

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

C.P. No.D-527 of 2004  
Joseph Masih through L.Rs  
Versus  
2<sup>nd</sup> Additional District Judge & others

**AND**

Civil Revision No.266 of 1991  
Yousuf (Joseph) through his L.Rs  
Versus  
Muhammad Ibrahim

Date	Order with signature of Judge
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**Before: Mr. Justice Faisal Arab  
Mr. Justice Muhammad Shafi Siddiqui**

**Date of hearing: 15.08.2013**

Mr. S. Nasir Hussain Jafri for the petitioners.  
Mr. Abdul Khalil for respondent No.3 and 4.

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**Muhammad Shafi Siddiqui, J.**- This petition along with connected Revision Application No.266 of 1991 was dismissed by a short order dated 15.08.2013 and the following are the reasons for the same.

Very briefly the facts of the case are that one Joseph son of Barkat Masih filed suit under section 9 of the Specific Relief Act contending that he was in possession of four plots bearing No.590, 591, 616 and 617 Sector A, Street 3/4, Kashmir Colony, Korangi Road, Karachi, and got two electricity meters installed in his father's name and in the name of his younger sister and subsequently applied for sui-gas connection which was also sanctioned. The record of the plots in question was maintained by the Excise & Taxation Department as PT-1 was issued in favour of said Joseph.

It is contended that earlier the area was unauthorizedly occupied and the plot in question was numbered as C/46 however when the area was declared as Katchi Abadi by the Government of Sindh this plot was divided in four and numbered as 590, 591, 616 and 617. At this stage respondent No.3 along with respondent No.4 who was a tenant of Joseph (predecessor of the petitioners), filed a suit bearing No.570 of 1989 in the Court of Senior Civil Judge for injunction in respect of the said plots claiming to be in possession thereof as according to them the predecessor of the petitioners was attempting to dispossess him (respondent No.4). It is contended that the said respondent No.4 raised construction as being attorney of the predecessor of the petitioners i.e. Joseph however at that time they had no idea that he would be filing the suit on the strength of such documents.

The suit filed by the respondent No.4 was dismissed however an appeal bearing Civil Appeal No.02 of 1990 was preferred before the District Judge South which was decided by learned VII-Additional District Judge Karachi South and the order of the dismissal of the suit was set aside. Learned counsel submitted that the said order/judgment was challenged by the predecessor of the petitioner i.e. Joseph Masih in Civil Revision No.266 of 1991, which is connected with this petition.

Learned counsel submitted that while this part of the litigation continued with respondent No.3 and 4, the officials of the concerned police station in collusion with above respondents, dispossessed the petitioners from subject premises on 12.11.1991 and the predecessor of the petitioner Joseph Masih filed Suit No.30 of 1992 under section 9 of the Specific Relief Act for restoration of the possession which was contested by respondent No.3 whereas respondent No.4 remained absent and proceeded exparte. After settlement of issues evidence was recorded by the petitioner as well as by respondent No.3 and suit was

ultimately transferred to the Court of III-Senior Civil Judge South Karachi and renumbered as Suit No.237 of 2000. The said suit was dismissed vide judgment and decree dated 29.04.2003. Aggrieved of the said dismissal the petitioner's predecessor filed Civil Revision No.27 of 2003 which was decided by the II-Additional District Judge Karachi South who after hearing dismissed the same by judgment dated 06.02.2004 hence the petitioners have preferred this petition on the ground that the basis on which the suit was dismissed was the fact that earlier Suit No.570 of 1989 was filed by respondent No.3, which cannot become basis of the dismissal of the petitioner's suit. Learned counsel has argued that the judgment passed in Suit No.570 of 1989 is not conclusive and since the facts pertaining to the year 1989 only were involved in Suit No.570 of 1989 the same cannot become basis of the decision of the suit filed by the petitioners' predecessor wherein they claimed to have been illegally dispossessed by the respondents in the year 1991.

Learned counsel for the petitioner further submitted that the petitioners have brought convincing documentary evidence which included installation of electricity and payment of electricity charges and this evidence should have been considered by the learned two Courts below. Learned counsel submitted that the two Courts below did not peruse the material available on record and hence reached to a faulty judgment not based on correct appreciation of evidence.

