

Respondent No.1 who had already filed suit No.222/1989 against the applicant for declaration and possession of the suit property as owner by virtue of allotment order dated **27.03.1962**, issued in his favour by KDA (Respondent No.2). The allotment was matured into a registered lease dated **18.2.1987**. The Respondent in his suit No.222/89 alleged that the applicant herein was his tenant in the suit property and he is a constant defaulter in payment of rent. Therefore, respondent No.1 had filed a rent case No.2650/1980. However, it was dismissed by learned Rent Controller holding that there was no relationship of landlord and tenant between the parties. Respondent No.1 filed FRA No.762/1984, but it was withdrawn with permission to file suit for possession if permissible under the law. Respondent No.1 in his plaint averred that the applicant was occupying the suit property illegally and without paying the rent to him despite the fact he has demanded the same and entitle to possess of suit property as owner.

He has prayed for the following reliefs:-

- i) For declaration that the plaintiff is the owner of quarter No.178/35-D, Korangi Township by virtue of Allotment No.63, issued by the Settlement Department in the Plaintiff's favour.
- ii) For Judgment and Decree direction the handing over possession of the said plot No.178/35-I by the defendant in favour of the Plaintiff be issued.
- iii) Cost of the suit.
- iv) Any other relief or relieves which this Hon'ble Court may deems fit and proper in the circumstances of the case.

3. The applicant in the year **1997**, after 9 years of pendency of suit filed by respondent No.1, filed Suit No.744/1997 for declaration & cancellation of lease in favour of Respondent No.1. He claimed that he has several times approached the KDA authorities for regularization of suit property

but he was being kept on assurance that his case will be sent to Head office for necessary orders. In his suit the applicant averred that all of sudden he received notice from the small causes court and through the said notice it transpired that Respondent No.1 has claimed himself to be the owner and landlord of the suit property. In fact in plaint of his suit, he has reiterated his defence from Suit No.222/1989 filed by Respondent No.1. The applicant in his Suit No.744/1997 prayed for the following relief(s).

- i) To declare that the survey slip, allotment order and lease Reg. No.704 dated 18.02.1987 in respect of quarter No.178 Area 25-B, Korangi Township, Karachi in the name of the defendant No.2 issued by the defendant No.1 is collusive, illegal, arbitrary and against the KDA and Govt. policies and such is of no legal effect and as such does not confer any title in the name of the defendant No.2 and the same is liable to be cancelled and consequently the same be cancelled.
- ii) To declare that the plaintiff is entitled for the regularization allotment and lease of the quarter No.178 Area 35-B Korangi Township, Karachi and as such the defendant No.1 be directed to cancel the allotment and in the name of the defendant No.2 and to regularize, allotment and lease the aforesaid quarter in the name of plaintiff.
- iii) Any other relief or relieves which this Hon'ble Court fit and proper in the circumstances of the case.
- iv) Cost of the suit.

4. Respondents No.1 & 2 filed their written statement and denied the allegations of the applicant. Respondent No.2 did not contest as according to them the dispute is between the private parties and no relief was sought by either of the applicant and Respondent No.1 in their pleading against the KDA.

5. The record shows that suit No.229/1989 filed by Respondent No.1 was decreed by judgment and decree dated **28.8.1999**. However, on appeal

filed by the present applicant bearing Civil Appeal No.144/1999 and the decree dated 28.8.1999 was set aside by the Appellate Court and the case was remanded to the trial Court by Judgment dated **18.8.2000** with direction for a decision on the issues framed by the appellant. The issues framed by the Appellate Court were as under:-

- i. Whether the lease deed of the suit property was allotted in favour of the respondent No.1 (Plaintiff Nazeer Ahmed) by the Respondent No.2 (KDA) during the Pendency of litigation between the parties in the courts of law and without consideration the pending application of the appellant for allotment? If yes, what will be its effect.
- ii. What should the decree be?

