

# **IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 09 of 2003**

**Abdul Fatah Soomro v. Sukkur Municipal Corporation & others**

Date of hearing: **13.12.2021 & 11.04.2022**

Date of Judgment: **25-04-2022**

Applicant Abdul Fatah Soomro in person.  
Mr. Khuda Baksh Chohan, Advocate for the Respondents 1 and 2.  
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

-----

## **J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicant has impugned judgment dated 31.10.2002 passed by 3<sup>rd</sup> Additional District Judge, Sukkur, in Civil Appeal No.26 of 2001, whereby while dismissing the Appeal, the judgment dated 25.6.2001 passed by 2<sup>nd</sup> Senior Civil Judge, Sukkur, in Suit No. 146 of 1985 has been maintained, through which the Suit of Applicant was dismissed.

2. Heard the Applicant and learned Counsel for Respondents and perused the record.

3. Perusal of the record reflects that the Applicant had filed a Suit for declaration, permanent and mandatory injunction against Respondents seeking the following relief(s);

(a). *Declare that plaintiff is legally entitled to the grant of proprietary rights on the area of 1368 yards much less 7700 sq.yds i.e. the suit land in S.No.C-628 pir Maki Shah Colony Sukkur as found by the defendant No.1 over the said S.No.628/C under the provision of law.*

(b). *Declare that the plaintiff has become owner of suit land to the extent shown in sub-para "a" also by operation of law of adverse possession alternatively.*

(c) *To declare that the impugned actions of interference in plaintiff's possession and demolition of the suit premises damage to the property removal and mis-appropriation of the material and articles, construction of boundary wall done or intended to be done by and at the behest of the defendants their agents and sub-ordinates are illegal, unlawful malafide, without jurisdiction, and ipso facto void.*

(d). *To declare that grant in favour of defendant No.3 in respect of the above said plot, by defendant No.1 & 4, or to, any other person authorized by them is malafide ultra vires without jurisdiction illegal and ipso facto void.*

(dd). *To declare that the impugned actions of interference in plaintiffs' possession of the suit premises, demolition of the structure, damage to and removal of the property and mis-*

*appropriation of the material and construction of another boundary wall overlapping scratching or minimizing the suit land or annexure of the suit land for the children complex by def. 1, 2 or 4&5 directly or any other action whereby the plaintiff's right, interest and title in the suit land be prejudiced are illegal, malafide, without jurisdiction and ipso facto void.*

(e) *To grant permanent injunction restraining defendants or any other person or authority acting as such or on their behalf from granting the suit land or any part thereof to anyone else much less the defendant No.3 and from dispossessing or rejecting the plaintiff and from demolishing his structure of the suit premises.*

(ee). *To grant permanent injunction restraining the defendants from annexing the suit land or any part thereof with the proposed children park/complex to be constructed in C.S.No.C-622 and from doing any action whereby the plaintiff's right, title or interest in the suit land be prejudiced.*

(f). *To grant mandatory injunction directing the defendant No.1,2, 4 and 6 any person authorized by them or any authority acting as such to grant the suit land measuring about 1368 sq.yds; much less 7700 sq.ft and to execute the lease/transfer in favour of the plaintiff and in case of their failure directing execution of lease/transfer deed by the Nazir of this Honourable Court on behalf of the defendants.*

(g). *To grant any other relief, this Honourable Court may deem fit under the circumstances.*

(h). *To grant the costs of the suit.*

4. The Suit was contested by the Respondents; a written statement was filed and the trial Court settled the following issues.

1. *Whether the suit is not maintainable under the law?*
2. *Whether the plaintiff has remained in possession ad occupation of an area of 7700 sq.ft from S.No.628 C.P.M. S.C. Sukkur since the year 1970?*
3. *Whether the suit premises has been declared Katchi Abadi?*
4. *Whether the plaintiff entitled to damages worth Rs.20,000/- on account of acts of S.M.C, whereby the construction on the suit premises was demolished and material as well as articles removed by S.M.C, illegally in the year 1985?*
5. *Whether the plaintiff suffered monetary loss as well as mental agony and torture as result of illegally demolishing of construction standing over the suit premises subsequent to 1985 by defendants and why should be the amount of such compensation against the defendants?*
6. *Whether the plaintiff is entitled to the grant of proprietary rights/lease of an area 7700 sq.ft. from S.No.628-C P.M M.C, Sukkur?*
7. *Whether the plaintiff is also entitled to grant of lease/ownership on the basis of adverse possession over the suit premises?*
8. *Whether the S.M.C is legally bound to obey the order of the Chief Minister Sindh to execute the deed of transfer of the suit plot in favour of the plaintiff, as to Chief Executive of the Province?*
9. *Whether the plaintiff is entitled to the relief claimed?*
10. *What should the decree be?*

