



Ferozpurwala having leasehold rights since **1915**. He contended that in the year 1981 when applicant tried to demolish the colony, respondent No.1 filed suit No.696/1981 for declaration and permanent injunction against the applicant but later on it was withdrawn by him. He further averred that during the period of 49 years, the residents tried their level best to get the colony regularized and the concerned authorities have filed comments in favour of the residents and the matter was in progress. According to respondent No.1, he and the other residents residing in the colony constructed their katcha/pucca houses and during 49 years the owners of the land never tried to dispossess the residents. On the contrary, he averred that the owners visited the area and assured them that they would never dispossess the poor residents from the land. Therefore, the KMC or any other authority have no right to dispossess respondent No1 from the said land. Respondent No.2 was an MPA having enmity with the residents due to non-cooperation in the election, he, therefore, convinced the applicant, who came without any prior notice or intimation on 09.5.1997 and had forcibly and illegally demolished two houses and 13 shops and took away the valuable/belongings. Therefore, the applicant filed suit for Declaration and Permanent Injunction and damages of Rupees Ten Lacs. He prayed for judgment and decree as under:-

- a. A decree of Rs.10 Lacs towards damages may be passed in favour of plaintiff against the defendant No.1.
- b. Declaration that the Plots Nos.108/109, Garden West, Karachi are not belong to defendants.
- c. Declaration that the plaintiff has got possessory rights on plots Nos.108/109, Ghulam Hussain colony, Ghulam Hussain Qasim Road, Garden, West, Karachi as the plaintiff and other residents of the colony are in possession of the plots since 49 years and have constructed Kacha/Pucca houses and shops over the plots

and the plaintiff and the residents are owners of the said plots by way of possessory rights.

- d. Permanent Injunction by restraining the defendants, their men, agents, servants or any other person/ persons working under them from carrying on constructions works on plots Nos. 108/109, Ghulam Hussain colony, Ghulam Hussain Qasim Road, Garden, West, Karachi.
- e. Cost of the suit.
- f. Any other relief which this Hon'ble Court may deem fit and proper.

3. Applicant through their Director Admn filed written statement and denied all the allegations leveled in the plaint on the ground that the respondent No.1 raised unauthorized structure on portion of a road abutting Plot No.62, therefore, in order to safeguard the road, municipal land/property had removed the temporary encroachment. The claim of the respondent No.1 is totally false and incorrect. Respondent No.2 also filed written statement whereby denying the contents of the plaint on the ground that he has not demolished any building. Learned trial court from the pleadings of the parties framed the following issues:-

1. Whether the Plot No.108 and 109 Garden West, Ghulam Husain Qasim Road, Karachi are owned by the Plaintiff?
2. Whether the process for regularization of the Ghulam Hussain Colony is under progress?
3. Whether the Defendants illegally and forcibly demolished the shops of the Plaintiff and caused damages of Rs.10,00,000/-?
4. What should the decree be?

4. The suit was originally filed before the High Court and the evidence was recorded by the commissioner for recording the evidence. Respondent No.1 had filed his own affidavit-in-evidence as PW-1 and produced witnesses namely Salahuddin and Mahmood

Ahmed as PW-2 and PW-3. The applicant examined Assistant District Officer, (Land Department) CDGK namely Syed Abu Talib Shah. Witnesses of both sides were subjected to cross-examination. Subsequently the case was transferred to the District Court on change in pecuniary jurisdiction of High Court.

5. The suit filed by Respondent No.1 was decreed and the appeal preferred by the applicant against the said decree has been dismissed by the appellate court and this Revision is directed against the concurrent findings.

6. I have heard learned counsel for the parties and perused the record.

7. The counsel for the applicant has contended that the trial Court has granted the decree of ownership of the property bearing Plot No.108 and 109 by decreeing the suit as prayed and at the same time decided issue No.2 in affirmative that the regularization of Ghulam Hussain Colony is under process. When issue No.2 was decided in affirmative then how issue No.1 that respondent No.1 could be declared owner of the suit property by the Court before the process of regularization is completed. Therefore, the Hon'ble Court had erred on fact and in law while declaring that respondent No.1 is owner of plot Nos.108 and 109, Ghulam Hussain Colony, Garden West, Karachi. The finding of issue No.3 regarding damages was also without supporting evidence to the effect that the plaintiff has suffered damage of Rs.10,00,000/-. The figure was imaginary and in fact no evidence has been produced to quantify the damage. Therefore, the suit ought to have been dismissed instead of have been decreed as prayed. It was only the case of removal of encroachment from the footpath of the area. The counsel contended that the learned

trial Court was persuaded by the findings of trial Court on an earlier suit which was filed by respondent No.1 and subsequently withdrawn by him without permission to file fresh suit. In the said suit Respondent No.1 has sought declaration and injunction and once it was not granted, he was not entitled to file a fresh suit for the same relief.