The remand order suggests that the appellate Court was impressed by the pendency of Suit No.744/1997 against Respondent No.1 the decree holder of Suit No.222/1989 and, therefore, the decree of respondent's suit was set-aside and the case was remanded for decision on the issues framed by the appellate Court. After remand the two suits proceeded jointly and common evidence was adduced. Respondent No.1 filed combined affidavit-in-evidence and produced documents at Ex.B, C-1 to C-9, D and E. The applicant has also filed his joint affidavit-in-evidence and produced documents at Ex.D-1 to D-20.

6. Learned trial Court after hearing the counsel for the parties, passed consolidated judgment dated **30.10.2002** whereby Suit No.222/1989 was again decreed and Suit No.744/1997 was dismissed. The applicant preferred two separate appeals against the consolidated judgment bearing Civil Appeal Nos. 281 & 282 of 2002. Both appeals were dismissed by IVth Addl. Session Judge, East, Karachi by judgment dated **29.05.2004**. The

applicant against the concurrent findings of facts presented these Revision Applications on **04.09.2004**.

7. I have gone through the record and heard learned counsel for the parties who has also filed written synopsis. The last 12 years' diaries of this Court show that learned counsel for the applicant after presentation of these revisions on **04.09.2004** made all efforts to delay this case. The impugned order was suspended on **29.4.2004** and thereafter on three consecutive dates he did not turn up. On **28.8.2006** he was again not well. On **18.9.2006** somebody died in the family of Mr. S. Zahir Hussain Chishti advocate, so he did not attend the Court. After two and half year on **10.11.2006** the revisions were dismissed for non-prosecution for the **first** time. He filed an application for restoration bearing CMA No.1091/2007. On **11.3.2008** restoration was allowed on no objection from the other side. Then again Mr. Chishti remained absent on two subsequent dates and his client appeared for seeking dates. Then again on **21.5.2009** after 05 years these revisions were **second** time dismissed for non-prosecution. On **05.9.2009** he again filed application for restoration bearing CMA No.2813/2009 even **second** restoration application was dismissed on **28.4.2010**. This time after delay of two years on **7.8.2012** he filed an application for restoration of his dismissed restoration application. Again after filing of belated application, the learned counsel for the applicant remained absent on **10.10.2013**, **5.12.2013**, **24.12.2013**. Then on **2.4.2014** he filed an application to bring L.R's on record for the first time during pendency of restoration application for the restoration of revision application. In already dismissed revision application and dismissed

application for restoration of restoration application, he filed application bearing **CMA No.1033/2015** for injunction against operation of writ of possession issued by the executing Court in Execution Application No. **16/2004** and got the order of writ suspended till **16.3.2015**. On **24.3.2015** he got the case adjourned by consent to **15.4.2015** to be taken up at 11:00 a.m and on **15.4.2015** applicant sought time on the ground Mr. Chishti is in Larkana. The case was adjourned to **30.4.2015** and on **30.4.2015** he remained absent. On **29.4.2016** he again requested for time, when all the pending applications were allowed without touching the merits on the condition the Revisions will be heard and decided on merits on **30.08.2016** at 10.00 a.m. . But on **30.8.2016** he again sought time and the case was adjourned on cost of Rs.10,000/- to **7.9.2016**. On **7.9.2016** he did not assist the court on the ground that he is hard of hearing, therefore, he was given three days' time to file written submission, which he has filed.

8. Learned counsel for the applicant during the course of argument and in his written submission has not pointed out a single misreading and non-reading of evidence by the two Courts below. His only contention that the lease deed was executed by KDA in favour of Respondent No.1 in 1987 when there was litigation and FRA No.762/1984 was pending before the High Court and therefore, it was hit by **Section 52** of the Transfer of Property Act, 1882. The submission of learned counsel is misconceived and contrary to law. He has misquoted the provision of **Section 52** of the Transfer of Property Act, 1882 in his written notes. He has quoted un-amended provision to take the advantage by misguiding the Court. The Sindh Amendment in **Section 52** of the Transfer of Property Act, 1882

was incorporated way back in 1940 and it has not been referred to by the learned counsel, which is reads as follows :-

[Sind Amendment- Section 52 of the Transfer of Property Act, 1882 shall be re-numbered as sub-section (1) of Section 52 of the said Act, and

(i) In sub-section (1) so re-numbered, after the word “question”, the words and figure

“If a notice of the pendency of such suit or proceeding is registered under section 18 of the Registration Act, 1908”,

shall be inserted.

