

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Suit No.1041 of 2008

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DATE

ORDER WITH SIGNATURE OF JUDGE

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For Final Disposal  
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30.11.2016.

Mr. H.A. Rehmani and Ms Naheed Akhtar Advocates for plaintiff.  
Mr. Shahid Iqbal Rana, Advocate for defendant No.5.  
Ms. Leelae Kalpana, A.A.G.  
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**Muhammad Junaid Ghaffar J.-** This is a Suit for Declaration, Permanent and Mandatory Injunction, wherein, the plaintiff seeks a declaration to the effect that defendant No.1 has no right, title or interest in land bearing Survey Nos.2 to 7 admeasuring 73.24 acres situated in Deh Songal Tappo Songal (Now Scheme-33), Karachi or any part thereof.

2. Learned Counsel for the plaintiff submits that the said piece of land is an Evacuee Trust Property within the meaning of Section 2(d) of Evacuee Trust Properties (Management and Disposal) Act, 1975 (Act 1975) and under Section 6 of the Act of 1975 all Evacuee Trust Properties vest in the Federal Government. He has further submitted that pursuant to order dated 01.06.1995 passed in C.P No.744 of 1989, the defendant No.5 upon receiving the lease-money of Rs.2,79,68,000/- granted 99 years lease on an area of 73.24 acres, out of total area of 90.01 acres in the said survey numbers and such deed was executed on 19.08.1999. He further submits that defendant No.1 collusively succeeded in obtaining a judgment and decree in Suit No.23/1980, whereafter, the Chairman of defendant No.5 took up the reference and came to the conclusion that the property

belongs to Evacuee Trust and the so called claim of defendant No.1 was overruled. He submits that thereafter another Suit No.510/1988 was filed by defendant No.1 claiming damages on different accounts, which was compromised between the plaintiff and defendant No.1 after payment of certain money, whereas, the defendant No.1 also withdrew HCA No.22/1990, which was filed against Order dated 25.01.1990 passed in Suit No.23/1980. He submits that thereafter it came to the knowledge of the plaintiff that defendant No.1 has managed to record a collusive entry with Mukhtiarkar Scheme-33 in respect of the said survey numbers on the basis of the decree passed in Suit No.23/1980, which was no more in field. He submits that the defendant No.1 has thereafter not contested this matter and evidence led on their behalf has gone unchallenged and therefore instant suit be decreed as prayed.

3. I have heard learned Counsel and perused the record. Insofar as, defendants No.1 & 2 are concerned they have been declared Ex-parte vide Order dated 17-01-2011, whereas, rest of the official defendants have been debarred. However, learned Counsel for defendant No.5 supports the case of the plaintiff and submits that the land belongs to the Evacuee Trust Property Board and has been duly leased in favour of the plaintiff, whereas, Mukhtiarkar has no lawful jurisdiction to make any entry in the name of defendant No.1. It further appears that the plaintiff's witness was not cross-examined by the defendants No.1, 2 & 3, whereas, despite opportunity, the rest of the defendants also did not cross-examine the plaintiff's witness and thereafter the side was closed.

4. Since in this matter, the defendants No.1 & 2 have failed to contest this Suit and other contesting defendants have not led any evidence, whereas, defendant No.5 has supported the case of the plaintiff and on perusal of the evidence led on behalf of the plaintiff, who has produced the original of Ex PW-1/5 (**lease deed dated 19.8.1999 between plaintiff and Evacuee Trust Board**), I am of the view that the plaintiff has made out a case for grant of judgment and decree as averred. In the circumstances, instant Suit is decreed, as prayed. Office is directed to prepare decree accordingly.

J U D G E

Ayaz P.S.