5. The trial Court after evidence came to the conclusion that the Applicant had not been able to prove his claim and accordingly the Suit was dismissed against which Appeal of the Applicant has also failed; hence, this Revision Application.

6. On perusal of the record it appears that though the learned trial Court as well as the Appellate Court have dealt with various issues (total 10 issues) and have given their elaborate finding on each issue separately; however, in essence, the moot question involved is that *whether the claim of adverse possession is maintainable; whether the suit land was part of Katchi Abadi*

*anymore, conferring any ownership rights to the Applicant; whether the Applicant had proved the claim of damages; whether the Applicant was entitled for any lease pursuant to some purported directions of the Chief Minister as claimed; whether possession was to be restored to the Applicant; and whether the suit land was available and could be allotted to the Applicant.* There is another question of maintainability of the Suit as well; which will be attended to in the later part of this judgment.

7. As to the claim of adverse possession, it has been correctly held by the two Courts below that the Applicant has failed to establish that he is in uninterrupted possession for the last 60 years so as to claim any adverse possession. In fact, the Applicant in his plaint had claimed he was in possession since the year 1970, whereas, the Suit was filed in the year 1985; hence, in law he could not have claimed any adverse possession. Moreover, the Applicant had taken contradictory and alternate plea so as to justify his possession, including the claim that the suit property was a Katchi Abadi; that he was also entitled for allotment and that some favorable orders had been passed by the Chief Minister. He in fact has not denied in his pleadings the ownership of the defendants on the point of adverse possession but has sought grant of the same on various grounds. In that case both the Courts below had come to a correct conclusion that not only the Applicant had failed to prove his possession; but so also was not entitled for his claim regarding any adverse possession. Moreover, this is notwithstanding the fact that at the time of filing of Suit the Applicant was already out of possession, but so also the suit property had been allotted to private respondents as borne out from the plaint itself.

8. As to the issue regarding the suit property being declared as Katchi Abadi, it has come on record that though earlier it was declared so; however, vide Notification dated 12.07.1999 the suit property has been DE notified and has been excluded from the master list of Katachi Abadi and settlement. The Applicant has not been able to controvert this fact in any manner, whereas, this being a legal proposition, even otherwise could not be disproved by him.

9. As to the claim of damages and loss of property and lowering of his reputation, again the Applicant has not been able to lead any confidence inspiring or convincing evidence in any manner. He has examined his chowkidar along with himself and has also produced certain receipts so as

to incurring expenditure on the suit property which according to him has been damaged by the Respondents; however, such evidence does not establish his case in any manner. Both the courts below have appreciated such evidence and have come to a final conclusion that neither damages as claimed have been proved; nor any other ground has been made out to award any damages or compensation.

10. As to claim that the Chief Minister had purportedly issued any orders or directions to grant any lease to the Applicant through the Local Government department, again neither any evidence has been led to this effect; nor any law has been cited under which such kind of directions can be issued by the Chief Minister and even if so, are to be complied with by the department. Rather, such orders, if any, have found to be illegal and without lawful authority, as even otherwise, in law the Chief Minister has no authority to grant land to anyone<sup>1</sup>.

11. Lastly, as to restoration of possession, it may be observed that as per evidence led by the Applicant it has not been established that the Applicant had any lawful possession of the suit property being claimed, therefore, no question of restoration of the same has arisen. As to the claim that alternatively, the Applicant was entitled for allotment of the Suit property as he was in possession and certain orders have also been passed in his favor, it would suffice to observe that again this argument is also misconceived. In the Pleat and the pleadings, it has come on record that the land in fact was owned by Sukkur Municipal Corporation, whereas, it is merely an application or claim regarding allotment of the land by the Applicant and by some means the possession was claimed. The moot question would then be that without seeking a declaration to any title or entitlement, can a mere Suit for possession or intended allotment could be maintained and whether the claimed relief could be granted in view of the provisions of section 42<sup>2</sup> of The Specific Relief Act. It is also not understandable as to how a suit for possession had been filed without seeking declaration in respect of title<sup>3</sup>. The only claim was to the effect that

---

<sup>1</sup> American International School System v Mian Muhammad Ramzan (2015 SCMR 1449)

<sup>2</sup> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief; provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to so.

