

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 1749 of 2021
Suit No. 1266 of 2021
Suit No.732 OF 2011

CMA No.12783/2021 (u/O 39 Rules 1&2 CPC r/w Sec. 151 CPC) in Suit No.1749/2021

CMA No.9409/2021 (u/O 39 Rules 1&2 CPC r/w Sec. 151 CPC) in Suit No.1266/2021.

CMA No.6257/2011 & CMA No.6704/2011 in Suit No.732 of 2021.

Date of hearings: 17.03.2022

Date of decision: 31.03.2022

APPEARANCE

Syed Ghulam Shabbir Shah advocate for the plaintiff in Suit No. 732 of 2011 and 1749 of 2021.

Mr. Muhammad Ali Lakhani advocate for the plaintiff in Suit No. 1266 of 2021 and for defendants in Suit No. 1749 and for the alleged contemnors in Suit No. 732 of 2011.

Mr. Khawaja Shams-ul-Islam advocate for defendant No.1 in Suit No. 1749 of 2021.

Mr. Abdul Razzaq advocate for defendant No.2 in Suit No. 1749 of 2021.

Mr. Ghulam Shabbir Sheikh Advocate for Board of Revenue

Syed Mohsin Shah AAG

ORDER

Salahuddin Panhwar, J.-By the dint of this order I intend to decide applications under Order XXXIX Rule 1 and 2 CPC being CMA No.12783/2021 filed in Suit No.1749/2021, CMA No.9409/2021 in Suit No.1266/2021 and CMA No. 6257/2011 & CMA No.6704/2011 in Suit No.732/2021, *separately*.

2. In the injunction application in Suit No.1749 of 2021, the plaintiffs have prayed that;

“-----, this Honourable Court be pleased to restrain the defendants and/or any person or persons inclusive of agents, servants, associates, whomsoever claiming through or under the defendants from carrying out any construction work on the subject property viz land measuring 02 acres and 20 ghuntas at Na-Class 34, Deh Dozan, Tapo Gujro, Scheme No.33, Karachi (Subject Property) and/or from

creating any third party interest in the subject property and further from causing any interference in the enjoyment or rights of the plaintiffs in the subject property.”

3. In the injunction application in Suit No.1266/2021, the plaintiff has prayed that;

“-----this Honourable Court may be pleased restraining the defendants (including persons acting under/through and/or on their behalf) from interfering with and/or interrupting the lawful use, occupation and possession of property bearing Survey No.33, admeasuring 2 acres and 16 ghuntas, situated in Deh Dozan, Tappo Gadap, Karachi, by the plaintiff.”

4. In the injunction application in Suit No.732 of 2011 it is prayed that;

“--- restrain the defendants, their employees, officer, attorneys, assigns or any once claiming under or through them from interfering with the construction of boundary wall, dispossessing, interfering with the peaceful enjoyment of possession of the plaintiff or taking any adverse action against the plaintiff in respect of the suit land belonging to the plaintiff i.e. 2 acres and 20 ghuntas land out of 7 acres 10 ghuntas from Na-class No.34 Deh Dozan, Tappo Gujro, Scheme No.33 Karachi as shown/described in annexure C i.e. site plan F i.e. Form II and K site plan.”

5. Succinctly the relevant facts of Suit No.1749/2021 are that Mst. Fauzia Mahmood and others (legal heirs of plaintiff in Suit No.732/2021) filed instant suit, wherein; it is stated that they are legal heirs of Mahmood A. Ghaffar, hence they by virtue of inheritance are the legal and lawful owners of land measuring 02-20 acres situated at Na-Class No.34, Deh Dozan, Tapo Gujro, Scheme No.33, Karachi (hereinafter referred to as subject land). Initially one Ali Bux purchased three pieces of land from one Dur Muhammad, from which Ali Bux agreed to sell the subject land to deceased Mahmood A. Ghaffar and in this regard fresh Form-II and NOC were obtained from concerned Authority and after due verification of the same as well as possession of Ali Bux in accordance with sketch plan issued by concerned Mukhtiarkar, Agreement to Sale dated 29.12.2010 was executed between the parties. Deceased Mahmood A. Ghaffar on the basis of Sale Deed applied for mutation in the record of rights before the competent authority which was affected in the record of rights in the name of deceased on 26.01.2011. However, due to delay on the part of concerned government officials in completing demarcation/survey of the subject land, the deceased instituted Suit No. 732/2011, wherein; this Court passed interim order dated 23.05.2011, restraining the official defendants from interfering with the construction of the boundary wall and also they

