiff.

5. All these loopholes show that the controversy is rooted in disputed facts and cannot be puzzled out until and unless the evidence is recorded. The claim of the petitioner is that he is the owner of the said property, on the contrary, the respondents have sought declaration in the suit claiming that they are the owners of the plot. The claim and counter claim made by the parties entails a detailed enquiry to arrive at a proper conclusion. Merely on the basis of a judgment of this Court which palpably does not engulf any detail about the subject property, plaintiff cannot be non-suited and thrown out of the court before his case is examined on merits. The respondents/plaintiff are hotely disputing the petitioner's claim of being owner of the said property by making a counter claim relating to owner of the subject property.

6. The said context has been properly reviewed by the revisional Court in Para Nos.10, 11 and 12 and the reasons justifying remand of the case are spot-on and cover the nexus of the controversy. The revisional court has rightly concluded that unless and until evidence is recorded, the issue cannot be decided. Further, para No.14 the ...

7. We, therefore, find no illegality in the impugned order. Even otherwise constitutional jurisdiction is discretionary in nature. Learned counsel for the petitioner has failed to point out any material illegality in the impugned order to justify exercise of discretion in his favour, not the least when all the points he has raised are not clear enough to be decided summarily without a survey into the merits of the respective claims. Further, the learned trial Court while allowing the application under order VII Rule 11 CPC has not given any reasons specifying as to how the judgment of this court in aforesaid Constitution Petitions cover the controversy and its observations that the Scheme No.36 belongs to KDA does not oust jurisdiction of a civil court to examine the case, and if, warranted, give a

declaration of ownership in favour of the plaintiff. The observations given by this court in the cited judgment are general in nature and does not tend to non-suit the respondents from invoking jurisdiction of the civil court for seeking adjudication in respect of their rights over the property. We, therefore, find no illegality to allow this petition. Consequently, the petition is dismissed.

**JUDGE**

**JUDGE**

Imran