8. The counsel for respondent No.1, in reply, has contended that the learned Court has applied the "rule of thumb" for determination of damages and therefore, the decree of Rs.10,00,000/- which was modified by the appellate Court to Rs.5,00,000/- cannot be disturbed in Revision. The other ground taken by him in his arguments was that the KMC was estopped from taking any action against Respondent No.1 in view of compromise decree in suit No.696/1981.

9. On careful examination of record and evidence, I noticed that in para-9 of the plaint the applicant has mentioned that only one shop of the applicant was demolished. He has not mentioned his two houses. The other shops were owned by different persons namely; Ikramuddin, Saleemuddin, Muhammad Saeed, Malik Dad, Yamin, Muhammad Sarwar Khan, Saleem Khan, Muhammad Younus, Muhammad Ayub and Muhammad Anwar. But none of the persons mentioned in para-9 of the plaint have lodged even formal complaint against the applicant for illegal demolition of their shops. The contention of respondent's counsel that applicants were estopped under **Article 114** of the Qanun-e-Shahadat Order, 1984 can be appreciated by referring to the record of suit No.696/1981. The prayer clause in the earlier suit No.696/1981 filed by respondent No.1 which was subsequently withdrawn was as follows:-

- (i) To declare that the plaintiff's SHO is on private land and the defendant has no jurisdiction to interfere in peaceful possession and occupation of the plaintiff over the shop **NO:G.R.V.H.F.42 measuring 144 Sq. Feet on plot No:108-109**, Ghulam Hussain Kassim Road, Garden West, Karachi.
- (ii) To grant permanent injunction restraining the defendants, his employees, servants, agents, any other person or persons working and acting on his behalf from interfering peaceful possession of the plaintiff over the shop No.G.R.V.H.F.42 measuring 144 sq. ft. on plot No.108-109, Ghulam Hussain Kassim Road, Garden West, Karachi.
- (iii) Costs of the suit.
- (iv) Any relief which this Hon'ble Court may deem fit and proper in the circumstances of the case.

The application of withdrawal of suit No.696/1981 is at page No.107 shows that the applicant herein has allegedly that he withdrew the suit since statement has been made by KMC that the KMC has no intention to dispossess the plaintiff (Respondent No.1) therefrom and the property does not belong to KMC. However, such statement was not placed on record before the Court which entertained suit No.696/1981 nor it was filed with the subsequent suit No.1024/1997. In earlier suit, the applicant claimed only **144 sq. ft.** space on the plot No.108-109 and in the present suit he claimed and obtained decree of entire plot No.108-109, Ghulam Hussain Colony. In 1981 he has withdrawn his claim of **144 sq. ft.** and in 1997 under the cover of action by KMC he obtained declaration of possessory right for entire plot No.108-109, Garden West, Karachi pending the so-called process of regularization of the colony before the competent authority.

10. The applicant's evidence and record has not been properly appreciated by the two courts below. The applicant himself has filed annexure A to I with the plaint which include documents about

regularization of plot No.108/109. Annexure E-1 at page-111 of file shows that in **1993** regularization of **52** Jhuges was under consideration and there was no request for regularization of shops and Pucca houses. If that was the situation in 1993 as per plaint, then the claim of the applicant that he was residing and running shops for last 49 years was on the face of it false and the Court have failed to appreciate the record filed by Respondent No.1 with plaint. Even in cross-examination his own witness Mahboob Ahmed (PW-3), whose name was not mentioned in the list of the affectees of demolition by applicant in para-9 of plaint, has categorically stated *“that plot No.108 and 109 are owned by some Moeez and others”*. Another witness Salahuddin (PW-2) categorically contradicted the plaint when he stated in cross-examination that *“there are about 60/70 houses in the locality on Plots No.108 and 109, **Islamuddin has two houses and six shops, which have been demolished but houses and shops of other persons are there”***. However, in plaint, Respondent No.1 himself has given names of owners of several other shops which were allegedly demolished by the applicant and he has failed to mention his two demolished houses and their value in the plaint. Islamuddin in his own evidence claimed to be living in the property for over 55 years on the basis of site plan produced by him as Ex.A-1. However, when confronted with it, he admitted that site plan does not bear signature of any competent authority. All the bills produced by him were for the period after October 1997. Several documents which he produced did not belong to him. He admitted in cross-examination that annexures **B-1 to B-6** (which are P.T-I of 10 different properties) are not in his name and annexure **B-8 to B-16-A** are challans of property tax and these annexures are also not in his name. He conceded that there are no documents either of ownership