were restrained from taking any coercive action against the plaintiff (deceased Mahmood A. Ghaffar) in respect of the subject land till next date of hearing and Commissioner was appointed to carry out inspection of subject land. During pendency of suit, an application under Order 1 Rule 10 CPC was filed by M/s Dadabhoy Investment Pvt. Limited (defendant No.2) for impleading him as defendant; which was allowed and the restraining order was modified to the extent whereby plaintiff/deceased Mahmood A. Ghaffar was restrained from raising construction. Again subject land was inspected by Nazir of this Court, wherein; he asserted that plaintiff/deceased Mahmood A. Ghaffar was in possession.

6. It is further case of the plaintiffs that defendant No.2 in order to defeat the orders of this Court, obtained fresh NOC for sale of the subject land against which plaintiff/deceased Mahmood A. Ghaffar filed contempt application as well as fresh injunction application. This Court vide order dated 24.01.2012 ordered that unless the dispute regarding location of land is decided, the disputed portion shall not be sold, which order is still subsisting. However, the defendant No.2 challenged the revenue entries made in the record of rights in favour of plaintiff/deceased Mahmood A. Ghaffar before Revenue Authorities under Section 164 of Land Revenue Act 1967, which proceedings having been concluded by the Revenue Authorities, culminated into filing of C.P.No.D-3028/2017 by plaintiff/deceased Mahmood A. Ghaffar, wherein; operation of the order passed by Revenue officials was suspended. However, the defendant No.2 sold the subject land clandestinely to defendant No.1 M/S Shield Pvt. Limited through Conveyance/Sale Deed dated 05.10.2015 and was effectuated in the record of rights i.e Deh Form-II.

7. It is further averred that defendant No.1 filed Suit No.1266/2021 against plaintiff/deceased Mahmood A. Ghaffar, wherein; by way of sheer misrepresentation and concealment of facts, obtained restraining order dated 01.06.2021 against the plaintiffs for interfering in the lawful possession of plaintiffs (defendant No.1), hence the plaintiffs being legal heirs of deceased Mahmood A. Ghaffar have instituted in the instant suit for Declaration, Cancellation, Permanent Injunction and Damages.

8. In Suit No. 1266 of 2021, the M/S Shield (Pvt) Ltd (plaintiff) has submitted that; subject land was owned by M/S Dadabhoy Investments (Pvt) Limited, which is evident from Form-II maintained by the Revenue

Authorities and execution of Sale Deed, the plaintiff acquired lawful vacant possession of the subject land. It is further averred that plaintiff is related concern of M/S Dadabhoy Investments (Pvt) Limited (IDPL). It is further submitted that defendant No.1 (deceased Mahmood A. Ghaffar) claimed that he purchased 2 acres and 20 ghuntas from 7 acres and 10 ghuntas from Na-Class No.34 situated in Deh Dozan Tappo Gujro, Scheme No.33, Karachi, therefore, it has not been demarcated or surveyed till date. IDPL ensured mutation in the record of rights as per entry No.20/18 dated 19.02.1978, however; in the year 2011 it came to their knowledge that defendant No.1 had managed an entry in his favour in collusion with the Board of Revenue, which was challenged by the plaintiff by filing Revision No.08/2011 under Section 164 of the Land Revenue Act 1967, which was contested by defendant No.1, wherein; the title of defendant No.1 was declared invalid. Such order was challenged by the defendant No.1 through SROA-37/2012. The findings recorded in Revision No.08/2011 were set-aside and case was remanded to Deputy Commissioner/ Collector for fresh adjudication. In compliance whereof the Deputy Commissioner Malir adjudicated the case afresh and ordered for cancellation of entry 12/19 dated 20.12.1977, VF-VII Deh Dozan Tappo Gujjar Scheme No.33, Karachi. The defendant No.1 challenged such order in C.P.No.D-1501/2014, which was disposed of with directions to Deputy Commissioner Malir to decide the matter afresh. In compliance of such order, Member, Land Utilization initiated matter afresh and set aside the order passed in Revision No.08/2011 and Survey Superintendent Karachi was directed to survey the land claimed by the defendant No.1. Concerned Mukhtiarkar in response to such order addressed a letter to Deputy Commissioner that entry No.12/19 dated 20.12.1977 was bogus. The letter sought for the case to be placed before Full Board of Defendant No.3 to review the order dated 16.08.2016 passed by Member Land Utilization. Full Board of defendant No.2 conducted detailed adjudication and notice to all concerned parties and vide order dated 11.04.2017, set aside the order dated 16.08.2016 and earlier orders passed in Revision and in Case No.7/2012 were upheld. Order of Full Board was challenged by defendant No.1 in C.P.No.D-3018/2017. The defendant No.1 attempted to dispossess the plaintiff by using criminal elements. Such incident was culminated into FIR No.503/2011, wherein; person associated with defendant No.1 and representatives of the plaintiff were nominated. It is further submitted that suit land inspected by Commissioner in Suit

