

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A No. 52 / 2009

Date

Order with signature of Judge

Present: **Mr. Justice Nazar Akbar**

1. For hearing of Main Case.
2. For hearing of CMA No.1311/2009 (U/s.151 CPC)

03.11.2016

Mr. Iftikhar Javed Qazi, advocate for the Applicant.
Mr. Muhammad Raghil Baqi, advocate for Respondent No.1.

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NAZAR AKBAR, J:- This revision is directed against the concurrent findings. The first finding against the applicant was dismissal of his suit No. 1332/1986 by trial Court on 25.7.1990 and second finding was dismissal of his Civil Appeal No. 54/1990 by the appellate court on 19.2.2009.

2. Briefly stated the applicant has filed suit for declaration and injunction in respect of property bearing No.D-121 situated at Hanifabad Sector 10, Orangi Town, Karachi without title documents. The Respondents contested the suit and on their application under **Order VII Rule 11 CPC** the plaint was rejected by order dated **24.9.1986**. The applicant preferred appeal against rejection of plaint and the appellate Court in Civil Appeal No. 12/1987 converted the suit for declaration and injunction into a suit for recovery of possession under **Section 9** of the Specific Relief Act, 1877 (SRA, 1877) in the following terms.

The Plaintiff/appellant has filed this suit within six months of his alleged dispossession. Probably he can his (seek) reliefs of declaration and injunction and continue the suit U/s.9 of the Act. The Plaintiff has not mentioned the section under which he has filed the suit when the Plaintiff wants possession under Section 9 of the Act and not under the ordinary law on the claim(s) based on title, probably the relief may be granted. The mere fact that the Plaintiff has

referred to his claims of ownership in the plaint, would not make any difference. That would be matter of history not material or relevant for the purpose of suit U/s.9 of the Act. For the reasons stated above. I, accept this appeal, set aside the impugned order and remand the case to the court below for disposal, according to law. Parties are directed to appear before the trial court on 11.3.1987.

The applicant's counsel did not prefer any appeal against the conversion of this suit into a suit under Section 9 of SRA, 1877. Even today he has argued that he had the possessory right in respect of the suit property and may be for this very argument the first appellate Court in Civil Appeal No.12/1987 has allowed him to contest recovery of possession of suit property since suit has been filed within six months of the alleged date of dispossession by the Respondents. Both the parties concede that suit was therefore, a suit under **Section 9** of the SRA, 1877, which reads as follow:-

9. Suit by person dispossessed by immovable property.--If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall brought against the Federal Government or any Provincial Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

3. The law has specifically barred an appeal against the dismissal of suit under **Section 9** of the SRA, 1877. Since appeal was not maintainable as specifically barred by law, the revision against the impugned appellate order of dismissal of appeal is obviously not maintainable. The revisional court cannot find any jurisdictional

defect in dismissal of an appeal by a Court of law when the appeal is specifically based by law. Learned counsel for the applicant has contended that revision lies against the said order. However, he has not elaborated his contention. In my humble view his contention is misconceived. The revision lies when **“no appeal lies”** but in the case of an order / decree under **Section 9** of SRA, 1877, the appeal has been specifically barred. The phrase **“no appeal lies”** in **Section 115 CPC** cannot be equated with the phrase **“No appeal shall lie”** in **Section 9** of SRA, 1877. The legislative intention of barring an appeal is re-enforced in the next sentence that **“nor shall any review of any such order or decree be allowed”** cannot be ignored either. This is not any injustice to a party against whom the verdict is given by the court nor it is even against the recently introduced **Article 10-A** of the constitution of the Islamic Republic of Pakistan, 1973 for two reasons. Firstly, the right and entitlement of the parties in suit property is not determined by the Court under **Section 9 of SRA, 1877** in favour of either party. Secondly, the remedy is also provided to the lawful claimant of suit property in the same **Section 9** of SRA, 1877 by allowing him to file a civil suit for his title and recovery of possession in the following terms:-

“Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

4. The learned counsel for the Respondent has pointed out that the learned appellate Court in the impugned appellate order has referred and relied on the judgment of Supreme Court in the case reported as Late Mst. Majeedan through LRs and another..Vs.. Late Muhammad Naseem through LRs and another (**2001 SCMR 345**). The Hon’ble Supreme Court in the said judgment has examined several judgment from Pakistan and Indian Supreme Court and

concluded that suit under **Section 9 CPC** can be filed even against the true owner of the property and revision against an order under **Section 9 SRA, 1877** would be generally declined though remedy of revision is not excluded altogether. Relevant observation of the Hon'ble Supreme Court from side note B, C and D are reproduced below:-

Side note B:-

It is well-established legal position that "Title was not material in a suit falling under section 9 and any person who had been dispossessed, otherwise than in due course of law, could, without pleading or proving title, seek to be reinducted into possession, **even though such a relief was sought against true owner of property himself**". (Sobha v. Ram Phal, AIR 1957 All, 394; Azam Khan v. The State of Pakistan and another, PLD 1957 Kar. 892; Saddiq Ahmed v. Estate Officer and another PLD 1957 Kar. 887; Riaz and another v. Razi Muhammad PLD 1979 Kar. 227 and Supercon Ltd. v. Eastern Construction Ltd., 1987 CLC 156 ref.) Reference may here be made to the case reported as Ganesh and another v. Dasso and another (AIR 1927 All. 669), where while construing the scope of section 9 of the Specific Relief Act it was observed:-

In suits under section 9, Specific Relief Act, **the Court does not try in question of title and, therefore, the Defendant cannot resist the Plaintiff's suit on the ground of his being the rightful owner**. No matter how good the title of the dispossession, the person previously in possession is entitled to a decree for possession in suit under section 9, Specific Relief Act, provided he brings, the suit within six months of the date of his dispossession." (*Emphasis provided*)

Having observed as above the learned Court held:-

"This is not the case in suits for possession brought more than six months after the dispossession of the Plaintiff. In such suits Courts have to try question of title and, therefore, it is open to a defendant notwithstanding the previous possession of the Plaintiff to resist the claim for possession by setting up and proving a title in himself. In other words, title is no defence in a suit under Section 9, Specific Relief Act, but affords a conclusive defence in other suit". (Messrs A.R. Muhammad Siddique v. The Saife High School Board (1983 CLC 507).

Side note C:-

It is well settled by now that “A revision lies to the High Court under section 115 of the Civil Procedure Code in respect of an order or decree made in a suit under section 9 of the Specific Relief Act (1983 PSC 158 + PLD 1964 Pesh. 157 + 16 DLR (W.P) 164 + PLD 1950 Pesh. 35 + PLD 1952 Dacca 89. But as in a suit under section 9 an aggrieved party can institute suit on the basis of title, **interference in revision, has been generally declined even though section 9 does not exclude the remedy by way of revision altogether.** (*Emphasis provided*)

Side note D:-

In the light of foregoing discussion, we are, of the considered opinion that no illegality or infirmity whatsoever has been committed either by the trial or revisional Court calling for interference. It is worth mentioning that interference in a revision in a particular case is justified if the case may have been disposed of on an obvious, misapprehension as to the legal position, or where there is some defect of jurisdiction. But where no exceptional circumstances are brought out and the only contention raised is that the finding on a question of fact is not based on adequate evidence or is erroneous, interference would not be justified. It would be going against the spirit of section 9 of the Specific Relief Act and in effect would be to convert a petition of revision into an appeal which the law expressly disallow.

5. In view of the above discussion on facts, law and the judgment of the Hon’ble Supreme Court this revision is dismissed.

JUDGE