

total sale price was agreed to be **Rs.20,000/-** and Rs.10,000/- were paid in advance to the father of the respondent and even physical possession of the suit plot was delivered by respondent's father to the applicant. The applicant subsequently constructed six shops in the suit property by spending huge amount. The suit property was held by the respondent under Provisional Transfer Order (PTO) and sale deed was to be executed on issuance of Permanent Transfer Document (PTD) which according to the applicant was issued by Settlement department by order No.617 dated **28.6.1978**. But when the applicant offered Rs.10,000/-, balance sale consideration and requested for the execution of sale deed, it was turned down and therefore, he filed suit for specific performance. The respondent on service filed written statement through attorney and denied execution of the sale agreement and the other averments of the plaint. It was specifically denied that respondent's father as attorney has executed any sale agreement or received part payment of sale consideration. It was further averred that the applicant has committed fraud and forgery by taking the advantage of fact that father of the Defendant had died and the Defendant and his family were out of Pakistan since **1959**. The respondent further averred in his written statement that the applicant and other occupants in the suit premises are tenant and they were not paying rent to the respondent. The applicant is illegally collecting rent from others despite objection raised by the attorney. Thus they are liable to be ejected and suit be dismissed.

3. The trial court from the pleading of the parties framed the following issues.

- i. Whether the then Deputy Settlement commissioner Thatta had issued the Provisional Transfer Order of the suit property to the Defendant, if so then what is its effect?

- ii. Whether the then Deputy Settlement Commissioner Thatta handed over the possession of the suit property to the Defendant, if so then what is its effect?
- iii. Whether the suit plot was agreed to be sold for Rs.20,000/- by father / attorney of the Defendant to the Plaintiff, if yes, what is its effect?
- iv. Whether agreement dated 2.9.1965 is forged document and is not specifically enforceable?
- v. Whether in the year 1965, value of the suit property was more than one lac rupees, if so then what is its effect?
- vi. Whether the suit is barred by Limitation Act?
- vii. Whether the suit is barred by Section 34 of Arbitration Act?
- viii. What should the decree be?

The Plaintiff in support of his case examined himself as PW-1-Ex.134 and produced the following documents.

- i. **Ex.135** sale agreement dated **2.9.1965**.
- ii. **Ex.162** applicant's letter dated **30.9.1978** addressed to the respondent.
- iii. **Ex.163** copy of plaint of earlier suit No.81/79 filed by the applicant against the respondent.

In rebuttal the respondent examined his attorney as DW-1 – Ex.167 who produced the following documents.

- i. **Ex.168** Power of attorney dated **6.6.1978**
- ii. **Ex.169** Order of Settlement and Rehabilitation Commissioner dated **3.12.1969**
- iii. **Ex.170** Notice of Deputy Settlement Commissioner Thatta to Plaintiff for recovery of rent dated **15.9.1970**
- iv. **Ex.171** Certified copy of respondent's application to Deputy Settlement Commissioner Thatta for removal of encroachment dated **26.6.1966**.
- v. **Ex.172** Application of Plaintiff to Deputy Settlement Commissioner Thatta claiming possession dated **07.11.1966**

vi. **Ex.173** Transfer Order of the suit plot in favour of respondent dated **25.4.1974**

Learned trial court after recording evidence and hearing the counsel dismissed the suit by a comprehensive judgment dated **8.09.1990** holding that the agreement of sale dated 2.9.1965 (Ex.135) was forged, fabricated and not specifically enforceable. The applicant filed civil appeal No.28/1990 which was also dismissed by judgment dated **30.05.1991** and therefore, this revision was filed on **09.9.1991**.

4. Since the pendency of Revision for almost **25 years** against the concurrent findings of the two courts below is embarrassing for the Court, I would first like to examine the causes of delay and whether so far has entirely defeated / denied the justice or not and how to restore the image of the Court which is tarnished by such inordinate delay. Therefore, I have to scrutinize entire order sheet and the entire record & proceedings to appreciate the circumstances in which the case has not completed even one round upto Supreme Court since **1979**.