No.732/2011, wherein; the Commissioner reported that; Tracer and Surveyor stated that the subject land pointed out by the plaintiff is not a Na-class land but in fact a private survey land bearing Survey No.33 of Deh Dozan, which fact was reaffirmed in another inspection carried out in pursuance of order dated 19.07.2011 passed in Suit No.732/2011. It is therefore, submitted that entitlement against the subject land the defendant No.1's disentitlement stood confirmed. Hence the plaintiff sought declaration and injunction(s).

9. Learned counsel for the plaintiff in Suit No.1266 of 2021, inter alia, contends that defendant (Dadabhoy Investment [Pvt] Ltd.) sold out the subject matter land to M/s. Shield (Pvt) Ltd; that land is comprising on survey numbers and is situated at different places then the land claimed by the plaintiffs in Suit No.1749 of 2021 and Suit No.732 of 2011. Learned counsel while referring to the pleadings of Suit No.732 of 2011, contends that in the proceedings of that suit inspections were carried out, wherein; it is manifest that plaintiff (Mahmood A. Ghaffar) has no concern with the suit land in possession of plaintiff (M/s. Shield (Pvt) Ltd.). He has also referred to Commissioner's report dated 23.05.2011 emphasizing over the inspection report, which speaks that;

"During the course of inspection of the land pointed out by the plaintiff, it transpired that the same is open to sky and in possession of the plaintiff. There was no boundary wall at all and one temporary hut was erected covered by bushes. A sign board in the name of plaintiff was found affixed thereon. M/s. Rustom & Arbab Chowkidars were found at the land.

The inspection of the land pointed out by the plaintiff was carried out in the presence of the following:

- *Mr. Muhammad Moosa, Supervising Tapedar, Scheme No.33.*
- *Mr. Abdul Qadir, Tracer of the Survey Department.*
- *Mr. Sanaullah, Surveyor from the Survey Department.*
- *Mr. Javed Ali Baig, Manager of the Intervenor Co. (M/S Dadabhoy).*
- *Mr. Abdul Jabbar Mirza, Advocate for the Intervenor*
- *Mr. Azam Mir, S.H.O, P.S Mobina Town.*

It is respectfully pointed out that during the course of inspection, the Tracer and the Surveyor as mentioned above stated that the suit plot pointed out by the plaintiff is not a Na-Class land but, in fact, private survey land bearing survey No.33 of Deh Dozan. They pointed out the suit land situates left side of the Survey No.33 where the flats existing in the name and style of Ghaziani Castle. In

this regard the Survey Superintendent has forwarded a letter along with the copy of demarcation showing the exact position of the site attached herewith and marked as annexure X/2 and photographs of the plot in possession of the Plaintiff marked at annexure X/3."

