

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
R.A. No. 46 of 2022

| Date | Order with Signature(s) of Judge(s) |
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Fresh Case.

1. For order on office objection alongwith reply as at flag "A".
2. For order on C.M.A. No. 1897/2022 (Stay Application).
3. For hearing of main case.

20.04.2022

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Mr. Khalid Latif, Advocate for applicant.  
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**ZAFAR AHMED RAJPUT, J:-** Applicants herein filed Civil Suit No. 1245/2009 against the respondents No.1 to 4 for declaration, cancellation, possession, mesne profit and permanent injunction, alleging therein that the plot bearing No.140, measuring 80 sq.yds., situated in Sector 13-A, Orangi Township, Karachi ("*suit plot*"), was allotted to their father (*late Abdul Hameed*) vide Allotment Order, dated 15.11.1967, issued by the Administrative Officer, Resettlement Department, Orangi Town, K.D.A Karachi. It was further alleged that due to financial problems, late father of the applicants neither could get the suit plot leased out, nor he constructed or visited the same, and later he died on 19.05.1994; so also, his widow Mst. Anwari Begum died on 23.04.1997. It was also alleged that in the month of August 2008, the appellant No.3 went at the suit plot and shocked to see that the same was encroached and a house was built upon it and the respondent No.2 was living therein with her family. The appellant No.3 in order to ascertain the present status of the suit plot moved an application, dated 10.09.2008, to the respondent No.3 (*KMC*) and vide letter, dated 10.09.2008 issued by the respondent No.3, came to know that the suit plot was leased out in the name of the respondent No.1 and, subsequently, it was transferred in the name of the respondent No.2. It was case of the applicants that the respondent No.2 was in illegal possession of the suit plot without having any right, title and interest and was enjoying the benefit thereof. It was also case of the applicants that the

execution of lease in the name of the respondent No.1 and subsequent sale deed in the name of the respondent No.2 were illegal, having no value in the eyes of law and the respondent No.1 in collusion with the respondent No.3 managed to get the suit plot leased out in his name behind the back of original allottee and thereafter sold out the same to the respondent No.2; hence, cause of action accrued to applicants to file the said suit.

2. The respondent No.2 contested the suit by filing her written statement in denial by stating therein that the suit plot was owned and possessed exclusively by the respondent No.1 having acquired the same by virtue of lease deed, dated 24.01.1991, from respondent No.3, and then he conveyed the title of the suit property to her vide registered Conveyance Deed, dated 08.10.2005, with construction thereon. She also pleaded that the applicants have no cause of action against her and the suit of the applicants was liable to be dismissed as they were not entitled for the relief claimed by them.

3. Upon the divergent pleadings of the parties, the learned trial Court framed following issues:

*1. Whether the suit is barred by limitation?*

*2. Whether the suit plot was allotted in the name of late Abdul Hameed?*

*3. Whether all the transaction effected at the back and without notice to the late Abdul Hameed including execution of lease in the name of respondent No.1 and sale deed in the name of the respondent No.2 are illegal, having no value in the eye of law and liable to be canceled?*

*4. Whether the plaintiffs being legal heirs of late Abdul Hameed are entitled for mutation/ transfer/ possession of the suit plot?*

*5. Whether the plaintiffs are entitled for mesne profit at the rate of Rs.3,000.00/(Rupees three thousand only) w.e.f. October, 2005?*

*6. What should the decree be?*

4. After recoding pro and contra evidence and hearing the counsel for the parties, the learned II<sup>nd</sup> Senior Civil Judge, Karachi-West, in first round of