Mr. Abdul Khalil, appearing for respondents No.3 and 4, has supported the judgment of the two Courts below. He relied upon the findings recorded in the judgment of the two Courts below and submitted that there is absolutely nothing contrary to the law and more importantly when the two Courts below have given concurrent findings, this Court cannot reappraise the evidence to reach to any other conclusion.

We have heard the learned counsel and perused the material available on record.

The petitioner has challenged before us concurrent findings of the Courts below. The judgment of learned III-Senior Civil Judge Karachi South passed in Suit No.30 of 1992 (New number 237/2000) is very comprehensive and detailed. Learned Senior Civil Judge framed the following issues:

1. Whether plaintiff has been in possession of suit property?
2. Whether the defendants forcibly and illegally dispossessed the plaintiff from suit property on 12.11.1991?
3. What should the decree be?

Learned Senior Civil Judge has considered the evidence of each and every witness produced in the case and exhaustive findings with reasoning were given to every issue. The witnesses such as councilor, and from SSGC, E&T Department and KESC were considered in detail. Precisely the point involved in the suit is as to whether the plaintiff was in possession of the property in question and has been dispossessed forcibly by the defendants/ respondents. The question of title was not the subject matter of the suit as it was filed under section 9 of the Specific Relief Act. Learned Senior Civil Judge, while dealing with the issues, has also referred the evidence of the parties and has provided a detailed discussion in reaching to a conclusion which was challenged by the petitioner in Civil Revision Application No.27 of 2003.

Without involving into the controversy as to whether a Revision would lie against the dismissal of the suit or an appeal, the revision application was dismissed by learned Additional District Judge on 06.02.2004 hence he has preferred this petition. Without any hesitation

we are afraid that we cannot reappraise the evidence while exercising the jurisdiction under Article 199 of the Constitution which powers or jurisdiction is not available even when any other view is possible. There are the concurrent findings of two Courts below and are considered as sacrosanct unless found to be suffering from patent illegality. While exercising powers under Article 199 of the Constitution this Court cannot interfere in the concurrent findings of fact unless it is established that the judgments were without jurisdiction. In the instant case the petitioners' predecessor has failed to establish a solitary point that they were in possession of the premises in question on the day when they alleged to have been dispossessed and the arguments of the learned counsel that the judgment was based on erroneous assumption of fact that the earlier suit was filed in the year 1989 is also misconceived as the burden was on the petitioners' predecessor who has failed to discharge the same.

Similarly in the Revision Application No.266 of 1991 which is also preferred by petitioners' predecessor Joseph Masih where the judgment and decree of learned VII-Additional District Judge South Karachi passed in Civil Appeal No.2 of 1990 was challenged and precisely in terms of the said order the injunction in favour of defendant NO.3 was ordered to be maintained while the matter was referred to the Katchi Abadi authorities for exercising of their powers in accordance with law for disposal of the land in question. In substance, the order of the appellate Court has decided that while issue of entitlement would be decided by the authority, the parties would maintain status quo and since the question of illegal dispossession has already been decided whereby the suit of the petitioners' predecessor was dismissed, therefore, there is no justification to alter or modify such injunction order in view of reasons recorded in the judgment of the Courts below.

The petitioners in this petition have sought reappraisal of evidence which cannot be undertaken by this Court in exercise of jurisdiction conferred under article 199 of the Constitution or 115 CPC in order to come to its own conclusion as the findings on the question of fact recorded by the Courts below cannot be substituted. This Court however can always upset the findings of the Court below in case of misreading and non-reading of the evidence or if there is a jurisdictional error or violation of any law but in the instant case the petitioners have failed to agitate or point out any such conditions.

Upshot of the above discussion that we do not find any justification to interfere in the judgment/order passed by the Courts below in exercise of jurisdiction and powers conferred either under article 199 of the Constitution or Section 115 of CPC and accordingly the petition and the Revision application were dismissed by short order and these are the reasons for the same.

**Judge**

**Judge**