10. As well as learned counsel has also referred to the Commissioner report dated 19.08.2011, which speaks that; Assistant Commissioner pointed out that demarcation of suit land was already carried out by Mukhtiarkar Scheme-33 and Survey Superintendent Karachi and through the site sketch Surveyor has pointed out that the land which is in occupation of the plaintiff shown with red colour in the site plan, as survey No.33 measuring 3-05 acres is owned by Dadabhoy Investment [Pvt] Ltd. The Na-class No.34 measuring 2-16 is located where the flats known as Ghaziani Castle are constructed. Being relevant paras-5 and 6 of the report are that;

"5. At the site Assistant Mukhtiarkar pointed out that the demarcation of suit land has already been carried out upon which the survey staff produced demarcation site plan carried out by Mukhtiarkar Scheme-33 and Surveyor of Survey Superintendent, Karachi and through the site sketch surveyor pointed out that the land which is in occupation of plaintiff shown in red color in the site plan as Survey No.33 measuring 3-05 is owned by Dadabhoy Investment (Pvt) Ltd, the intervener. The Na-class No.34 measuring 2-16 is, where the flats known as Ghaziani Castle are constructed/existing.

6. It is respectfully pointed out that on left side there is Ghaziani Castle project and on right side there is wall of right side of other property. And on right side i.e North there is wall of other property running East and there is no extra land except suit land. However the plaintiff provided photo copy of site sketch prepared by Mukhtiarkar & copy of demarcation of S.No. 30 of 1992 (copy of demarcation site plan provided by Surveyor, two copies provided by plaintiff as mentioned are attached with this report as annexure 'A' and copies provided by plaintiff marked as annexure P/1 & P/2."

11. In contra, learned counsel for the plaintiff (Mahmood A. Ghaffar and his descendent) contends that possession of subject land was with the defendants, however they were dispossessed forcibly. He has also contended that demarcation was not carried out in accordance with law; hence he extends his no objection if fresh demarcation of the land is carried out in accordance with law. However, it is contended that C.P. No.D- 3028/2017 filed by the plaintiff (Mahmood A. Ghaffar and his descendent) is pending where in order of BoR has been called in question.

12. Learned counsel for BoR vehemently opposed demarcation and claim of plaintiff (Mahmood A. Ghaffar and his descendent), as according to him, that land was cancelled hence plaintiffs have no title or legal

character with regard to subject matter land; that all entries were found fraudulent and pursuant to order passed by this Court in C.P. No.D- 1501 of 2014, whereby BoR was directed to hear the case of the plaintiff (Mahmood A. Ghaffar and his descendent); accordingly, the case was considered and answered in negative with the plea that title in favour of Mahmood A. Ghaffar as claimed was based on bogus entry. Besides, he has emphasized over statement filed by learned A.A.G Sindh in the month of June, 2012, which is appended with interim order of the Commissioner Karachi, which categorically speaks that *“the Record of Rights in respect of Mr. Mehmood A. Ghaffar, was called and perused. The record reveals that mother Entry No.12/19 dated 20.12.1977 is bogus and managed one. As per this fake entry, state land measuring 35-15 acres from NA class Nos.21, 34 and 1 has been transferred in the name of private person namely Ali Bux S/o Aitbar Baloch. As the basic Entry No.12/19 is bogus and the land involved in the case belongs to Government, the title of Mehmood A. Ghaffar, who is a subsequent purchaser, cannot be considered valid as it was created through managed/bogus papers.*

13. While perusal of pleadings and contentions raised by both parties, admittedly with regard to title of Mahmood A. Ghaffar over the land claimed by him is sub judice before learned Division Bench of this Court, as referred above. It is pertinent to mention here that the Custodian of Record of Rights has vehemently denied the claim/title of the plaintiff (Mahmood A. Ghaffar) and yet his legal heirs who preferred second suit are legally required to establish their legal character and title; besides, it has come on record that the subject matter land is in possession of plaintiffs in Suit No.1266/2021 and that is comprising on survey No.33 measuring 2-16 acres, with regard to their right and possession, official respondents have not disputed the same. On the contrary, their rivals have also admitted their possession; whether plaintiffs who are in possession of survey No.33 are entitled to raise construction, erect boundary wall or they shall be deprived to raise their construction until the case of Mahmood A. Ghaffar is decided. At this juncture, it is significant to mention that plaintiff in Suit No.1266 of 2021 categorically states that they may be allowed to raise construction and reject stay granted in other representative suits and that permission may be subject to their risk and cost.