<sup>3</sup> Muhammad Aslam v Mst. Ferozi (PLD 2001 SC 213)

there are some favorable orders for allotment of land which are pending finalization. This has no basis; nor it could be used as a title or in any manner could be accepted for seeking a declaration and possession. Form of suit also does not appear to be proper when the title of the property admittedly vested in Sukkur Municipal Corporation<sup>4</sup>. Notwithstanding the above, it is also an admitted position that the Applicant was not holding any title on the suit property and it was only an anticipated order which according to the Applicant was required to be passed on his application of allotment, and therefore, the suit is open to another objection. According to Section 42 only that person can maintain a suit for declaration who is entitled to any legal character or to any right as to any property. This means that the character or the right which the plaintiff claims and which is denied or threatened by the other side must exist at the time of the suit and should not be the character or right that is to come into existence at some future time<sup>5</sup>. This was in effect a suit for a declaration, not with respect to an existing right, but with respect to some possible anticipated right which even otherwise was never granted in the entire period during which allegedly the Applicant had claimed possession. Per settled law a Suit on such right cannot be entertained in terms of section 42 of the Specific Relief Act, 1877, as at the time of filing of the Suit, the Applicant was not holding any title to seek the relief as prayed for. In fact, what the Applicant wanted was to obtain an affirmative declaration that he may have a right to claim or own the property upon grant of his pending application and some purported orders of the Chief Minister, and till such time the said right is granted, his possession be affirmed as being legal by way of a declaratory decree. In other words, he has asked for a declaration not of an existing right but of chance or possibility of acquiring a right in the future. The character or right within the contemplation of s.42 ibid, which the Applicant / Plaintiff asserts or claims, and which is allegedly being denied by the other side must exist at the time of filing of the Suit for such a declaration and should not be the character or right that is to come into existence at some later stage. It is also a settled law that no declaration of an abstract right can be granted; howsoever, practical it may be to do so. The Courts after coming to a definitive conclusion that the land in question was never owned by the Applicant, were fully justified to refuse exercise of any discretion in the matter, as it is not a matter of absolute right to obtain a declaratory decree;

---

<sup>4</sup> Province of Punjab v Syed Ghazanfar Ali Shah (2017 SCMR 172)

<sup>5</sup> AIR 1944 Lahore 110 Ahmad Yar Khan Vs. Haji Khan and Ors

rather it is a discretionary relief and was rightly refused in the given facts of the case in hand. This power of granting a discretionary relief should be exercised with care, caution and circumspection. Such power ought not to be exercised where the relief claimed would be unlawful. The Courts have always been slow and reluctant in granting such relief(s) of declaration as to future or reversionary rights.

12. Finally, it is needless to observe that in a finding of fact where such findings were based on appraisal of evidence, raising of inferences in its discretion could not be interfered with under S.115, C.P.C. merely because a different view was also possible to be taken<sup>6</sup>. It is also settled law that a mere fact that another view of the matter was possible on appraisal of evidence, would not be a valid reason to disturb concurrent finding of fact in a Civil Revision<sup>7</sup>. It is further settled that High Court cannot upset finding of fact; however erroneous such finding is, on reappraisal of evidence and take a different view of such evidence<sup>8</sup>.

13. In view of hereinabove facts and circumstances of this case, it appears that both the Courts below have arrived at a fair and just conclusion, whereas, no case of any exception has been made out so as to interfere with the concurrent findings of fact recorded by the Courts below; hence, this Civil Revision Application does not merit any consideration; and is accordingly hereby **dismissed**.

**Dated: 25-04-2022**

Abdul Basit

J U D G E

---

<sup>6</sup> ABDUL QAYUM V. MUSHK-E-ALAM (2001 S C M R 798)

<sup>7</sup> Abdul Ghaffar Khan v Umar Khan (2006 SCMR 1619)

<sup>8</sup> Muhammad Feroz v Muhammad Jamaat Ali (2006 SCMR 1304)