

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.687 of 2003

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| Date | Order with Signature of Judge |
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Present: ***Mr. Justice Nazar Akbar***

Plaintiff : Khair Muhammad, through LR's
1. Imam Baksh
2. Mst. Sher Bano
3. Mst. Madina
4. Mst. Latifan
5. Mst. Nasima
6. Mst. Saima
7. Mst. Anum
through Mr. Muhammad Ikram Siddiqui,
Advocate.

Defendant No.1 : M/s. Godhra Gulistan Cooperative
Housing Society.
through Mr. Abdul Wajid Wyne,
Advocate

Defendant No.2 : Malir Development Authority,
Through Mrs. Leela Kalpana, AAG.

Date of hearing : 20.12.2017

Decided on : 20.12.2017

JUDGMENT

NAZAR AKBAR, J. The Plaintiff had filed this suit on **01.4.2003** for Declaration and Permanent Injunction through his duly constituted Attorney Mehrab Khan Bikak against the Defendants declaring that a piece of land measuring 20 acres situated in Deh Nagan, Tappo Songal, Surjani, Gadap Town Karachi-West (the suit land) occupied by the plaintiff is Khair Muhammad Goth. It is alleged that the Plaintiff and other occupants have been in possession and occupation of the suit land on the basis of Sanads issued by Mukhtiarkar, Goth Abad Scheme Karahi-West. The suit land is known as Khair Muhammad Goth, is occupied by different villagers and it is in existence for last more

than 40 years. The possession and occupation of the villagers of Khair Muhammad Goth has been duly recognized by Nazim, Union Council, Songal, Gadap Town, Karachi as is evident from certificates dated **16.5.2002** and **16.11.2002**. It is further averred that Defendant No.1 a Cooperative Society had also been allotted/ allocated land admeasuring 136.12 acres by the competent authorities. The said defendant No.1 had filed Civil **Suit No.163/1998** (M/s. Godhra Gulistan Cooperative Housing Society ..Vs.. KDA and others including the plaintiff herein) in this Court. The said suit of defendant No.1 had been decreed by judgment dated **10.3.1999** whereby defendant No.1 was declared owner of 136.12 acres land situated in Deh Nagan, Naiclass No.30 Sector-33, KDA Scheme No.45, Taiser Town, Karachi-West, and the Nazir of this Court had supervised the demarcation of the land of defendant No.1 in presence of officers of competent authorities. It is alleged that Defendant No.1 having a definite demarcated area of 136.12 acres of land in pursuance of the decree passed by this Court in Suit No.163/1998 has started harassing the plaintiff in a bid to occupy extra land in excess of their allocation upon 10 acres of the suit land. The plaintiff, therefore, has sought the following relief(s):-

- a. Decree declaring that the defendant No.1 authorized, entitled and empowered to use, occupy and enjoy land admeasuring 136.12 acres as having been conferred upon them in pursuance of judgment and decree dated 10.3.1999 and 29.5.1999 situated in Deh Nagan, Naiclass 30, Sector-33, KDA Scheme No.45, Taiser Town, Karachi-West.

AND FURTHER declaring that the plaintiff being occupied of Khair Muhammad Goth spreading over 20 acres which Goth totally admeasures 20 acres of land in Deh Nagan, Tappo Songal, Gadap, Surjani Town, Karachi-West and is thus entitled to use, occupy and enjoy land of Khair Muhammad Goth in

pursuance of / conformity of Sanad granted and further rights conferred in accordance with Form-II which 20 acres of land is adjacent to the land of defendant No.1.

- b. Permanent injunction restraining the defendant No.1 and 2 jointly and severally, their men, servants, agents, employees, attorneys and or anybody else claiming through or under them in any capacity from occupying, harping upon, excavating, digging, laying any amenity lying, erecting poles, raising any structure katcha/paca over 10 acres of land in the name of Khair Muhammad Goth situated in Deh Nagan, Tappo Songal, Karachi District-West being adjacent to 136.12 acres of defendants land.

The defendants may further be restrained not to occupy or raise any structure in excess of their allocated piece of land, measuring 136.12 acres so conveyed and demarcated by virtue of decree and in compliance by the Nazir of the Court.

- c. Cost of the suit.
- d. Any other relief or reliefs.