14. While granting relief under Order XXXIX Rule 1 & 2 C.P.C. three ingredients are to be seen (i) whether plaintiff has prima facie case, (ii)

balance of convenience lies in favour of the plaintiff and (iii) they will suffer irreparable loss if injunction is not granted. Suffice it so, that plaintiffs in Suit No.732 of 2011 and Suit No.1749 of 2021 have failed to establish their title as well as they have failed to demonstrate as to where their land is situated and they are seeking declaration and claiming that land in possession of plaintiff of Suit No.1266 of 2021 is their land, hence the plaintiffs in these suits have failed to establish the above ingredients for grant of injunction in their favour, whereas; Commissioner's report is very categorical that the land as pointed out by the plaintiff in Suit No.732 of 2011 is falling within the area of Ghaziani Castle (flats), hence the land which is in occupation of plaintiff in Suit No.1266 of 2021 is an open land and cannot be treated as same land, therefore, injunction applications in both Suits bearing No.732/2011 and 1749 of 2021 are dismissed, whereas; plaintiff in Suit No.1266 of 2021 has established their prima facie case and possession as well as their legal character is not disputed, therefore, application is allowed as prayed. They would be competent to raise construction including boundary walls within the supervision of Nazir of this Court subject to their own risk and cost.

15. With regard to the contempt application, Mukhtiarkar present admits that he was not aware regarding pendency of application and stay granted by this Court, however, undertakes that he will obey the orders and will not violate the same and in any manner will not interfere in the peaceful possession of subject matter land which is in possession of plaintiff in Suit No.1266 of 2021. It is pertinent to mention that Mukhtiarkar was not competent to cause damage to the wall erected over Qabuli land; however, in view of his undertaking, the contempt application is disposed of.

16. From the above discussion and the contention of BoR it is apparent of the record that the land which is being claimed by the plaintiffs in Suit No.1749 of 2021 is not their land but the land of the plaintiff in Suit No.1266/2021. Though the contention of the learned counsel for the BoR has been brought on record in detail but to observe the maintainability of the suit No.1749/2021 it is necessary that some of the contentions of the learned counsel for the BoR may be reproduced again, as according to him;

“land was cancelled hence plaintiffs have no title or legal character with regard to subject matter land;

all entries were found fraudulent and pursuant to order passed by this Court in C.P. No.D- 1501 of 2014, whereby BoR was directed to hear the case of the plaintiff (Mahmood A. Ghaffar and his descendent); accordingly, the case was considered and answered in negative with the plea that title in favour of Mahmood A. Ghaffar as claimed was based on bogus entry.

he has emphasized over statement filed by learned A.A.G Sindh in the month of June, 2012, which is appended with interim order of the Commissioner Karachi, which categorically speaks that "the Record of Rights in respect of Mr. Mehmood A. Ghaffar, was called and perused. The record reveals that mother Entry No.12/19 dated 20.12.1977 is bogus and managed one.

As per this fake entry, state land measuring 35-15 acres from NA class Nos.21, 34 and 1 has been transferred in the name of private person namely Ali Bux S/o Aitbar Baloch. As the basic Entry No.12/19 is bogus and the land involved in the case belongs to Government, the title of Mehmood A. Ghaffar, who is a subsequent purchaser, cannot be considered valid as it was created through managed/bogus papers.

The perusal of pleadings and contentions raised by both parties admittedly with regard to title of Mahmood A. Ghaffar over the land claimed by him is sub judice before learned Division Bench of this Court as referred above.

It is pertinent to mention here that the Custodian of Record of Rights has vehemently denied the claim/title of the plaintiff (Mahmood A. Ghaffar) and yet his legal heirs who preferred second suit are legally required to establish their legal character and title;

It has come on record that the subject matter land is in possession of plaintiffs in Suit No.1266/2021 and that is comprising on survey No.33 measuring 2-16 acres, with regard to their right and possession, official respondents have not disputed the same. On the contrary, their rivals have also admitted their possession-----."