(ii) after the said sub-section (1) so re-numbered the following shall be inserted, namely :-

“(2) Every notice of pendency of a suit or a proceeding referred to in sub-section (1) shall contain the following particulars, namely :-

(a) the name and address of the owner of immovable property or other person whose right to the immovable property is in question;

(b) the description of the immovable property the right to which is in question;

(c) the court in which the suit or proceeding is pending; the nature and title of the suit or proceeding; and

(d) the date on which the suit or proceeding was instituted.”]

Admittedly the applicant never got the pendency of F.R.A. No. 762/1984 registered, therefore, the Registrar of Properties was justified in admitting the execution of transfer deed. No other ground was urged in the written submission. The applicant has stretch litigation for over 28 years in respect of the property in which his own occupation is without any lawful entitlement. He spent more than 12 years in this Court to perpetuate his illegal possession in the name of pendency of these repeatedly dismissed

revision against the concurrent finding for his eviction from the suit property.

9. On merit, too, his own suit for cancellation of lease deed dated **18.2.1987** filed in **1997** was hopelessly time barred. It was not only time barred it was also not maintainable in terms of **Section 42** of the Specific Relief Act, 1877 since the applicant has no legal character or any right as to the suit property. He has not prayed for declaration of ownership. In fact he had no title and he has sought declaration of his entitlement of lease in his favour for the first time in **1997** after ten years of the lease of suit property in favour of Respondent No. 1 by Respondent No. 2 (KDA), on the basis of allotment order dated **27.3.1962**, Survey Slip dated **25.2.1962**, payment challan dated **28.11.1979** etc. As against these admitted document showing entitlement of Respondent which were confirmed as lawful document by KDA in its evidence, the applicant has not produced any document which could have been considered by the KDA for grant of lease to him. The applicant in the plaint of his suit No. 744/1997 claimed his entitlement for lease on the ground that he has occupied the suit property in **1961** when it was lying vacant. By occupying a property which was lying vacant, one does not acquire any right in such property, particularly when the said property, as in this case, belongs to the government institution. Such property has to be disposed of in accordance with law. The applicant has made first ever application to KDA in 1980 without disclosing that under what circumstances, he entered into property and despite the fact that he has been facing after rent case instituted against him by Respondent No. 1, who hold official allotment order of the

suit property issued by the competent authority. The other document such as certificate from Justice of Peace issued in **1980** and the electricity bills of **1996** etc. etc. do not confer any title better than the allotment issued by the competent authority in **1962** and the subsequent registered lease deed by the competent authority. The crux of the above discussion is that the claim of applicant was frivolous and as discussed in para-7 above, he is also guilty of abusing the process of court to perpetuate his illegal occupation over the suit property for more than **25** years.

10. In view of the above facts and particularly, the conduct of counsel for the applicant narrated in Para-7 above, these revisions are dismissed with cost of **Rs.50,000/-** each to be paid by the applicant to Respondent No. 1 along with peaceful possession of the suit property within 30 days from the date of announcement of this judgment. The executing Court is already seized of **Execution No. 16/2004**. Even writ of possession was issued on **11.02.2015**. Therefore in case the suit property is not vacated by the applicants within thirty days, the executing Court should issue fresh writ of possession with permission to break open the locks and police aid without further notice to the applicant. The cost of Rs.50,000/= in each Revision Application should also be deposited by the applicant with the Nazir of trial Court within 30 days. In case of non-payment of cost, the executing Court already seized of execution should recover the same as recovery of money decree in accordance with law.

JUDGE