

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

**Civil Revision Application No.35 of 2015**

Date \_\_\_\_\_ Order with signature of Judge \_\_\_\_\_

**Present: Mr. Justice Nazar Akbar**

Applicant : Muhammad Yaqoob  
(Since deceased) through his LRs.  
1. Mohammad Zahid  
2. Mohammad Wahid  
3. Mohammad Shahid  
4. Mohammad Talib  
5. Mst. Zubeida Bano  
6. Mst. Fareeda Bano  
7. Mst. Shahida Bano, through  
Mr. Muhammad Ali Waris Lari, advocate.

## Versus

Respondent No.1 : Karachi Metropolitan Corporation,  
Through Mr. Hassan Abidi, advocate.

Respondent No.2 : Sub-Registrar, T-Division X

Respondent No.3 : Syed Habib Ali.  
Through Mr. Alamgir Shaikh, advocate.

Respondent No.4 : Town Nazim, Orangi Town, Karachi.

Respondent No.5 : Assistant Director Land, Orangi Town,  
Karachi.

Respondent No.6 : District Officer (D.O) City District  
Government, Orangi Town, Karachi.

Respondent No.7 : The Court of the learned IVth Sr. Civil Judge,  
West Karachi.

Respondent No.8 : The Court of the learned Vth Additional District Judge, West Karachi.

Date of hearing : **06.12.2018**

Date of judgment : **10.01.2019**

## JUDGMENT

**NAZAR AKBAR, J:-** This Revision Application is directed against the judgment and decree dated **31.10.2014** and **06.11.2014**, whereby V-Additional District and Sessions Judge, West Karachi

allowed Civil Appeal **No.175/2012** filed by Respondent No.3 and reversed the judgment & decree dated **25.10.2012** passed by IV-Senior Civil Judge, West Karachi in Civil Suit No.236/2003, whereby the suit filed by Respondent No.3 was dismissed. The applicants preferred this Revision Application against the said judgment of appellate Court.

2. Briefly, the facts of the case are that Respondent No.3 filed Civil Suit No.236/2003 before the trial Court for Declaration, Cancellation, and Permanent Injunction against the applicants and official Respondents stating therein that he is owner of plot bearing No.531, Sector 1/D, Orangi Town, Karachi West (subject plot) which was purchased by him through his father by executing the sale agreement dated **04.8.1972** from the original allottee namely Muhammad Ali son of Allah Ditta. It was averred that parents of Respondent No.3 had good relations with one Muhammad Ismail son of Allah Rakha and they lived together at Hyderabad and said Muhammad Ismail used to call Respondent No.3 as his son. Therefore, in the sale agreement dated **04.8.1972** his father's name was inadvertently mentioned as Muhammad Ismail. The parents of Respondent No.3 allowed said Muhammad Ismail to live in the subject plot as licensee. Thereafter the said Muhammad Ismail filed an application for issuance of lease on the basis of forged documents before the Assistant Director Land KMC, Orangi Town, Karachi. The Assistant Director Land, Orangi Town, Karachi advised them to approach Court of law for seeking declaration of their title in respect of the property in question, therefore, the said Muhammad Ismail filed a suit against Respondent No.3 before the Ist Senior Civil Judge, Karachi West bearing suit No.152/1994, which was initially dismissed for non-prosecution on **18.5.1998** as the said Muhammad

Ismail has expired on **03.2.1997** and left no legal heir. The applicant Muhammad Yaqoob claiming himself to be legal heir of the said Muhammad Ismail and asked Respondent No.3 to vacate the suit premises, therefore, Respondent No.3 filed civil suit bearing **No.436/1997** against the applicant Muhammad Yaqoob as well as Assistant Director Land, Orangi Town, Karachi and Project Director, Orangi Town, Karachi. The applicant Muhammad Yaqoob filed application under Order VII Rule 11 CPC in the said suit. Upon notice of the said application, Respondent No.3 came to know that the applicant Muhammad Yaqoob fraudulently got the lease from Assistant Director Land, KMC, Orangi Town, Karachi and for the first time copy of the lease deed was supplied to Respondent No.3 with the said application. Subsequently the said application under Order VII Rule 11 CPC was allowed and the plaint of the suit was rejected. Thereafter Respondent No.3 preferred an appeal against the said order bearing Civil Appeal No.88/2002 which was also dismissed by the appellate Court. It was further averred that Respondent No.3 was in possession of the subject plot since its purchase as the same was constructed by his father. It was claimed by Respondent No.3 that the applicant Muhammad Yaqoob got the lease on the basis of forged and fabricated documents, with collusion of KMC staff on **20.11.1998**. The said lease was registered with the Sub-Registrar, T-Division, Karachi. Therefore, Respondent No.3 filed said **suit No.236/2003** before the trial Court.

