

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD

R.A. No.147 of 2015

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**DATE**

**ORDER WITH SIGNATURE OF JUDGE**

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1. For Katcha Peshi.
2. For hearing of C.M.A. 1087/2015

27.03.2018.

Mr. Suresh Kumar, Advocate for the applicant.

Mr. Wali Muhammad Jamari, Assistant A.G.

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Heard the counsel as well as learned A.G.

Despite notice, none has affected appearance on behalf of private Respondent No.8, the reason for such absence as explained by learned A.G. is that Respondent No.8 was the one, who was beneficiary of the Contract awarded by Respondent No.1 and since considerable time has elapsed since the filing of this revision application, therefore, ground realities might have changed leaving the private Respondent having no interest in the matter, which is evident from his non-appearance despite service.

This revision application has been filed against concurrent findings of the learned trial Court as well as appellate Court. Learned counsel for the applicant draws Court's attention to the trial Court judgment dated 30.11.2013, which was rendered in

F.C.Suit filed by the applicant, who was using his private land for the purposes of running Mal Piri business for a considerable length of time and he was aggrieved of the initiative taken by the Municipal Committee concerned for the interference in his business. Before that he filed C.P. No.D-270/2009 where restraint was sought from the Respondent not to enter into the land of the petitioner, who as mentioned earlier was running Mal Piri business at his own estate. While the Honourable Bench of this Court restrained the Respondents from entering into private land of the petitioner by order dated 25.06.2009 or from interference in his business, official Respondents were given freedom to levy taxes and collect the same (if any) payable in respect of the business being conducted on the private land of the petitioner.

But the fact is that the learned trial Court strangely passed the judgment against the applicant even after affirming that the applicant was running the said business for the last 12 to 13 years on his own lands. The judgment shows that the prayer of the plaintiff / applicant with regard to non-payment of the taxes, was dismissed, however, it was affirmed that he has right to run his business. An appeal was preferred against judgment and decree where the appellate Court through a short order refrained from interfering into the findings of the trial Court.

With the assistance of the counsel, I had opportunity to go through both the judgments and the order passed in C.P. No.D-270/2009, to me it is abundantly clear that there is no dispute as to the ownership of the land in question, thus, *prima-facie* right subsists in appellant's favour and Constitution providing freedom of profession and business, therefore, no cavil could be imposed on the appellant to run any legal business

including business of his own choice being Mal Piri, however, of course such conduct of business is always to be under applicable law, rules and payment of taxes, if any.

The counsel for the appellant affirms that his client has no objection for the payment of any applicable taxes, however, would be given right and freedom to operate Mal Piri market as protected by Constitution as no monopoly of running such a market could be hinged to whims of the official respondents.

In the given circumstances, I allow this revision to the extent that applicant would be free and at liberty to run his business of Mal Piri at his property, however, subject to the payment of all applicable taxes and compliance of the applicable rules and regulations.

JUDGE

Asif.I.Khan