5. The record shows that applicant was tenant of evacuee property prior to transfer of the title / ownership of the suit property to the respondent. The Deputy Settlement Commissioner, Thatta by notice dated **15.9.1970** (Ex.170) had demanded rent from him prior to the ultimate transfer of the suit property to the respondent on **25.4.1974** (Ex.173). Therefore, the applicant had become statutory tenant of applicant once the property was officially transferred to the respondent. The respondent, pending the civil suit filed by the applicant on the forged agreement of sale, initiated eviction proceedings through **Rent Case No.11/1987** against the

applicant and four others namely (i) Terremal Chanmal, (ii) Maighji, (iii) Abdul Wahab and (iv) Zaheer Shah. They were ordered to be evicted from the suit property by the court of Rent Controller Thatta by order dated **9.7.1990**. However, only applicant herein preferred **FRA No.415/1990** against the eviction order before this court and the said FRA was also dismissed by order dated **15.10.1990**. The respondent then filed execution application No.2/1990 in rent case No.11/1987. By the time of filing of this revision application on **09.09.1991** against the concurrent findings, the order of eviction of applicant has already attained finality. Therefore, applicant alongwith Revision has also filed an application under Order XXIX Rule 1 & 2 C.P.C (**CMA No.944/1991**) which was disposed of by order dated **26.1.1992** in the following terms.

In the suit, the only prayer of the applicant was for specific performance of the sale agreement dated 2.9.1965. The applicant had not sought injunction against the respondent for protecting his possession of the suit property. The two courts below have declined to order for specific performance of the sale agreement dated 2.9.1965. Suspension of the operation of the impugned decree would not amount to order for specific performance of the sale agreement dated 2.9.1965. In this way the applicant cannot have any positive result by seeking suspension of the impugned decree or of the decree passed by the trial court. In the circumstances, **the prayer for suspension of operation of the two decrees is misconceived and the present application is, therefore, dismissed**, except that since the suit property is under litigation, none of the parties should / alienate the same or create third party interest in the same till decision of the main revision application.

6. The above quoted order was not sufficient to stop eviction through Ex.No.2/1991 by the Rent Controller, therefore, on **18.04.1993**, the learned counsel after submitting his arguments at length got the disposed of **FRA No.415/1990** tagged with the Revision despite the fact that respondent

with his counter affidavit filed on **24.11.1991** available at page 165, has placed on record ejection order dated **19.7.1990** and order of dismissal of FRA No.415/1990 dated **15.10.1990** as annexure A/1 & A/2. (page Nos.191 & 197). The order dated **18.4.1993** is reproduced for convenience:-

After arguments were heard at some length it was pointed out that in the Rent case filed by the respondent eviction was ordered which was challenged in FRA No.415/1990. The office is directed to put up the file of the aforesaid FRA No.415/1990 alongwith this revision application. To come up on **9.5.1993**.

Sd/-
JUDGE

On **09.05.1993**, the applicant suppressed the dismissal of his earlier application under Order XXIX Rule 1 & 2 CPC (**CMA No.944/1991**) by order dated **26.1.1992** reproduced above, to frustrate the execution proceeding in the Court of Rent Controller, filed another application under Order XXXIX Rule 1 & 2 CPC (**CMA No.444/93**) in this case with the following prayer;

“That on the facts and circumstances narrated in the accompanying affidavit this Hon’ble Court may be pleased to restrain the respondents from evicting the applicant from the suit premises till decision of the above Revision Application”.

And got the following order in presence of learned counsel for the respondent.

1. Learned advocate for the respondent waives notice. Copy of the application has been supplied to him. **The respondents are restrained from ejecting the applicant till the next date of hearing.**
2. For want of time adjourned to 16.5.1993.”

Then again on **14.7.1993** another application under **Section 151 CPC (CMA No.708/1993)** was filed with an urgent application with the following prayers;

“It is prayed on behalf of the applicant abovenamed that this Hon’ble Court may be pleased to order for continuation of status-quo order earlier passed by this Hon’ble Court on 9.5.1993 till the next date of hearing, in the interest of justice.”

And the following order in absence of counsel for respondent that:-

1. For orders on CMA No.707/1993 (if granted)
2. For orders on CMA No.708/1993

Mr. S. Masroor Ahmed, advocate for the Petitioner.

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1. Granted.
2. Notice for **25.7.1993**. Until then the operation of the impugned order is stayed.

