

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.34 of 2017

Date

Order with signature of Judge

Present: Mr. Justice Nazar Akbar

Applicant No.1: Kamil
Applicant No.2: Hanif
Applicant No.3: Fateh Muhammad
Applicant No.4: Ahmed
Applicant No.5: Lano
Applicant No.6: Yousuf
Applicant No.7: Khano
through Mr. Nasrullah Malik, advocate.

Respondent No.1: Province of Sindh,
Respondent No.2: The Addl. Deputy Commissioner
(Revenue & Estate) Thatta.

Respondent No.3: The Assistant Commissioner Jati,
Taluka Jati, District Sujawal.

Respondent No.4: The Mukhtiarkar (Revenue) Jati,
Taluka Jati, District Sujawal.

Respondent No.5: Rasool Bux
through Mr. Faisal Farooq Thaim,
advocate.

Date of hearing : 20.11.2018

Decided on : 20.11.2018

JUDGMENT

NAZAR AKBAR, J:- This revision is directed against the judgment dated **21.12.2016** whereby by District Judge, Thatta, dismissed Civil Appeal **No.32 of 2016**, filed by the applicants and upheld the judgment & decree dated **31.08.2015** passed by Senior Civil Judge, Sujawal in FC Suit **No.92/2011** filed by Respondent No.5 / the plaintiff.

2. Brief facts of the case are that Respondent No.5 is owner of the suit land, as Block Survey No.365/1 to 4 admeasuring 16-0 acres which was previously entered in the name of one

Muhammad son of Noor Muhammad @ Nooro Mallah, who sold out the same land to Respondent No.5 in total consideration of Rs.96,000/- at the rate of Rs.6000/- per acre through his general attorney Abdul Rehman son of Ahmed Thahim vide registered sale deed No.157 registration No.220 of book No.1 dated **10.05.2001** registered by the Sub-Registrar Jati microfilmed by the Photo-Registrar Hyderabad vide MF Roll No.803 dated **08.11.2001**. Likewise, Block Survey No.376/1 to 4 admeasuring 16-00 acres was previously entered in the name of one Muhammd son of Noor Muhammad @ Nooro Mallah, who had sold out the same land to plaintiff / Respondent No.5 in total consideration of Rs.96,000/- at the rate of Rs.6000/- per acre through his general attorney Dildar Ahmed son of Haji Ghulam Muhammad Samejo vide registered sale deed No.158 registration No.222 of book No.I dated **10.05.2001** registered by the Sub-Registrar Jati Micofilmed by the Photo-Registrar Hyderabad vide MF Roll No.803 dated **08.11.2001**. On the basis of these registered sale deeds, the suit land was mutated in the name of Respondent No.5 in the record of rights vide mutation vide entry No.123 and 124 dated **26.11.2001**. Respondent No.5 also hypothecated the suit land with Zarai Taraqati Bank Limited, Jati vide mutation entry No.128 dated **24.5.2001**. The possession of the suit land was delivered to the plaintiff/Respondent No.5 at the time of purchase of the suit land since then Respondent No.5 has been in actual, physical and cultivating possession of the suit land and has leveled and developed the suit land with and huge expenses. The applicants

are nefarious and land grabber type persons, they have no right, title, interests or any concern with the suit land but they are in habit of creating the various problems in the way of Respondent No.5 to cultivate the suit land, even they are disturbing the irrigation peach of the suit land without any legal justification and hesitation. Due to disturbance caused by the applicants, respondent No.5 / the plaintiff was unable to cultivate the same land nor could pay the bank loan as such Respondent No.5 sustained very heavy loss at the hands of the applicants. On **04.5.2011**, applicants came at the suit land alongwith other persons being armed with hatchets and lathies and created law and order situation and also issued the threats to Respondent No.5 not to cultivate the suit land. Therefore, Respondent No.5 made the complaints to Respondents No.2 to 4 and also made an application to Respondent No.4 for impartial demarcation and measurement but they did not take any action in the matter at the influence of applicants and even Respondent No.5 / the plaintiff approached the SHO police station Jati, who also did not take any action in the matter. Respondent No.5/the plaintiff then filed an HR petition before the District & Sessions Judge, Thatta, who called the parties and then he was kind enough to pass order dated **02.7.2011** advising the parties to approach the competent Court of law, however directed the SHO police station Jati to provide the protection to Respondent No.5 and also directed the parties not to create the law and order situation and maintain good atmosphere in the area creating the problems for Respondent No.5 and interfering in the

peaceful possession of Respondent No.5 in the suit land and also about one week back and again about two days back. The applicants came at the suit land and forcibly attempted to dispossess Respondent No.5 from the suit land and issued serious threats of forcible dispossession of the plaintiff / Respondent No.5 from the suit land and of creating the encumbrances in the suit land illegally, unlawfully and malafidely, hence Respondent No.5 filed **FC Suit No.92/2011** before Sr. Civil Judge, Sujawal.

