

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Const. Petition No. D- 2155 of 2014**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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**For hearing of case (Priority).**

1. For hearing of CMA 6896/2014.
2. For hearing of CMA 2075.2916.
3. For hearing of main case.

Present:

**Mr. Justice Muhammad Shafi Siddiqui &  
Mr. Justice Rasheed Ahmed Soomro**

M/s Bhajandas Tejwani and Manoj Kumar Tejwani Advocates for petitioners.

Iqbal Ahmed, the respondent No.2 present in person.

Mr. Noor Hassan Malik, Assistant A.G.

**Date of hearing:** 12-02-2019.

**Date of Order:** 12-02-2019.

**ORDER**

**MUHAMMAD SHAFI SIDDIQUI J.**, Learned counsel for the petitioners has challenged the order dated 01.07.2014 of Additional Deputy Commissioner-1/Additional Collector, Naushehro Feroze passed on Appeal under sections 161 & 162 of Sindh Land Revenue Act, 1967.

2. The main contention was that the land in question was part and parcel of Civil Appeal No. 30 of 1982, wherein father of the respondent No.2 entered into a compromise. The last three survey numbers i.e. 34, 62 and 99 had the land of 02-39 acres, 05-06 acres and 06-18 acres

respectively. The dispute pertains to the land of these survey numbers. The compromise provides that out of these survey numbers, 01-26 acres, 03-30 acres and 01-24 acres respectively were in the name of Masu Khan, whereas, he had no title over rest of the land of these survey numbers. The total land in terms of this compromise is 57-06 acres and without considering the terms of compromise, the Additional Deputy Commissioner has passed the impugned order, which in fact deprived the petitioners from the land of around 07-00 acres approximately. He submits that they were not made as party in the proceedings that ended up as the impugned order at page-19. He further relied upon certain documents on the strength of which this compromise was entered into.

3. Iqbal Ahmed, the respondent No.2 who has appeared in support of the impugned order submits that this compromise was never acted upon and in fact entries in favour of respondent No.2 and others were made in terms of an order of learned Additional District Judge, however, he was unable to place on record order of learned Additional District Judge.

4. We heard the counsel and Iqbal Ahmed, the respondent No.2 and perused the record.

5. Petitioners had an interest over land by virtue of compromise order, hence we deemed it appropriate that the Additional Deputy Commissioner at the very outset passed the impugned order without hearing the petitioners and that too without looking into compromise entered into between Masu Khan and Zulfiqar Ali, which disclosed the entitlement of the respective areas of the disputed survey numbers. The respondent No.2 has also filed a

civil suit seeking declaration to the extent of property as disputed and claimed by the petitioners. The controversy pending in the court of learned Senior Civil Judge, Naushehro, perhaps would cover the entire litigation as to the entitlement over an excess land of survey numbers 34, 62 and 99. These petitioners have already been arrayed as defendants in the suit.

6. Accordingly, we deem it appropriate and by consent of the petitioners' counsel as well as respondent No.2 to dispose of the instant petition as under:-

- A). That the F.C. Suit No. 202 of 2014 ( Iqbal Ahmed and others Vs. Allah Warrayo and others ) shall be transferred to the court of Senior Civil Judge, Moro along with entire record and proceedings forthwith.
- B). The proceedings be initiated on urgent basis and on receipt of the record and proceedings, the Senior Civil Judge, Moro may dispose it of preferably within a period of three months from the date of receipt of suit proceedings.
- C). While proceedings the case on merits, the order of Additional Deputy Commissioner-I/Additional Collector, Naushehro Feroze dated 01.07.2014 impugned herein, shall not come in the way as it was passed in the absence of the petitioners and have loses of efficacy and does not constitute a judicial determination by a court of law and entitlement of parties more particularly with reference to the claim of the

petitioners. The order of the Additional Deputy Commissioner cannot bind the petitioners.

D). The Senior Civil Judge, Moro, however, shall take into consideration all defense / documents / orders / entitlements / transfer-deeds / sale-deeds etc and pass a speaking order / judgment without being influenced by any proceedings before any administrative authority and /or impugned order.

6. The instant Const. Petition stands disposed of in the above manner.

**JUDGE**

**JUDGE**

Ahmad