The plaintiffs in suit No.1749 of 2021 have prayed that;

- a. Declare that the impugned deed dated 05-01-2015 and impugned entry in the record of rights (Form-II) in favour of defendant No.1 are results of fraud and thus of no legal effect.
- b. Mandatory injunction directing the defendant No.1 to surrender and deliver the originals of impugned deed dated 05-01-2015 (annexure J-1) and impugned Form-II (annexure J-2) with the further prayer to declare them as illegal, malafide, cancelled and without no legal effect.
- c. Permanently restrain defendant No1 and 2 and its men, agents, attorneys, any and every person working through or under them or on their behalf (including those present at the subject property) from creating any third party interest and/or trespassing on the suit property.
- d. Permanently restrain and preclude defendant No.1 and 2 from asserting any claim against plaintiffs in the subject property.

17. The perusal of above prayer clauses shows that the plaintiffs have not sought any declaration with regard to their own right, title or interest in the suit property in the instant suit.

18. These prayer clauses of the plaint are seeking declaration in negative form as the plaintiffs have not sought any declaration with respect to their own title or character. It is an admitted position of law that a suit seeking declaration in negative form is not maintainable. It was held in the case of Tahira Bano through legal heirs v/s Muhammad Bilal and others reported as 2019 MLD 1307 that "Section 42 (Specific Relief Act) only applies to the cases where a person files a suit claiming entitlement to any legal character or to any right to property which is denied by the defendants. When a person's right and title is clouded by an instrument he may seek declaration U/s 42 to nullify the effect of such an instrument. There is plethora of judgments holding that suit for mere declaratory relief U/s 42 of the Act without stating anywhere in the plaint as to legal "character or status" of the plaintiff disentitle him to such a prayer such plaint infact is held to be no plaint in the eye of law and same is liable to be rejected in exercise of inherent power of the Court." Similar propositions were laid down in the cases reported as PLD 2019 SC 449, 2016 CLC N10 [Karachi], 2002 YLR 1473 and 1991 MLD 1112 [Karachi]. Besides, admittedly plaintiffs are not in possession, hence even their declaratory suit is not maintainable u/s 53 of Sindh Land Revenue Act, 1967.

19. From the contentions, as specified above and contended by the learned counsel for the BoR, it is clear that entries on the basis of which the plaintiff is claiming his right and title over the suit property are based on bogus entry, cannot be considered valid as it was created through managed/bogus papers, the subject matter land is in possession of plaintiffs in Suit No.1266/2021 and that is comprising on survey No.33 measuring 2-16 acres and with regard to their right and possession official respondents have not disputed the same. The title of the plaintiff is in cloud and such contention makes the suit of the plaintiffs barred Under Section 42 of Specific Relief Act, 1977. Section 42 of Specific Relief Act, 1877 provides as under: -

42. Discretion of Court as to declaration of status or right: Any person entitled to any legal character, or to any rights 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 do so.”

20. According to Section 42 of Specific Relief Act, 1877 only that person can maintain a suit for declaration who is entitled to any legal character or to any right as to any property provided that no declaration may be given where a further or consequential relief deriving from the declaration which could have been claimed by way of relief in the same Court and in the same suit has not been claimed. The purpose of this jurisdiction vested in the Civil Courts is plainly to prevent future litigation, and to remove existing sources of controversy. 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. 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 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. It is also relevant to take note that the entire relief claimed in the suit is against private defendants with regard to the documents and the property of the private defendants for which the plaintiffs have no title document and they are not in possession of that land.

21. The title of the plaintiffs is under cloud and without making their own title clear the declaration sought by the plaintiff in Suit No.1749 of 2021 is not maintainable under the law and such declaration cannot be granted in the circumstances of the case. In a declaratory suit, declaration could be granted as regards the title, legal right, or character. Where prayer of plaintiff did not fall within any of the ingredients provided in S. 42, Specific Relief Act, 1877, suit for declaration filed by him is not maintainable. Reliance can be placed on PLD 1998 Karachi 59.

22. What has been discussed above, I am of the view that the Suit No.1749 of 2021 of the plaintiffs is not maintainable **and is barred under Section 42, of the Specific Relief Act for want of legal character and title of**

the Plaintiff in the Suit Property. Therefore, the plaint of Suit No.1749 of 2021 is rejected.

