

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

Civil Revision Application No.191 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on C.M.A. No.2010/2020.
	2. For orders on C.M.A. No.1812/2020.
	3. For orders on C.M.A. No.1813/2020.
	4. For hearing of main case.

22.12.2020

Syed Ghulam Hyder Shah, Advocate for the applicant.
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Urgency granted.

The facts in brief necessary for disposal of instant Civil Revision Application are that the applicant claiming to be owner of plot consisting of an area of 12010 sq. ft. situated in Deh Sanghar, having been allotted to him by Board of Revenue Sindh, filed a suit before learned 1st Senior Civil Judge Sanghar, with the prayer that the actions of the private respondents for making interference with his possession or raising of construction over an area of 7411 sq. ft forming part of above said plot, be declared illegal and unlawful. With this, the applicant also sought for injunction, the plaint whereof was rejected by learned 1st Senior Civil Judge Sanghar, vide his order dated 16th October 2020 such rejection of the plaint was maintained by learned 2nd Additional District Judge, Sanghar, vide his Judgment dated 10th November 2020, which is impugned by the applicant before this Court by way of instant Civil Revision Application.

2. It is contended by learned counsel for the applicant that the triable issues were available, therefore, learned trial and appellate Courts ought not to have rejected the plaint of the applicant out-rightly. By contending so, he sought for setting-aside of the impugned order after notice to other side.

3. I have considered the above arguments and perused the record.

4. If, for the sake of argument, it is believed that the private respondents were/are making interference with the possession of the applicant over the subject plot then such

interference on their part *prima facie* amounts to denial of right of ownership of the applicant over the subject plot. In that situation, as per requirement of section 42 of the Specific Relief Act 1877 the applicant was under lawful obligation to have sought for declaration of his title over the subject plot, which is not sought for by him, for no obvious reason and such omission on his part has made his suit to be incompetent. The declaration which is sought for by the applicant obviously is negative. No negative declaration could be granted by the Courts under section 42 of the Specific Act, 1877. Therefore, learned Trial and Appellate Courts while rejecting plaint of the applicant, have committed no wrong which could be made right by this Court by way of instant Civil Revision Application, it is dismissed in limine together with the listed applications.

JUDGE

Muhammad Danish Steno*