3. On service of notice of the said suit, the applicant Muhammad Yqaoob filed his written statement wherein he submitted that he is the owner of subject plot and contended that in the year 1972 Respondent No.3/plaintiff was only 7 months of age, therefore, he was not competent to enter into a contract of sale and the parentage

of Respondent No.3 has wrongly been shown as Muhammad Ismail in the sale agreement, in fact he is son of Sher Ali. He further contended that said Muhammad Ismail had remained in occupation of subject plot since beginning and the said address was shown even in his CNIC. He also contended that despite several notices, Respondent No.3 did not appear before Assistant Director Land, KMC. He denied that Respondent No.3 has remained in possession of the subject plot since its purchase or the house on the subject plot was constructed by his father. He contended that the lease was issued to him by KMC as per rules on the basis of regularization of possession after making proper inquiry by the KMC.

4. Official Respondent No.1, 4 and 5/CDGK had filed their joint written statement in which they submitted that the lease deed of the subject plot has been executed in the name of Muhammad Yaqoob/ applicant by lease deed dated **21.11.1998** by way of regularization of possession and at the time of lease deed, he was in occupation of the subject plot. They contended that an application written by Respondent No.3 was received in their office but no action has been taken by them as the same was not signed.

5. The trial Court from pleading of the parties has framed the following issues:-

1. *Whether the suit is maintainable?*
2. *Whether the plaintiff is owner of plot No.531, Sector 1/D, situated Orangi Town, Karachi and lease deed in respect of same house in favour for defendant No.3 is liable to be canceled?*
3. *Whether the plaintiff is entitled for the relief claimed?*
4. *What should the decree be?*

6. Learned trial Court after recording evidence and hearing learned counsel for the parties, dismissed the said suit by judgment & decree dated **25.10.2012**. Respondent No.3 against the said judgment preferred a civil appeal **No.175/2012** before V-Additional District Judge, West Karachi which was allowed by judgment and decree dated **31.10.2014** and **06.11.2014** and the judgment and decree of dismissal of suit passed by the trial Court was set aside and the suit filed by Respondent No.3 was decreed as prayed. Therefore, the applicants preferred the instant Revision Application against said judgment and decree.

7. I have heard learned counsel for the parties and gone through the written arguments submitted by the learned counsel for the respective parties and perused the record.

8. Learned counsel for the applicant in written arguments has contended that the learned appellate Court by referring to the judgment passed in earlier suit No.436/1997 has reopened closed and past issues between the parties. Learned appellate Court according to the learned counsel, has also failed to appreciate that the suit decreed by the trial Court was hit by the provision of res-judicata since earlier suit No.436/1997 was dismissed under **Order VII Rule 11 CPC** as plaint was rejected and even the appeal against the rejection of plaint bearing Civil Appeal No.88/2000 was also dismissed. Therefore, suit No.236/2003 was hit by **Section 11 of CPC**. He further contended that the applicant has proper registered sale deed on the basis of regularization of possession executed by official Respondents. He further contended that lease was granted after proper enquiry by the KMC authorities about the possession of the applicant.

9. In rebuttal the counsel for respondent No.3 claims to be still in possession, he contended that reference to the previous litigation by appellate Court was necessitated by the fact that both the parties admit contents of it and it has a direct bearing on the question of possession of the suit property. The contention of the learned counsel for Respondent No.3 that the suit No.236/2003 was hit by res-judicata is misconceived since the earlier suit has been dismissed under **Order VII Rule 11 CPC** and in the earlier suit the applicant had not challenged the fraudulently obtained lease by the respondent, therefore, the issue was not raised, heard and even decided by the Court. Learned appellate Court has examined the question of limitation for challenging lease fraudulently obtained by respondent No.3 from the date of knowledge of such lease deed. He further contended that admittedly the documents of earlier litigation were produced by the applicant before the trial Court showing the consistent/uninterrupted possession of the applicant and therefore, the claim of Respondent No.3 that KMC has granted lease on the basis of regularization of possession is otherwise found to be misstatement.

10. I have perused the entire detailed judgment of the appellate Court in which the appellate Court on the basis of contents of first ever suit filed in respect of the suit property in 1994 against the applicant (Syed Habib Ali) concludes that the very possession of Syed Habib Ali in the property in question was proved. The appellate Court also examined form PT-I and the report of the Nazir filed in suit No.436/1997. The Appellate Court also clearly noticed that in all the three cases, starting from the first in 1994, second in 1997 and the third in 2003, the official respondents were party and they had knowledge of different orders passed by civil Courts in respect of suit

property including status quo orders and therefore, it cannot be believed that any inquiry was conducted by the official respondent to find Respondent No.3 in possession on the basis whereof lease had been issued in his favour. However even if it is presumed that respondent No.3 was in possession of the suit property and he was subsequently dispossessed by the applicant, who is in Court right from 1994 to protect his possession on the suit property, then at least a formal prayer of putting Respondent No.3 in possession of the suit property should have been made by Respondent No.3 in any of the suits in which he had filed written statement or he should have filed a separate suit for possession. I have found the order of appellate Court perfectly within the four corners of law, based on minute examination of evidence by the parties. This is also a settled law that in case of conflicting judgments of trial Court and appellate Court, findings of the appellate Court are to be respected unless it is, shown that such findings are not supported by evidence. In this case findings of the appellate Court are very much supported with evidence and discussion.

11. In view of above facts and discussion, this revision application is dismissed.

JUDGE

Karachi  
Dated:10.01.2019

Ayaz Gul/P.A  
SM