3. The applicants made appearance and filed their written statements wherein denied the claim of the plaintiff / Respondent No.5. According to them, they are in actual and physical possession of the suit land since decades. The alleged sale deeds and copy of village Form-VII-B produced by Respondent No.5 are false, fabricated and managed documents. They further averred that survey No.365/1 to 4 was previously owned by one Muhammad who sold out the land to Respondent No.5 through his attorney Abdul Rehman, or the survey No.376/1 to 4 were previously owned by one Noor Muhammad who sold the land to Respondent No.5 through his attorney Dildar Ahmed and suit land is a government naqabooli land till today which is in possession of applicants who also have applied for its grant many times. Applicants further averred that one Abdul Sattar Soomro have also filed a suit before the Court viz, **F.C Suit No.07/2003** claiming to be the owner of suit lands and plaint was rejected under **Order VII Rule 11 CPC** with the observation that the plaintiff has not exhausted the remedy

available to him by applying to Revenue authorities and the suit barred under revenue jurisdiction Act. Applicant further averred that Respondent No.5 be put to strict proof of the same and applicants are in actual possession of the suit land and they are cultivating the same and there is no question of disturbance in irrigation or any heavy loss to Respondent No.5 and all these applications are fictitious and false, Respondent No.5 himself is not aware with the boundaries of the land which shows that he has never remained in possession, nor has any title in respect of the suit land, hence Respondent No.5 is not entitled for any relief and no cause of action has ever arose to Respondent No.5 and the suit is barred under **Section 172 and 117** of Land Revenue Act.

4. The trial Court from the pleadings of the parties settled the following issues:-

- i. Whether suit is not maintainable and that this Court has jurisdiction?
- ii. Whether plaintiff is legal owner of suit land having its possession?
- iii. Whether defendants No.5 to 11 are in possession of suit land if yes then whether possession of defendants is legal?
- iv. Whether plaintiff is entitled for any relief?
- v. What should the decree be?

5. On the above issues, Respondent No.5/plaintiff examined himself at Ex.48, he produced **certified** copy of order Member Land Utilization Board of Revenue Sindh Hyderabad in Case NO.SROR 226 of 2005 dated 27.7.2007, **original** registered sale

deed No.157 dated 10.5.2001, **original** copy of registered sale deed No.159 dated 10.5.2001 and **certified** copy of order of Hon'ble Sessions Judge, Thatta passed in Cr. Misc. Appl. No.256/2001 dated 02.07.2011 at Ex.48/A to Ex.48/D. Respondent No.5/plaintiff also examined his witness namely Abdul Rehman as Ex.62 and Ahmed Shah as Ex.63 and then Respondent No.5/plaintiff closed the side vide statement as Ex.65. On the other hand out of 7 applicants only applicant No.5 / defendant No.5 namely Lano examined himself through affidavit in evidence as Ex.74 he produced five copies of land revenue receipts, attested copy of field book, certified copy of order dated **02.07.2011** passed by Hon'ble Sessions Judge, Thatta as Ex.74/A to Ex.74/G. Thereafter learned counsel for the defendants field statement for closing his side as Ex.76.

6. The learned trial Court after recording evidence of the parties and hearing them decreed the suit of Respondent No.5 by judgment dated **31.08.2015**. Then applicants preferred civil appeal under Section 96 of CPC bearing **Civil Appeal No.32/2016** impugning the judgment and decree dated 31.08.2015. Learned appellate Court also after going through the record dismissed the appeal and maintained the impugned judgment and decree, hence applicants have filed instant revision application.

7. I have heard learned counsel for the parties and perused the record.

8. Learned counsel for the applicants against the concurrent findings of the two courts below was unable to refer to any evidence, which could be considered as misreading by the learned appellate Court or the trial Court in decreeing the suit for permanent injunction against the respondents. Out of seven applicants only applicant No.5 has appeared in the witness box and no documents were produced by him except dhul / Revenue receipts in respect of the suit land. The initial burden on plaintiff to prove that he is the owner in possession of the suit land was discharged when respondent No.5 / plaintiff has produced original registered title documents and the witnesses of the sale purchase of the suit land and also by not asking for the possession through the Court. Their evidence was consistent to their claim. The moment Respondent No.5 / plaintiff has produced the original title documents and witnesses, the burden was shifted on the applicants who could not discharge their burden of proving forgery, fraud and manipulation in obtaining these documents and therefore, they had no case. As against the evidence of respondent No.5, the applicants' contention that the documents i.e registered lease deed and mutation etc are forged and fabricated was not supported by any documentary evidence. The trial Court's decree has been modified by the appellate Court to the extent that it was simple decree of permanent injunction against the respondents, such modification has been challenged.

9. In view of the above facts and discussion, no case is made out for interference in the impugned order, therefore, this

revision was dismissed by short order dated **20.11.2018** and these are the reasons for the same.

Karachi

Dated;_____

SM

JUDGE