

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 191 of 2018

M/s Haq Waris Iron Store v. Province of Sindh & others

Date of hearing: **31-01-2022**

Date of decision: **31-01-2022**

Mr. Saeed Memon, Advocate, holding brief for Mr. Shafqat Rahim Rajput, Advocate for the Applicant.

Mr. Muhammad Idrees Shaikh, Advocate, holding brief for Mr. Ameer Ahmed Shaikh, Advocate for Respondent No.7.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision Application, the Applicant has impugned judgment and decree dated 04-10-2018 and 04-10-2018, respectively, passed by the Additional District Judge-III, Sukkur in Civil Appeal No.171 of 2017, whereby order dated 28-09-2017 passed by the Illrd Senior Civil Judge, Sukkur in F.C. Suit No.325 of 2017, through which the Plaint in Suit of the Applicant was rejected in terms of Order VII Rule 11 CPC, has been maintained.

2. Heard the learned Counsel and perused the record.

3. It appears that the Applicant filed a Suit for declaration, cancellation and permanent injunction, seeking the following prayers:

(a) *To declare that the plaintiff has legal and lawful right over the suit plots lying vacant in the in the southern side of the plots of the plaintiff and the plaintiff has superior right for allotment of open space plot admeasuring near about 2100 SQFTS in back side of plots bearing No.98-A and 99-A situated at Iron Market Golimar Sukkur and also be pleased declare that at this stage the defendant No.2 to 6 cannot revise the map according to their own wish and will.*

(b) *To direct the defendant No.2 to 4 to allot the open space plot admeasuring about 2100 SQFTS in favour of plaintiff as the plaintiff has superior right for allotment of open space plot admeasuring about 2100 SQFTS in back side of plots bearing No.98-A and 99-A situated at Iron Market Golimar Sukkur and the said plot is also part and parcel of Iron Market.*

- (c) *To direct the defendant No.2 to 6 to produce entire documents in respect of the allotment of the iron plots and after going through the allotment orders will be prove the outsiders / not concern persons have been allotted same may be cancel.*
- (d) *To cancel and deliver-up the allotment order in favour of defendant No.7 of plot No.46 and other allotment orders of outsiders and not concern persons and after cancellation of the fake and false allotment same may be allotted to the concerned persons / businessmen who running the business of iron and Annaj.*
- (e) *To grant permanent injunction by restraining the all defendants either themselves or through their servants, subordinates, agents or any other agency from dispossessing the plaintiff from the suit plot and also alienating the suit plots by way of allotment of lease, gift, mortgage the suit plot admeasuring 2100 SQFTS in back side of plots bearing No.98-A and 99-A situated at Iron Maket Golimar Sukkur in any manner whatsoever and also be pleased restrain do not revise the original map till final disposal of the instant suit.*
- (f) *To award cost of the suit.*
- (g) *To grant any other relief which this Honourable Court deems fit and proper under the circumstances of the case.*

4. After issuance of summons, the Respondent filed an application under Order VII Rule 11 CPC, which was allowed by the learned Trial Court vide order dated 28-09-2017. The Applicant, being aggrieved, filed Civil Appeal No.171 of 2017, and through impugned judgment dated 04-10-2018, the Appeal also stands dismissed.

5. It is a matter of admitted record that the Applicant had sought a declaration in respect of a public property and the precise case of the Applicant was dependent on some alleged promise regarding grant or allotment of the land in question. In para 6 of the plaint it is stated that since the plot in question was lying vacant, therefore, he has taken over the possession to stop any encroachment of the same. Again in Para 8 it is stated that due to apprehension of encroachment by land grabbers plaintiff has taken over the possession, whereas, huge amount has been invested; hence, a right accrues to the grant of the said plot. It is beyond comprehension as to how the possession has been taken over, and under what law and authority; not only this, despite being in illegal possession, court of law has been approached to seek a declaration of ownership. It is not in dispute that the said land stands allotted to Defendant No.7 on 26-10-1986; whereas, the adjacent plots were granted to the Plaintiff on 06-01-2012, and in that case, apparently, no right accrues to the Applicant, of which any enforcement can be sought by way of a Civil Suit.

6. In fact, this is a case of no cause of action; whereas, even otherwise, The Applicant had no *legal character* in terms of section 42 of the Specific Relief Act, 1877 and his suit, seeking declaration to ownership of the said plot, was not maintainable, and therefore, no exception can be drawn to the findings of the two Courts below, whereby the Plaint has been rejected. The Applicant has no title of the property in question nor it is a case of any specific performance, in which the Applicant could have sought enforcement of the promise or agreement. Here, the case is simpliciter for declaration merely on the ground that the adjacent plot to his property allegedly lying vacant be granted to the Applicant as he has a superior right. It is a matter of record that no such right exists, therefore, the Courts below were justified in rejecting the plaint, and such orders do not warrant any interference; hence, this Revision Application is misconceived and is hereby **dismissed** with pending application.

Abdul Basit

J U D G E