Sd/-
Judge”

With the above order CMA No.708/1993 was almost disposed of and on the next date **CMA No.444/1993** was to be listed for hearing but it was not listed for hearing on **25.7.1993**, **29.7.1993** and even on **3.8.1993** when again only **CMA No.708/1993** was fixed for hearing and again in presence of counsel for the respondent following orders were passed.

For orders on CMA No.708/1993

03.8.1993

Mr. Masroof Ali, holding brief for
Abrar Hassan, advocate for the applicant.
Mr. Dilawar Hussain, for the respondent.

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It has been pointed out that on 09.5.1993 ad-interim stay was granted by this Court upon application No.CMA 444/93 filed on behalf of the applicant. The order dated 23.05.1993 shows that this application was part-heard on that day but the status-quo order earlier granted was not continued. This probably appears to be on account of

the fact that the attention of the learned Judge was not drawn towards the interim stay earlier granted to the applicant. Since the interim stay earlier granted was not vacated and even the application CMA No.444/193 still appears to be pending, there appears to be no justification for discontinuance of the order of status-quo which was earlier granted in favour of the applicant. **Under the circumstances, ad-interim status-quo is granted in favour of the applicant till the final disposal of CMA No.444/93.** This application stands finally disposed of.

Sd/-
Judge

On **3.8.1993** when CMA No.444/1993 was not even listed for hearing, the applicant got interim order till final disposal of **CMA No.444/1993** without any objection / reservation by counsel for respondent. However on **17.8.1993** the respondent filed an application under Order XXXIX Rule 4 CPC bearing **CMA No.805/1993** for modifying the aforesaid interim orders. Both, **CMA Nos.444/1993** and **CMA No.805/1993** were pending even till the last date of hearing in **2016**.

7. The perusal of record further shows that counsel for the applicant on **16.5.1993**, prior to the passing of the aforesaid orders, has concluded his arguments and Mr. Dilawar Hussain, advocate for the respondent sought time on the ground that “*he will take two hours for his submissions*”, therefore, the case was adjourned to **22.5.1993** but since then he never offered to argue the case on behalf of the respondent and kept on watching the orders passed one by one on 15.7.1993 and 3.8.1993 (reproduced above) despite being detrimental to the interest of his client so much so that on **17.10.1993** it was ordered that the aforesaid two applications i.e CMA No.444/1993 and 805/1993 may be heard alongwith main revision application. Mr. Dilawar Hussain, advocate for the respondent since then has either sought adjournment on account of his ill health or consented to

the adjourned or remained absent on every material date of hearing until **14.1.2009**. He, however, on 14.1.2009 made an statement before the court that the respondent was represented by a duly constituted attorney and the said attorney has expired. Therefore, he showed his intention to file power on behalf of the respondent. And that statement was the last nail in the coffin of the respondent as Mr. Dilawar Hussain, advocate never turned up even to seek adjournment nor filed power on behalf of the respondent. Since then in almost seven (7) years, this Revision was listed for hearing on more than 100 dates for hearing discharged / adjourned. However, since I am assigned to take up old cases, exclusively therefore, when this case was listed before me for final arguments; it was clear message to the parties that the fate of this case like any other old case is going to be decided either way. Thus I got the opportunity to remove the last nail from the coffin of the respondent's case when I finally heard it. Now I will examine the merit of this revision.

8. For decision on merit, I have heard learned counsel for the applicant and perused the comprehensive counter affidavit filed by and on behalf of the respondent on **24.11.1991** followed by a rejoinder filed by the applicant on **7.12.1991**. The only arguments advanced by Mr.Abrar Hassan, advocate for the applicant is that the applicant has proved execution of sale agreement by producing marginal witness and in this context he has pointed out that the trial court has inadvertently framed a preliminary issue about relationship of landlord and tenant in the suit for specific performance and the attesting witnesses namely Abdul Aleem and Namdar Khan were examined for decision on preliminary issue as **Ex.63 & 67**. One of the witness has gone unchallenged and therefore, the courts below

