

IN THE HIGH COURT OF SINDH, KARACHI

**Revision Application No.58 of 2018**

Present: **Mr. Justice Nazar Akbar**

Applicant No.1 : Muhammad Aslam S/o Usman  
 Applicant No.2 : Mst. Zubaida Wd/O Usman  
 Applicant No.3 : Mst. Halima D/o Usman  
 Applicant No.4 : Mst. Marium D/o Usman  
 Applicant No.5 : Abdullah S/o Usman  
 Through Ms. Kausar Amin, advocate.

**Versus**

Respondent No.1 : The III<sup>rd</sup> Add: District Judge, South Karachi  
 Respondent No.2 : The Xth Senior Civil Judge, South Karachi.  
  
 Respondent No.3 : Mst. Zaitoon W/o Noor Muhammad  
 Respondent No.4 : Mst. Hajra Alias Hajiani  
 Through Mr. Muhammad Amin Motiwala,  
advocate.  
  
 Respondent No.5 : Mukhtiarkar Revenue, Lyari Town.  
 Respondent No.6 : Deputy District Officer Land, Lyari Town.

Date of hearing : **14.05.2019**

Date of Decision : **14.05.2019**

**JUDGMENT**

**NAZAR AKBAR J:-** This Revision Application is directed against the judgment dated **30.01.2018** passed by the learned III<sup>rd</sup> Additional District Judge, South Karachi in Civil Appeal No.40/2013 whereby the judgment and decree passed by the Xth Senior Civil Judge, South Karachi in consolidated suits No.973/2008, 974/2008 filed by applicants and suit No.104/2010 filed by Respondents No.3 and 4 partly decreeing and partly dismissing were reversed and the appeal was allowed.

2. Brief facts of the case are that the applicants filed two suits bearing Nos.973/2008 and 974/2008 both for Declaration, Cancellation, Possession and Mesne Profit and Permanent Injunction against the Respondents stating therein that they are legal heirs/ co-owners of Plot No.1081 and 1081-A, measuring 200 sq. yds. known as Osman Manzil, Tayyab Ali Alvi Road, near Masjid Aqsa, Khadda, Lyari, Karachi (the suit property). They got the suit property through inheritance from their husband/father Usman S/o Haji Dabbi, who expired on **15.5.2007** was owner through lease deed. The suit property was initially consist upon ground plus 2 stories and deceased Usman wanted to raise 3 additional stories, therefore, he entered into an agreement with contractor Rafiq Ahmed on **01.02.2006** and as the construction could not be completed within time the agreement was extended upto **30.06.2007**. On completion of construction, flats of the additional floors were given to different persons on pugree/goodwill basis in September and October, 2007 and Flat No.17 on 5<sup>th</sup> Floor was handed over by the contractor to applicant No.1 when some indoor work was yet to be completed. It was averred that on **24.10.2007** Respondent No.3 alongwith gunda element broke the locks of the said flat and took possession. Applicant No.1 lodged FIR No.311/2007 at P.S Baghdadi and also filed CrI. Misc: Application No.990/2007. Applicant No.1 during proceedings of CrI. Misc: Application No.990/2007 submitted that the suit property was leased in the name of deceased Usman since **31.12.1976**. However, he alleged that Respondent No.3 managed bogus sale deed in her name executed on **13.03.2008** and produced in Crime No.311/2007. The suit property is on KMC land and lease has been executed in the name of deceased Usman in 1976 by KMC but

Respondent No.3 categorized the suit property as LY-2/102 and shown it the land of Respondent No.5/Mukhtiarkar Revenue. The trial Court in Crime No.311/2007 gave findings that the dispute is over a flat and both parties have some documents, therefore, parties are at liberty to file civil suit for title, therefore, applicants filed two suits No.973/2008 and 974/2008.

3. Respondents No.3 and 4 also filed suit No.104/2010 for Declaration, Cancellation, Possession, Permanent Injunction and Mesne Profit against the applicants stating therein that applicants and Respondents No.3 and 4 are relatives with common ancestors and residing in the suit property since long. When it was alleged by the applicants that the suit property is in the name of their father/husband Usman, Respondents No.3 and 4 approached the Excise office wherein it was revealed to them that the PT-1 is still in the name of Haji Muhammad, fore-father of both the parties. Respondent No.3 and 4 when came to know that the suit property was never ever legally acquired by the said predecessor-in-interest, the same was legally acquired by them from its true owner duly recorded in the register of City Survey extracts of the record of rights maintained by the Mukhtiarkar (Revenue) Lyari Town, Karachi. It was further averred that the suit property originally belonged to Miss Gulebar Ara P. Kharas who sold out the same to Mr. Ghulam Ali and Mr. Ghulam Ali executed gift deed in respect of the suit property as well as other adjacent plots in favour of Mrs. Amir Ali. Thereafter Respondents No.3 and 4 purchased the property from said Amir Ali vide Sale Deed registered at No.1608 and 1609 dated **13.03.2008**.

