

Civil Revision Application No.170 of 2009

Present: Mr. Justice Nazar Akbar

Decided on : 02.12.2016

2. Briefly stated the facts of the case are that respondents No.1 and 2 have filed a suit No.37/1999 for Declaration, Possession and Permanent Injunction against the applicant. The respondents are owners of plot No.2C-44 and 2C-45 measuring 80 sq yds each, situated in Survey No.164, Deh Safooran Tapo Songal Taluka and District Malir (the suit property). It was purchased by them from one Khushhal Khan, who was attorney of Muhammad Moria and others, by registered sale deed dated **28.12.1978**. The said attorney delivered peaceful possession of the suit property to respondents No.1 and 2 and he has also issued a certificate of possession but after some time, the said attorney tried to disturb the peaceful

possession of respondents No.1 and 2 and issued threats to them. Therefore, they filed civil suit No.1202/1985 and 1203/1985 before VIII Civil Judge, East Karachi against Khushhal Khan. The said suit was decreed and they raised boundary wall on the suit property at that time. Thereafter one Rahim Bux in the year 1985 forcibly trespassed into the suit property and claimed that he is owner of plot No.2-C/69 and filed a civil suit bearing **No.786/1985** for permanent injunction against respondents No.1 and 2 which was also dismissed. The said Rahim Bux was facing a complaint before the SDM which was filed by the respondents and during the proceedings before the learned SDM, the said Rahim Bux had filed a civil **suit No.778/1993**, which was subsequently renumbered as suit **No.602/1996** and the said suit was also dismissed by order dated **01.9.1997** by the trial Court. After dismissal of suit of Rahim Bux, the present applicant trespassed into the suit property and claimed that the suit property belong to him. Therefore, respondents No.1 and 2 filed Civil **Suit No.37/1999** for Declaration, Possession and Permanent Injunction before the Senior Civil Judge, Malir and prayed for judgment and decree as under:-

1. Declaration that the defendant **Sher Muhammad** is in possession of Plot No.2-C/44 measuring 80 Sq. Yds. and Plot No.2-C/45 to the extent of 60 sq. yds owned by the plaintiff No.1 & 2 respectively situated in Survey No.164. Deh Safooran, Tapo Songal Taluka and District Malir having their possession illegally unauthorized without due course of law on the basis of some forged/tempered documents.
2. Declaration that 20 sq yds from plot No.2-C/45, situated in survey No.164, Deh Safooran, Tapo Songal Taluka and Distreict Malir is in illegal and unauthorized possession of **Rafique** s/o Jalaluddin the Defendant No.2.
3. Declaration that the plaintiff No.1 & 2 are the owners of plot No.2-C/44 and 2-C/45 both total measuring 160 sq. Yds. situated in Deh Safooran Tapo Songal Taluka and District Malir, Karachi, by virtue of their sale deed.

4. Declaration that the defendants are in an illegal possession over plot No.2-C/45 both measuring 160 sq yds situated in Deh Safooran Tapo Songal Taluka and District Malir Karachi **on the basis of tempered lease deed** which is also not in their names and that the plots in their possession are not the same is claiming by them to be plot No.2-C/69 and 2-C/68 of Survey No.164, Deh Safooran, Tapo Songal, District Malir, Karachi and lease deed if any being tempered one having no force in the eye of law.

5. Directed the defendants to vacate the plot No.2-C/44 and 2-C/45 measuring 80 sq yds. each (i.e to the extent of 160 sq yds.) situated in Survey No.164, Deh Safooran, Tapo Songal, Taluka and District Malir, Karachi and handover the possession to the plaintiff.

6. Permanent Injunction restraining the defendant from selling, transferring, parting with possession of Plot No.2-C/44 and 2-C/45 both total measuring 160 sq. yds, situated in Deh Safooran, Tapo Songal, Taluka & District Malir in favour of anybody else except the plaintiffs in any manner whatsoever in nature.