should have accepted that the sale agreement stand proved. However, it is clear from the record and impugned orders that the preliminary issue of landlord and tenant was out of scope of suit for specific performance, therefore, by consent of both the parties it was ordered on **31.8.1985** (Ex.120) that since the issue was outside the jurisdiction of civil court, the evidence was to be kept in misc. file and not to be mixed up with main case. Since the learned counsel has repeatedly referred to the evidence recorded in the inadvertently framed issue, therefore, I have carefully examined **Ex.120** which is order of trial court to keep the evidence in misc. file. The perusal of Ex.120 shows that by earlier order dated **31.7.1980** the then Sr. Civil Judge, Thatta (Mr. Ikram Hussian Jaffery) had ordered for evidence on some application of Plaintiff / applicant herein and the said order was reproduced in (Ex.120) the order of trial court dated **31.7.1985** from Ex.120, the operative part of the orders dated 31.7.1980 and order dated 31.7.1985 are reproduced below:-

“Heard counsels for the parties. It requires evidence to see who has put the man/occupant in possession of the property as tenant. Till then the occupant should deposit rent in this Court by 15th of each month. Such directions should go the occupants. For evidence of the parties on this application to prove landlordship.”

Sd/-**31.7.1980**
Seniro Civil Judge, Thatta.

In view of the above facts **I agree with the leaned advocates for the parties whose submission is that the issue as well as the evidence so recorded is irrelevant to the case.** I, therefore, direct that the evidence recorded on the said issue be kept with Miscellaneous part of the file of the case. **Let the parties lead evidence on the main Issue framed by the Court.** Put off to
21.9.1985 for further evidence of the Plaintiff's side.

The order of Sr. Civil Judge dated **31.7.1980** caused five year delay in disposal of main case and obviously the beneficiary was the applicant who was in possession since **1965** or before.

9. Learned counsel for the applicant has not referred to any other evidence which was recorded by trial court after orders dated **31.8.1985**, though the applicant/Plaintiff Ameer Hussain himself has reappeared in the witness box as **Ex.134** to prove issue No.3 & 4 as burden of these issues was on him. Earlier he was examined as **Ex.62** and subsequently as **Ex.134**, then why other witnesses did not appear at the relevant time to help him discharge his burden on issue No.3 & 4. He relied on his own fresh evidence but this time he did not produced marginal witness though he was again required to produce them to provide a fair chance to respondents to cross-examine them.

10. I have gone through the impugned judgments of the trial court and the appellate court. Both the courts below have elaborately discussed material evidence and found that the applicant in view of admitted documents of his own the execution of agreement of sale dated **2.9.1965** (Ex.135) was not proved. In this context both the courts below have thoroughly examined the documents while thrashing each and every contention of the applicant in the plaint for specific performance of the contract. From the impugned orders of the courts below, I have noticed that the concurrent findings were on the basis of appreciation of documentary evidence and the salient features of such findings are as under.

i. Between 1965 to 1979 when the suit was filed, the applicant made several representation to retain possession of the suit property and attempted to acquire ownership and title documents from the

Settlement department but he failed. The applicant through **Ex.169** was contesting for transfer of the suit property to him until **3rd December, 1969** when his Revision application before the Settlement & Rehabilitation Commissioner was dismissed regarding condonation of delay in filing "P" Form and dismissal his revision No.23/1965 by District Judge, Thatta. He never disclosed even in a passing remarks that he has also entered into agreement of sale with the respondent on **2.9.1965**.

ii. On **7.11.1966** in his application to the Deputy Settlement Commissioner Thatta, (**Ex.172**) he claimed that he is in possession of a portion of the suit property and requested for action against the father of respondent through whom he allegedly entered in agreement of sale (Ex.135). However in **1966** he did not mention that he has entered into agreement of sale with the respondent. This admitted document is worth reproduction. It reads as under:-

iii. The applicant in the suit for specific performance of the agreement dated 23.9.1965 has claimed that the physical possession of the suit land was delivered to him at the time of execution of sale agreement. However, in evidence it has come on record through his own admitted documents that it was not delivered to him by the respondent and he was in possession as tenant of evacuee property board (**Ex.170** Notice of recovery of rent) even prior to the auction of the same by the settlement department to the respondent.

iv. The applicant also contended in the plaint that PTO was available at the time of execution of sale agreement and subsequently permanent transfer document was also issued but neither he filed copy of the PTO with the plaint nor he was able to produce the same even subsequently in evidence. There was not any permanent transfer document either. The **Ex.174** reveals that the Government of Sindh has disposed of the suit property under scheme No.VIII proposed by Chief Settlement Commissioner which was notified on **13.8.1973**. It was clearly mentioned in transfer order No.617 dated 24.4.1974 that no PTO or PTD was issued in respect of the suit property.