or approval of building plans. He admitted that only one shop is in his name and six shops are in the name of his children. I believe his children are not over fifty (50) years of age to claim possessory right. Even otherwise, owners of the other shops including his own children have neither authorized him to file suit for damages nor they have come in the witness box to claim that any of their shop has been illegally demolished. In the cross-examination he has admitted that:

“It is correct that widening of Roads and other amenities is the work of KMC. It is also correct that in case someone is sitting on the road he has to be dealt with by the KMC-----.”

The witness of KMC has categorically stated that the *“Land in possession of the plaintiff (Respondent No.1) is the encroachment on the road side and footpath”*.

11. The contention of the counsel for respondent No.1 that under **Article 146-A** of Qanun-e-Shahadat Order, 1984, the encroachment cannot be removed by the authorities if it is more than 30 years old is misconceived in the given facts of the case. Respondent No.1 has not been able to establish the portion of encroachment on road removed by the KMC was 30 years old. All the documents produced by him were issued in 1997 or around. Ghulam Hussain Colony on Plot No.108-109, Garden West, Karachi is under consideration for regularization in favour of occupants and respondent No.1 has encroached more than **144 sq. ft.** land as per his own claim in earlier suit and included his children as occupiers of different portions of the land on Ghulam Hussain Qasim Road and even managed P.T-I from authorities concerned in favour of his children. It is settled law that P.T-I is not title document nor on the basis of P.T-I ownership can be claimed. In coming to this conclusion I find guidance from the judgment reported as *Muzaffar Khan v/s Sanchi Khan and another*



**(2007 SCMR 181).** It has not come on record that owners of the shops claimed to have been demolished by the KMC were sitting there for more than 30 years and therefore, they have not shown any grievance against anti-encroachment drive.

12. The contention of the learned counsel for respondent No.1 that the Courts below have applied the “rule of thumb” for awarding damages to the tune of Rs.5,00,000/- is totally misconceived in the given facts of the case. The two Courts below have failed to appreciate that the “rule of thumb” is applicable for awarding damages only when the aggrieved party has claimed suffering from mental torture, agony or other injuries. When the nature of damages is such that if proved and there is no yardstick or definite principle for assessing damages, the Court applies the “rule of thumb” for determining the amount to be awarded keeping in view the evidence produced to prove the nature, extent and magnitude of such suffering. In the plaint and even in evidence I do not find even word “mental torture” or “psychological shock” etc. suffered by respondent No.1 as result of an action of the applicant. The “Rule of thumb”, if at all, it was applied by the Court below in awarding damages was incorrect appreciation of the “Rule” and the law laid down by the superior Court for its application. The “rule of thumb” does not apply in awarding the damages of general nature. In the case in hand respondent No.1 himself in para-9 has claimed damages to the tune of Rs.10,00,000/- on account of demolition of his shop. The burden of claim of Rs.10,00,000/- as damages on account of demolition of ONE shop of respondent No.1 was on the respondent which he was required to discharge through positive evidence like the market value of the property demolished by the applicant etc. Respondent No.1 has failed to even mention the value of the properties allegedly taken

away by the applicant at the time of demolishing the property of respondent No.1. Since there was no evidence to quantify the damages, if any, the award of damages to respondent No.1 was devoid of any legal and factual basis.

12. The Courts below have not read evidence and perused the record in its true perspective. The plaint was ambiguous. In fact the suit was not maintainable at least to the extent of prayer clause “b” and “e”. **Section 42** of the Specific Relief Act, 1877 does not envisage negative declaration and/or a declaration of general nature in respect of an immovable property in favour of unidentified persons who are not even before the Court.

13. The crux of the above discussion is that the findings of two Courts below are suffering not only from misreading/non-reading of evidence and record but these are also contrary to the relevant law. Consequently, this Revision is allowed, the impugned orders are set aside. The suit filed by Respondent No.1 is dismissed.

**J U D G E**

Karachi  
Dated: 02.12.2016.

Ayaz Gul