2. Defendant No.1 had filed written statement wherein he denied all the claim of the plaintiff and raised several preliminary objections. It is also contended by defendant No.1 that no Sanad was issued by Mukhtairkar Gothabad Scheme in favour of the plaintiff about the land adjacent to the land of defendant No.1 and plaintiffs are not permanent resident of Khair Muhammad Goth. The said goth is situated far away from the land of defendant No.1. There is a pucca road of 200 feet in between the land of M/s. Godhra Gulistan Cooperative Society and Khair Muhammad Goth. It is averred that M/s. Godhra Gulistan Cooperative Housing Society is duly registered under the Cooperative Societies Act, 1925, and the said Society has purchased land from Maymar Housing Services (Pvt) Ltd., through two conveyance deeds duly registered, and the said land was duly mutated in the name of the society in the record of Rights. Therefore, the suit is not

maintainable and is liable to be dismissed with heavy cost under **Section 35-A CPC.**

3. This court from pleadings of the parties on **17.4.2007**, had framed following issues.

1. Whether the plaintiff is in occupation of 20 acres of unsurveyed land situated in Deh Nagan, Tapo Songal, Surjani Town, Gadap Town, Karachi?
2. Whether the defendants have encroached upon any portion of land in occupation of the plaintiff?
3. What should the decree be?

4. Three witnesses on behalf of the plaintiff namely **Mehrab Khan Bikak, Allah Warayo** and **Muhammad Ramzan** appeared in witness box and their examination-in-chief and cross was recorded. Only one witness on behalf of Defendant No.1 namely Ibrahim appeared in the witness box whose examination-in-chief and cross was also recorded.

5. I have heard learned counsel and perused record. My findings on the above issues with reasons are as follows:-

Issues No.1 & 2

6. The burden of proof of both the issues was on the plaintiff that the plaintiff are in occupation of 20 acres of un-surveyed land in Deh Nagan, Tappo Songal, Surjani, Gadap Town Karachi-West, Karachi and that defendant No.1 has encroached any portion of land in occupation of the plaintiff. Learned counsel for the defendant has pointed out that the purpose of filing of the frivolous instant suit was to obtain some judicial orders against official defendants and in connivance with MDA encroach upon unidentified and unsurveyed land under the cover of Court orders.

He has pointed out that repeatedly in the plaint and evidence the plaintiff himself has used the term “unsanctioned Goth” and this is enough to dismiss the suit. The plaintiff’s attorney Mahrab Khan Bikak who appeared in the witness box in support of the plaint was not even authorized since the plaintiff Khair Muhammad has died and his legal heirs have not authorized him to pursue the instant suit. In the cross examination he conceded that Khair Muhammad has died and he has been survived by five daughters and one son and he further submitted that *“it is correct that only Imam Bux, the son of deceased Khair Muhammad has issued/executed Ex:P/2 the power of attorney in this case. No other legal heir of deceased Khair Muhammad has signed Ex:P/2.”* I have examined the evidence with the help of learned counsel. All the documents produced by the so-called attorney of plaintiff when confronted to him in cross-examination were found forged and fabricated. He admitted that Ex:P/5 to P/8 do not bear any date thereon. It is correct that neither Jiryan number nor Deh Form No.II bears any date. Ex:P/5 to P/8 have been produced as site plans and Deh Form-II. The plaintiff admitted in his cross examination that:-

“It is correct that Deh Form-II annexed by me to my affidavit-in-evidence do not bear any date under the signature of the signatory thereof. (voluntarily says that I had received these documents in 1995 and 1996)”. It is correct that Mukhtiarkar Sindh Gothabad Karachi also had not put any date on any of the aforesaid documents. I see Ex:P/10 and say that it is correct that there is no separate demarcation of land belonging to the plaintiff. It is correct that I had filed another suit No.1473/2004 against the Province of Sindh and others. It is correct that we had also filed another suit No.230/2004 for the same 50 acres against the Government and others.

7. The learned counsel for the plaintiff when confronted with the evidence that the plaintiff has no proof of whatsoever to claim even possession of land adjacent to the land of defendant No.1, he conceded that whatever is the evidence, it is before the Hon'ble Court.

8. The above evidence leads to inescapable conclusion that the plaintiff had no cause of action nor he is even able to make out a case for seeking declaration about occupation of 20 acres of land to claim it to be a land of Khair Muhammad Goth. The prayer clause in which the plaintiffs have sought declaration that he and others are **“entitled to use said land pursuant of / conformity of Sanads granted and further right confer in accordance with Form-II which 20 acres of land is adjacent to the land of defendant No.1”** cannot be granted by this Court since the Sanad and Deh Form-II are, on the face of it, forged. Admittedly none bear date and seal of the issuing authority. In view of the admissions of witness of plaintiff none of the documents have any legal sanctity to confer any right and title on the plaintiff. The plaintiff has not been able to make out any case, nor defendant No.1 has encroached upon any portion of land in occupation of the plaintiff. Therefore, both the issues are decided against the plaintiffs.

Issue No.3

9. In view of the above facts, the suit was been dismissed by a short on 20.12.2017 and above are the reasons for the same.

J U D G E

Karachi,
Dated: _____

SM*