The Deputy Settlement Commissioner,
Thatta.

Sir,

I am occupant of some portion of the plot No.44 situated at Gharo, District Thatta. The real owner of the said plot is Zaheer Ahmed Khan. A. Hameed Khan is the father and attorney of Zaheer Ahmed Khan. Zaheer Ahmed Khan is now a days in America and in the absence of the real owner, the father and attorney of Zaheer Ahmed Khan is passing threats to me for my illegal and forcible dispossession from the said portion of the plot. Some days ago the father and attorney of Z.A. Khan has come to the

said plot and asked me to vacate the portion of said plot but I refused to do so. When I refused, M.A. Hameed Khan read with anger and passed threats to me that I will be dispossessed forcibly and illegally with the help of the police and with the men of the Settlement Department.

I am not the owner of the said plot but only the occupant of the said plot, and I cannot be dispossessed from the said plot in this way. Hameed Khan is a very influential person, has a high post in some Government Department. **The Settlement Department or the police has no right or authority to dispossess me like this way.** Action against Hameed Khan is requested.

Yours faithfully,

Thatta
Dated:7.11.1966

Sd/-
(Amir Ahmed)

v. Even before filing of the suit for specific performance the applicant had also filed a suit bearing No.8/1979 (Ex.163) wherein the applicant has sought declaration that the suit property be declared evacuee property and the respondent has no legal right to encroach on any part of it.

vi. The applicant on **30.9.1978** sent a letter to the respondent in USA (**Ex.162**) and it was reproduced by the trial court in the impugned order while discussing issues No.3 & 4. In the said letter he has not mentioned anywhere that he had already purchased the property from the father of the respondent against down payment of Rs.10,000/- and he wants to complete the deal. The perusal of the said letter clearly shows that he is making a request with the respondent, who is living in America to sell his property through his brothers living in Karachi. Even name of father of the respondent as attorney was not mentioned this letter. The Ex.162 was sent at the following address:-

Mr. Z. A. Khan
15413 East Gold Ridge Lane,
Avocado Grove Hacienda, Heights
California 91745 Los Angles.

I have purposely mentioned this address from original letter available in R&P at page 149.

11. Learned trial court after discussing all the above documents and few more has specifically mentioned in the impugned order that the evidence of

the marginal witness of Ex.135 previously examined has also been belied by **Ex.162**, therefore, the contention of the learned counsel that the courts below have not properly appreciated evidence of the so called marginal witness has no force.

12. I have deliberately reproduced the order sheets of the instant Revision in para-5 to 7 above and order of Sr. Civil Judge in pra-8 above from the trial court diary dated **31.7.1980** and **31.7.1985** to appreciate that how a man with such a hopeless case has perpetuated his possession over suit property for almost 45 years including 25 years in this court. A mere occupant claims that he cannot be dispossessed and again I quote him from Ex.172 that “*The Settlement Department or the police has no right or authority to dispossess me like this way*”. And he meant it, the applicant who is mere occupant without any legal character has defeated the rights/entitlement of respondent granted under Article 23 and 24 of the Constitution of Islamic Republic of Pakistan, 1973 in the name of litigation. I have no hesitation in observing that he has smartly perpetuated his illegal possession on the suit property for several decades and even earned rental income from the different persons under agreements of lease. Lease agreements are available as **Ex.52, 54, 56, 58 & 60** in the R&P at page 101, 107, 111, 115 & 119. None of the beneficiary of these rent agreements even through the applicant has contested the rent case No.11/1987 and orders of their eviction from the suit property are in the field. The First Rent Appeal (FRA No.415/1990) was filed only by the applicant which has also been dismissed by the High Court. However, the applicant and his sub-tenant have continued to be in possession of suit property under the cover of the interim orders passed in this case on **9.5.1993** on **CMA**

No.444/1993 reproduced in para-6 above. The said application alongwith **CMA No.805/1996** by orders dated **17.10.1993** were specifically left to be disposed of with final decision in this civil revision.