7. The cost.

8. Any other relief.

3. The Applicant filed his written statement in which he stated that he is not in possession of the suit property of respondents No.1 and 2. Viz Plot No.2-C/44 and Plot No.2-C/45. They claimed that they are in possession of Plot No.2-C/68 and 2-C/89 for the last about 20 years. The Applicant claimed that plot occupied by him was firstly leased in favour of one Mst. Zubeda and later on one Ghulam Nabi from whom father of the applicant has purchased and after his death his legal heir namely Sher Muhammad (applicant) is in possession. It was further contended that the total claim of respondents No.1 and 2 of two plots in all was 160 sq yds, whereas the area in possession of the plot of respondents No.1 and 2 was 170 sq yds. which itself indicates that the properties of respondents No.1 and 2 are different from the properties of the applicant. Learned trial court from the pleadings of the parties framed the following issues:-

1. Whether the plaintiffs are bonafide owner of the suit property i.e plot No.2-C/44 and 2-C/45 to the extent of 160 sq. yards?
2. Whether the defendants are trespasser and they illegally in possession at suit property?
3. Whether the suit is barred by law?
4. Whether the suit is under valued?
5. Whether the suit is not maintainable?
6. Whether the plaintiffs are entitled for relief claimed?
7. What should the order be?

4. Both the parties have examined themselves and their witnesses. The suit filed by the Respondents No.1 and 2 was decreed and the appeal preferred against the said order was dismissed by the appellate court and this Revision is directed against the concurrent findings of the facts.

5. I have heard learned counsel for the applicant. I have also perused the record.

6. Learned counsel for the applicant argued that an application was filed by the applicant for framing additional issue on the point of limitation and that application was allowed. In spite of orders, no additional specific issue on the point of limitation was framed and suit of respondent No.1 (Suit No.37/1999) was decreed, although there was issue No.3 that whether the suit was barred by law. The learned trial court had not given any finding on the point of limitation. He further argued that respondent No.1 has claimed to be owner of a different number plot i.e Plot No.2-C/44 and 2-C/45, Deh Safooran, Tapo Songal, Taluka and District Malir and his title documents were in respect of the said different plots, whereas the applicant was owner and in physical possession of different plot

bearing Plot No.69/2-C, Deh Safooran, then in Moria Goth, near Star Gate, District Malir, Karachi.

7. I have heard learned counsel for the parties and perused evidence, as well as the record of concurrent findings.

8. The record shows that the only issue between applicant and Respondents was whether respondent was owner of suit property and whether it is different or the same, which is claimed by the applicant. Both the Courts below from evidence have categorically come to the conclusion that there was no plot No.2-C/68 and 2-C/69 and there was actual Plot No.2-C/44 and 2-C/45 as claimed by the Respondents. The evidence discussed by both the Courts was against the claim of applicants. In fact the burden was on the applicant to establish that he is sitting on plot No.2-C/69 and not on 2-C/44 & 2-C/45. In his cross-examination, the applicant has conceded that in the documents Plot No.2-C/69 was written in hand writing without any seal or countersign by any authority. Not only this, the applicant has also failed to produce the original documents showing existence of plot No.2-C/69 which they claimed to be owner of. Learned trial Court and appellate court have reproduced the evidence of applicant wherein it was categorically admitted by him that it is correct that he cannot produce any documents of any property as proof of the fact that the same was purchased by him. He has admitted that in 1990 he was party before the SDM on the application initiated by Respondents as an encroacher on the suit plots of Respondents as against the claim of applicant.

9. The Respondents in support of their plaint have produced unimpeachable evidence of ownership right from 1985 through registered document executed by the same person in their favour

through whom the applicant has also claimed to have acquired subsequently. There is no denial from the applicant side that suit **No.1202/1985** and **1203/1985** were filed by the Respondents against Khushal Khan from whom he claimed to have acquired title and both the suits were decreed in favour of the Respondents. It is also not denied that one Raheem Bux son of Allah Ditta forcibly trespassed in the suit plot and claimed that this is plot No.C-2/69 and he had also filed suit No.786/1985 against the respondents for such declaration which was dismissed. The same Rahim Bux filed another suit No.778/1993 which was renumbered as Suit No.602/1996 and it was also dismissed on **1.9.1997**. The respondents have successfully defended/contested four suits from 1985 to 1997. In this background when respondents were already in Court and applicant was not in the picture till 1997, the question of limitation raised by the applicants is misconceived. It is pertinent to mention here that originally suit was filed by respondent against the present applicant and one Rafique, but the other defendant has not challenged the judgment and decree of the trial Court in suit No.37/1999.

10. In view of above facts and discussion the concurrent findings of the courts below are perfectly in line with the evidence which cannot be interfered with in civil revision by this Court. Consequently this revision is dismissed.

J U D G E

Karachi
Dated: 02.12.2016.

SM