IN THE HIGH COURT OF SINDH AT KARACHI

R.A No.18/2002

Date	Order with signature of Judge

<u>For hearing of case</u>

22.04.2016

Mr. Amir Malik, advocate for the applicant.
Mr.Moula Baksh Khoso, advocate for Respondents.
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Applicant has filed this revision against concurrent findings of the two courts below. The suit filed by the applicant/Plaintiff bearing suit No.14 of 1998 was dismissed by the Sr. Civil Judge, Thatta by judgment dated 19.12.2000. The applicant has preferred appeal bearing Civil Appeal No.2/2001 against the dismissal of his suit before the court of IInd Additional District Judge, Thatta and unfortunately appeal met the same fate by judgment dated 30.10.2001. Both the orders were impugned through this Revision Application filed on 16.1.2002.

Briefly, the suit was filed in respect of unspecified property showing only survey numbers 358 & 256 against the respondents with the following prayers.

> a)   This Hon'ble court may be pleased to decree the suit of the Plaintiff by way of judgment and the suit land be got vacated from the Defendants and its peaceful possession of the suit be handed over to the Plaintiff.

> b)   That the mense profit at the rate of Rs.1000/- per year, per acre be allowed to the Plaintiff as the Defendants are failed to pay it to the Plaintiff.

c) That any other relief which this Hon'ble court may deem fit be granted to the Plaintiff.

Both the courts below had found that the suit was not maintainable. Learned counsel for the applicant has attempted to argue that the findings of the courts were not in consonance with the grounds taken by the respondents in their written statement. Be that at it may, the perusal of plaint suggests that by all means the pleadings were not completed and even if suit had been decreed, the execution had been impossible. The court has drawn attention of the learned counsel of the applicant on the two basic questions in the plaint Firstly; that the plaint does not specify the suit property for which he seeks possession from the respondents/Defendants, it is not mentioned in the plaint where the cause of action has accrued. Secondly as pointed out by the learned counsel for the applicant himself, the case of Defendants in written statement was that whatever it may be the land in question was a passage for the villagers meaning thereby it is not in physical possession of the Defendants/respondents or for that matter in anyone. Learned counsel for the applicant concedes that the respondents are not in possession, therefore, the question of handing over possession to the applicant does not arise. In view of the vague pleadings the decree could not have been passed. Irrespective of the reasoning advanced by the two courts below in declaring the suit as not maintainable, the above facts by itself are enough to

appreciate that the question of maintainability of the suit has rightly been decided against the applicant by the courts below.

It is indeed very unfortunate that such a hopelessly case remained pending in court for 14 years. However, when it was dismissed for non-prosecution on 09.11.2015 as a result of an earlier order dated **19.10.2015** whereby it was specifically ordered that non-appearance of the parties would result in dismissal of this revision for non-prosecution, learned counsel for applicant and respondent both were of the view that dismissal order of this revision for non-prosecution was illegal, it should be recalled. Therefore, keeping in view the history of the case yesterday i.e **21.4.2016** whiling restoring the Revision, I had imposed cost of Rs.5,000/- each for more than 13 years delay in the disposal of this case. Today while dismissing this revision, it has again been jointly requested by both the learned counsel for the parties that cost may be reduced from Rs.5000/- to Rs.2000/- each. Order accordingly. Let cost of Rs.2000/- by each party be deposited in High court clinic during the course of the day and receipt of payment may be handed over to the Reader of this court so that it may be placed in the court file.

In view of the above, this revision is dismissed.

JUDGE

SM