13. In view of the above facts and discussion, there is hardly any misreading and non-reading of the evidence or lack of any proper reasoning for dismissal of suit No.46/1988 and civil appeal No.78/1990 by the learned Judges of the two courts below. Therefore, I have no option except to dismiss the Revision application alongwith CMA No.444/1993 with cost of **Rs.300,000/-** towards compensation for perpetuating his possession over suit property for well over 40-45 years or more through frivolous litigations before Settlement authorities and civil suit and also on account of realizing rent since 1977 till date. All the agreement of lease which were entered into by the applicant with the so called tenants against whom the eviction order has been passed were executed in 1977. The applicant and other occupants of suit property who have no legal character / entitlement to over the suit property, after almost **40 years**, cannot be allowed to retain possession even for one day. Final eviction orders against the applicants and others are also in field since **15.10.1990** when FRA No.415/1990 was dismissed by this court. However, execution was stay in these proceeding on **9.5.1993**. Therefore, to meet the ends of justice and to do the complete justice, since the respondents have lost the track of proceeding only on account of inordinate delay and conduct of his counsel, it is ordered as under:-

- i. The District & Sessions Judge Thatta, through the Nazir should ensure preparation of inventory of moveable items/things lying in the suit property bearing **custodian No.44 admeasuring**

6875 sq.ft Gharo, Taluka Mirpur Sakro, District Thatta, including the six shops and seal them within 24 hours of receiving of this order without notice to the applicants / other occupants. The suit property should be sealed then and there on completion of inventory to be prepared by the Nazir of District Court, Thatta.

- ii. The Nazir of District Court, Thatta is allowed to break open the lock, if shops were found locked and he should also carry with him local police at the time of making inventory and sealing of the suit property.
- iii. The applicant should deposit Rs.300,000/- with the Nazir of District & Sesson Judge Thatta, within **one week** and until and unless he deposit the said amount not a single moveable property should be allowed to be removed from the shop in his possession and other shops on the suit property.
- iv. In case of non-payment of cost by the applicant, the Nazir of District Court, Thatta should attached either immoveable properties of the applicant and / on his bank accounts to the extent of **Rs.300,000/-**.
- v. Once the cost imposed in this order is paid / collected, the applicant and other occupants of shops shall be allowed to remove / shift only moveable properties from the suit property within 24 hours of such deposit of cost and in presence of Nazir.
- vi. The cost once collected from the applicant/occupants shall be payable to the respondent or in case of his death by now to his legal heirs after deduction of Rs.25000/- towards fee of Nazir of

District Court, Thatta. The remaining amount of cost should be handed over by Nazir of District Court, Thattta to the Nazir of High Court who should invest the same in some profit bearing Government Scheme.

- vii. The Nazir of District Judge Thatta, should submit compliance report of above direction through MIT-II within **one week** for perusal in chamber and after one week of compliance of above order, the sealed suit property should be handed over to the Nazir of High Court and Nazir of High Court should **rent out** the suit property on as is where is basis by advertisement through banner/ posters on the suit property after ascertaining market rate of rent of similar shops in the locality. In this connection the Nazir of District Court, Thatta should cooperate with the High Court Nazir.
- viii. The Nazir of High Court for incurring expenses for renting out the shops may utilize the cost deposited by the applicant as above and in case of non-deposit from his contingent or other miscellaneous account and adjust the same later on from the rental income. The fee of Nazir of High Court shall be 20% of the rental income of the suit property once the same is rented out by Nazir, subject to administrative order of the Hon'ble Chief Justice.
- ix. MIT-II is directed to locate the respondent or his legal heirs through the Pakistan Consulate in Los Angeles at the address I have reproduced in para-10 above, which is the last known possible address of the respondent in the court file, and sending copy of

this judgment to the respondent at the postal address through the Consulate. MIT-II should communicate with the Consulate of Pakistan in Los Angeles in locating the respondent or his legal heirs through electronic communication like e-mail or FAX, etc.

Before parting with this judgment, I must confess that besides the role of the counsel for the parties as reflected in para-6 & 7 of the judgment for causing uncalled for and inordinate delay in the disposal of this civil revision against concurrent finding, the courts for whatever reason also have its share in contributing in the delay.

JUDGE

Karachi
Dated: 05.05.2016

SM