

ORDER SHEET

**IN THE HIGH COURT OF SINDH HYDERABAD
CIRCUIT.**

Revision Appln. No. 200 of 2010.

DATE	ORDERS WITH SIGNATURE OF JUDGE
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21.08.2017.

FOR KATCHA PESHI.
FOR HEARING OF C.M.A. 752/2009.

Mr. Naimatullah Soomro, Advocate for the applicants.
Mr. Arbab Ali Hakro, Advocate for respondents.

Brief facts of the case are that respondents filed a suit for declaration, injunction and mesne profits against the applicants which was contested by the petitioner as defendants No.1 and 2. Petitioner claimed to be an independent transferee of the land by Barrage Department as being Barrage Land and relied upon the endorsement of Tapedar dated 19.05.1974, whereby the Revenue Entry of respondents based on title documents as being registered sale deed was cancelled on the basis of alleged order of Deputy Commissioner and subsequently the applicant claimed that the Barrage Department has allotted and transferred the land in favour of the applicant. It is the case of the applicant that since the entries of the predecessor of the respondents were cancelled, therefore, they cannot derive a better title. They further submit that Form 'A' was issued and the lease amount was paid in installments. Mr. Soomro further submits that the suit was not only barred by time but also suffers from incurable defect that respondent never claimed a consequential relief of possession as admittedly they are not in possession as they have claimed mesne profit. Learned counsel submits that appellate court has reversed the findings as far as the question of limitation is concerned though neither the trial court nor the appellate court discussed the issue of consequential relief of possession.

Learned counsel for the respondent on the other hand submits that the suit was never time barred as the question of limitation is a mixed question of law and facts and to be deduced from the pleadings of the plaint. The applicants were claimed to be Haris of the subject land as admitted in para-6 of the written statement. He submits that the entry dated 19.05.1974 of Tapedar as relied upon by applicant was never brought to the knowledge of these respondents and more importantly the order of the Deputy Commissioner which is the strength of this entry was

never made part of record nor that order was ever produced by the official respondents. It is claimed that when these Haris refused the payment immediately prior to the filing of the suit they filed the suit on the cause of action accrued in the year 2003 and hence the suit was within time. It is further contended that there was no question of claiming possession as the applicant being Haris can always be subjected to Sindh Tenancy Act for the possession whereas the instant suit is only in respect of a declaration of such entry and ofcourse mesne profits since the day of denial they are in unlawful occupation. The respondents have a remedy under the law to initiate proceedings against these Haris which they claimed to be efficacious.

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

The suit of the respondent bearing Suit No.29 of 2003, was dismissed by trial court on the ground that it was barred by limitation. With regard to the title of the respondents the trial court observed that the possession or symbolic possession was not proved by the plaintiff/respondents and without realizing the fact that the order of the Deputy Commissioner was never placed on record, the trial court went on to observe that the claim of Ghulam Haider was based on forged documents as his claim and title was cancelled in the year 1974. This was observed in typed page (9) of the Judgment. Being aggrieved and dissatisfied with the trial court the respondents preferred an appeal which was allowed on the strength that the record of the "cancellation of allotment" of Ghulam Haider one of the predecessor of respondents title was not traceable. It is but a fact that Tapedar alone could not have cancelled the entries. He only endorsed an entry on the basis of an order of the Deputy Commissioner cancelling the entries which order despite questions being raised by the counsel was never filed by the official respondents. More importantly the title of Ghulam Haider was based on registered instrument dated 23.06.1970 at page 203 executed between Ali Sher to Fakir Muhammad. The trial court should not have been influenced by an entry only of Tapedar when it was not countersigned by Mukhtiarkar or other Revenue Officers as required. More importantly the order of the Deputy Commissioner itself was not traceable. The applicants have never denied their original status of "Haris" and their induction to the land as being Haris. This is a hostile title that they are claiming despite being inducted in the premises as Haris. If at all they were inducted as Haris and subsequently claimed an independent title through Barrage Department as being its land they had no authority to retain the possession of the land to which they were inducted as Haris. If at all the Revenue Department

was/is of the view that the land of the respondents was cancelled or required to be cancelled the proceedings ought to have been initiated for the cancellation of the registered instrument on the basis of which the entry was made. A registered instrument should not have been cancelled by mere entry of Tapedar.

I do not see any reason to interfere with a well reasoned judgment of the two questions raised above i.e. point of limitation and a question of consequential relief as they have been answered with evidence and reasoning. The respondent can still avail relief against applicant under Sindh Tenancy Act to resume possession. As to the title of the applicant I do not want to comment and the respondents are at liberty to initiate proceeding which shall be considered in accordance with law.

These are the reasons for dismissing the revision application.

Judge

A.