4. In all the suits the parties filed their respective written statements and contested the suits and reiterated the same facts in their respective written statements which they have narrated in their respective pleadings. The learned trial Court from the pleadings of the parties framed the following consolidated issues:-

1. *Whether the suit No.973/2008 is not maintainable?*
2. *Whether the suit No.974/2008 is not maintainable?*
3. *Whether the plot bearing No.1081 and 1081-A have any concern with plot No.LY-2/102 and LY-2/103, Khadda Lyari Karachi?*
4. *Whether the Defendants have right over the plots bearing No.1081, and 1081-A Usman Manzil Khadda, Kyari Karachi?*
5. *Whether the Defendants took the possession of flat No.17 situated on 5<sup>th</sup> floor of Usman Manzil, situated at plot No.1081, and 1081-A, Khadda Lyari Karachi on 24.10.2007 illegally and forcibly?*
6. *Whether the Sale Deeds registration No.1608 and 1609, dated **05.08.2008** were obtained by the Defendants by way of fraud, if so, those are liable to be cancelled?*
7. *Whether the Plaintiffs are entitled for mense profit, if so, since when and at what rate?*
8. *Whether the Plaintiffs of suit No.104/2010 are entitled to recover amount of rent received by the Defendants of the suit No.104.2010?*
9. *What should the decree be?*

5. The trial Court after recording evidence and hearing learned counsel for the parties, partly decreed and partly dismissed all the three suits in the following terms:-

*For the reasons discussed above the suit of the Plaintiffs bearing civil suit No.973, 974/2008 and 104/2010 are hereby partly decreed and partly dismissed. The suit bearing No.973, 974/2008 are hereby decreed to the extent of prayer clause (a) and the other remaining prayer clauses of such suits have not been considered, hence are dismissed. The suit bearing No.104/2010 is also partly decreed to the extent of prayer clause (a), (b)*

*and (g) and the remaining prayer clauses of such suit have not been considered, hence are dismissed. Order passed accordingly, with no order as to cost.*

Against the said judgment and decree, only Respondents No.3 and 4 who were plaintiff in suit No.104 of 2010 filed Civil Appeal No.40/2013 before the Appellate Court which was allowed in the following terms:-

*In the light of foregoing discussion, it is clear that plots bearing #1081-A, do not exist. Therefore, I am of the view that the judgment passed by the Trial Court with respect to the possession of flat No.LY-2/102 & LY-2/103 is hereby set-aside, the applicants (Respondents No.2 and 3) are hereby declared as the sole owners of the said plots and the respondents (applicants) are directed to vacate the said premises. The appeal is hereby allowed and R&Ps are being returned.*

Against the above observations of the appellate Court the applicants / plaintiff of suit No.973 and 974 of 2008 who had not preferred any appeal against the judgment of the trial Court have preferred instant Revision Application against the appellate order.

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

7. Learned counsel for the applicants contended that both the Courts below have overlooked the important piece of evidence with regard to the suit property which is the land of KMC and not of CDC and both the Courts below acted arbitrarily which caused serious prejudice to the applicants and this Court while exercising Revisional powers can interfere in the impugned judgments. She however, concedes that the applicants have not challenged the judgment of the trial Court and contended that since the appellants were defending the civil appeal filed by Respondents No.3 and 4,

therefore, they were not required to file a separate appeal against the judgment and decree of the trial Court and they were protecting their right in the appeal filed by Respondents No.3 and 4.

8. Learned counsel for Respondents No.3 and 4 contended that since the applicants have not challenged the judgment and decree of the trial Court whereby their prayers except prayer clause (a), the suit was dismissed has attained finality and the applicants have no right to file instant Revision Application arising out of the same judgment and decree of the trial Court.

9. Learned counsel for the applicants was unable to satisfy the Court on the point that when their suit has been dismissed except prayer clause (a) and all other prayers including prayer for cancellation of lease of their predecessor of interest can be recalled since such part of the impugned judgment was not touched by the appellate Court. Therefore, the dismissal of the other prayers in their suit has attained finality and not only that prayer clause (b) in suit No.104 of 2010 filed by the respondents whereby lease of the said property in favour of predecessor-in-interest of the plaintiff has been cancelled has also obtained finality as prayer clause (b) in Suit No.104/2010 was accepted by the trial Court. How the applicants can change the two findings against them in revision against the orders passed by the appellate Court on the appeal filed by the respondents to get the decree to the extent of their prayer clause (c) in suit No.104/2010. The appellate Court on the basis of evidence on record has only set aside the findings of the trial Court to the extent that the property bearing Plot No. LY-2/102 and LY-2/103 and Plots NO.1081 & 1081-A have not concern with each other and same are different properties. This finding of the trial court was on

the face of it contrary to record as may be appreciated from the prayer clauses of the suit filed by the applicants themselves. In each of the prayers declaration has been sought that these two plots are not two different plots but one and the same. The applicants have claimed that it is the property of KMC and it was leased by KMC in favour of their father and according to their prayer clause (b) they had sought declaration to the effect that respondents have fraudulently changed number of plot No.1081 and 1081-A to Plot No. LY-2/102 & LY-2/103. This prayer and other related prayers were not accepted by the trial Court and the applicant has not filed appeal against this finding. Learned Appellate Court has very elaborately discussed the evidence which clearly shows that actually plot No. LY-2/102 and LY-2/103 are real plots and 1081 & 1081-A as claimed by the applicants in their suit does not exist. Even otherwise when both the parties are claiming possession of the same property by giving different number to it, it was illogical to accept that these were to different plot. Therefore, the observation of the trial Court was contrary to record that these were two different entities.

10. In view of the evidence discussed by the appellate Court its findings are in accordance with law.

11. In view of the above, instant Revision Application was dismissed by short order dated **14.05.2019** and these are the reasons for the same.

JUDGE

Karachi, Dated:03.08.2019

Ayaz Gul  
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