

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
II-Appeal No. 90 of 2020

<u>Date</u>	<u>Order with signature of Judge</u>
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1. For orders on CMA No. 2169 of 2020.
2. For hearing of CMA No. 2170 of 2020 (Stay).
3. For hearing of main case.

11th November 2020

Appellant present in person.

The appellant has preferred the instant II-Appeal against the judgment and decree dated 23.12.2019 passed by XI-Additional District Judge, Karachi South (**appellate Court**) in Civil Appeal No. 324/2019 whereby while allowing the said appeal the judgment and decree dated 11.07.2019 and 15.07.2019, respectively, passed by the III-Senior Civil Judge, Karachi South (**trial Court**) in Civil Suit No. 08/2015 have been altered in the terms mentioned therein.

2. Precisely, the facts of the case are that appellant (plaintiff) filed the above civil suit against the respondents (defendants), who are his real mother, brothers and sisters, for seeking declaration, possession, permanent injunction and mesne profit, which after full-fledged trial was partly decreed by the trial Court, through aforesaid judgment and decree, by declaring the appellant to be lawful owner of the subject property i.e. plot/house No. R-252-A Azam Basti, Karachi and entitled for vacant possession thereof from the respondents. Such judgment and decree were challenged by the respondents before the appellate Court, who, vide above referred judgment and decree, altered the same, against which the instant appeal has been filed.

3. Heard appellant in person.

4. Claim of the appellant is that he was residing with his parents in the subject matter property when he was aged about 9/ 10 years and that house was built by his father but that was in *Katchiabadi* and subsequently, same was regularized and he got lease in his favour, hence, claim of respondents (mother, two sisters and two brothers) over the property is illegal and they have no right to enjoy the possession of the property. I have perused impugned judgment, relevant page whereof being conducive is reproduced herewith:-

“Reasons recorded by the learned Trial Court on relevant issues show that the portion of cross-examination of respondent/plaintiff wherein he has made material admissions has been reproduced wherein he states that he was in possession of suit property since 1980 and then he was 9-10 year old. That in the year 1980, suit property was in possession of his father. That in the year 1993, he was in financial position to pay the lease expenses hence he with the consent of other family members got the lease in his own name. That since 1980, electricity bill of the suit property is in name of his father. That he had not produced receipts relating to HBFC loan on the suit property. That he and his siblings were jointly paying bills of the suit property.

It appears from record that respondent /plaintiff has examined himself only while in rebuttal appellants/defendants have examined four witnesses including RukhsanaMurad who lives in the suit property and Shabana w/o Sajad who is married sister of both sides and they have maintained that suit property was property of their father and falls on entire family. They have also produced on record the electricity bill of suit property for the month of August 1977 (D-3), water bills for years 1986-1989 (D-4 to D-7).

In the wisdom of learned Trial Judge, utility bills do not confer any title on immovable property. No doubt, it is true to say but it does not mean that they have no evidentiary value. Rather utility bills are *prima facie* proof of possession in respect of relevant immovable property. For this proposition, one can refer to the reported case of *Mrs. Unsia Band v/s Shell Pakistan Ltd* (2003 YLR 1837 Karachi).

Respondent/plaintiff has himself admitted that he was only 9-10 years old in the year 1980 when he claims to be in possession of suit property. A prudent mind cannot accept the proposition cannot accept the proposition that a child of this age obtain and ménage the physical possession of any immovable property when it is common scene in our society that illegal possession over the state lands are jealously guarded by occupant to save it from evil eyes and such

possession are commonly sold and further resold before regularization by the relevant authority.

In the evidence of both the sides, there are admitted facts to show that from the beginning of affairs, both the parties being members of same family unit had been living on the suit property and respondent/plaintiff being elder male child and second earning hand after his father in the family as such he was helping hand in the management of suit property. It is also admitted position in the evidence that respondent/plaintiff had paid for lease money of suit property. Further, it has come in evidence that electricity and water bills for suit property stand in the name of their father MuradMasih hence in view of this and admission by respondent/plaintiff, it is clear that possession over the plot of suit property belonged to said head of family.

So far as lease documents of the suit property are concerned, it is no secret that how lease of immovable properties is granted by the KMC and KMC has itself challenged its own lease grants in several instances. Besides, as earlier observed respondent/plaintiff being elder son in the family and being only educated and earning hand with ability to pay lease money, it was done so. Respondent/plaintiff has himself claimed that he got the lease with consent of family."

5. Admittedly appellant was minor and subject matter house was raised by his father; all brothers, sisters and mother are residing in the same house; appellant intends to deprive of other family members on the plea of lease granted in his favour when there is an admission that property was already in possession of his father, hence, lease in favour of appellant was not in accordance with law and KMC failed to grant lease in favour of all legal heirs of Murad Masih, who were in possession of said house. Accordingly, instant appeal merits no consideration is dismissed alongwith pending applications.

J U D G E

Sajid