litigation, decreed the suit of the applicants as prayed, vide judgment dated 29.03.2014 and decree drawn on 29.03.2014. Against that, the respondent No.2 preferred Civil Appeal No. 65/2014, which was allowed by the learned III<sup>rd</sup> Additional District Judge, Karachi-West, vide judgment dated 9.2.2016, by remanding the case to trial Court with direction to frame an issue, as proposed, and decide the suit afresh according to law. Applicants challenged the said judgment in II<sup>nd</sup> Appeal No. 37/2016, which was allowed by this Court vide Judgment, dated 30.04.2018, whereby Civil Appeal No. 65/2014 was remanded to Appellate Court for its disposal on merit. Subsequently, learned X<sup>th</sup> Additional District Judge, Karachi-West, after hearing the learned counsel for the parties remanded the case to trial Court with direction to reassess and re-appreciate the evident available on record; call the original record from the concerned department/authorities and examine the official respondent before reaching to the conclusion of the case. Thereafter, in second round of litigation, the learned II<sup>nd</sup> Senior Civil Judge, Karachi-West dismissed the above suit vide judgment and decree, dated 08.08.2020. Against that, the applicants maintained Civil Appeal No. 234 of 2020, which was heard and dismissed by the learned X<sup>th</sup> Additional District Judge, Karachi-West, vide judgment and decree, dated 24.01.2022. It is against that concurrent findings of the Courts below, the instant Civil Revision Application has been preferred by the applicants/plaintiffs.

5. The learned Appellate Court, while dismissing Civil Appeal No. 234 of 2020, filed by the applicants, has observed as under:-

*“Admittedly, in the year 1990 the suit plot was transferred in the name of respondent No.1 by the Assistant Director Land, Orangi Town, KMC on the basis of sale agreement vide transfer order No. ADL/OTS/1378/90 dated 26.12.1990. From perusal of above transfer order, it appears that the suit was originally allotted to the predecessor in interest of appellants but transaction regarding sale and purchase has been taken place in between the predecessor in interest of appellant and*

*respondent No.1 which was verified by the Assistant Director (L), Orangi Township, Karachi. The name of predecessor in interest of appellant was substituted in the office record in terms of approval accorded by the project Director Orangi vide order dated: 17.1.1990. On the basis of transfer order the leased deed was executed by KMC in favor of respondent No.1 bearing registration No.344 MF Roll No. 1391 dated: 31.1.1991. Admittedly, the respondent No.1 raised construction on the suit plot and resided thereon for about 15 years, thereafter he sold the same to respondent No.2 through registered conveyance deed dated: 08.10.2005. The respondent No.2 is residing there since 2005 while the present suit was filed on 29.10.2009. Admittedly, the predecessor in interest of appellant died in the year 1994 while the suit plot was already transferred in the name of respondent No.1 in the year 1990 and there is nothing on record that the predecessor in interest of appellants moved any application to the authority. The mother of the appellants was died in the year 1997 but she also not moved any application. It is highly impossible that the appellants were not aware about the transfer of the suit property in the name of respondent No.1 from 1990 to 2009.*

*The transfer order was issued in favour of respondent No.1 by the Assistant Director (L), Orangi Township KMC on 26. 12.1992 with the approval of Project Director Orangi vide order dated: 17.1.1990 and the name of predecessor in interest of appellants was substituted in the office record on the basis of transaction regarding sale and purchase took place in between the predecessor in interest of appellant and respondent No.1. The officers of KMC appeared before the trial court and give evidence in which they admitted the execution of transfer order and registered lease deed in favour of respondent No.1. This shows that the respondent No.2 after verifying the record of KMC purchased the suit property from the respondent No.1 and is bonafide purchaser of the suit property.*

6. The learned counsel for applicants failed to rebut aforementioned findings of the learned appellate Court, even he could not satisfy the Court on the query as to why the deceased father of the applicants did not challenge the alleged transfer of suit plot in favour of respondent No.1, who was admittedly alive for more than

four years after alleged transfer. He also failed to satisfy the Court as to why the deceased father of the applicant and the applicants remained silent for seven years thereafter and they did not raise any objection over construction made by the respondent No.1 and selling of the suit plot with construction to respondent No.2. It may be seen that applicant No.3, namely, Muhammad Sabir is not an illiterate person, he is an advocate, but even then the applicants maintained the suit after 19 years of execution of the title deed in favour of respondent No.1 by their deceased father.

7. For the foregoing facts, discussion and reasons, the judgment passed by the appellate Court appears to be well reasoned and in accordance with the pleadings on record and applicable law, which does not suffer from any illegality and irregularity requiring any interference by this Court in its revisional jurisdiction. Accordingly, instant civil revision application is dismissed in limine being devoid of any merit, along with pending application.

Athar Zai

JUDGE