23. In the similar way, Suit No.732 of 2011, the plaintiff Mehmood A Ghaffar has prayed for following relief(s).

a. Declare that the plaintiff is owner of the suit land i.e. 2 acres and 20 Ghuntas land of out of 7 acres 10 ghuntas from Na-class No.34, Deh Dozan, Tappo Gujro, Scheme No.33, Karachi having purchased the same from the previous owner and duly entered in the record of rights in the name of plaintiff.

b. Issue mandatory injunction by directing defendant No.6 to assign survey No, issue Sketch and Gath Wadh Form in favour of the plaintiff on basis of inspection/survey conducted in presence of defendants No.1, 5 to 7 on 17-03-2011 and 28-03-2011 in respect of suit land i.e. 2 acres and 20 Ghuntas land of out of 7 acres 10 ghuntas from Na-class No.34, Deh Dozan, Tappo Gujro, Scheme No.33, Karachi.

c. Restrain the defendants, their employees, officer, attorneys, assigns or any one claiming under or through them from interfering with the construction of boundary wall, dispossession, interfering with the peaceful enjoyment of possession of the plaintiff or taking any adverse action against the plaintiff in respect of the suit land belonging to the plaintiff i.e. 2 acres and 20 Ghuntas land of out of 7 acres 10 ghuntas from Na-class No.34, Deh Dozan, Tappo Gujro, Scheme No.33, Karachi as shown/described in annexure C i.e. site plan F i.e. Form II and K site plan.

24. The proceedings of this suit were adjourned *sine die* vide order dated 09-08-2017 with the observation that; *several orders have been passed by the Revenue Authorities and in continuation of those orders they are even before the Civil Courts., it means the issue to be first decided at the level of Revenue Authorities and such determination of rights of the parties would be subject to the order of the High Court and Supreme Court if approached by anyone. Pending the said proceedings the instant suit cannot be finally disposed of, the suit therefore adjourned sine die.* But later-on the proceedings of this suit have been resumed.

25. As discussed above, in a declaratory suit, declaration could be granted as regards the title, legal right, or character. Where prayer of plaintiff did not fall within any of the ingredients provided in S. 42, Specific Relief Act, 1877, suit for declaration filed by him is not maintainable. In the prayer clause 'a' of the suit the plaintiff is seeking declaration of the ownership over the suit land. However, according to the leaned counsel for the BoR the land was cancelled hence plaintiffs have no title or legal character with regard to subject matter land; all entries were

fraudulent pursuant to order passed by this Court in C.P. No.D-1501 of 2014, whereby Direction BoR was directed to hear the case of the plaintiff (Mahmood A. Ghaffar and his descendent); accordingly, the case was considered and answered in negative with the plea that title in favour of Mahmood A. Ghaffar as claimed was based on bogus entry; the record reveals that mother Entry No.12/19 dated 20.12.1977 is bogus and managed one; as per this fake entry, state land measuring 35-15 acres from NA class Nos.21, 34 and 1 has been transferred in the name of private person namely Ali Bux S/o Aitbar Baloch; as the basic Entry No.12/19 is bogus and the land involved in the case belongs to Government, the title of Mahmood A. Ghaffar, who is a subsequent purchaser, cannot be considered valid as it was created through managed/bogus papers; the subject matter land is in possession of plaintiffs in Suit No.1266/2021 and that is comprising on survey No.33 measuring 2-16 acres with regard to their right and possession, no one has disputed from official respondents. Thus it is clear that the plaintiff is seeking declaration of ownership for that land which is not standing in his name and has already been cancelled.

26. It is settled law that; besides, averments made in the plaint other material available on record which on its own strength legally sufficient to completely refute the claim of the plaintiff, can also be looked into for the purpose of rejection of the plaint. It does not necessarily mean that the other material shall be taken as conclusive proof of the facts stated therein, but it actually moderates that other material on its own intrinsic value be considered alongwith the averments made in the plaint. Reliance can be placed on *S.M. Sham Ahmad Zaidi through Legal Heirs v. Malik Hassan Ali Khan (Moin) through Legal Heirs (2002 SCMR 338)*.

27. In view of the above circumstances, the suit of the plaintiff is barred under Section 42, of Specific Relief Act. Therefore, the plaint of the suit No.732/2011 is also rejected.

JUDGE