

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Suit No. 1500 of 2019  
[Abdul Ghani & others v. Waheeduddin Siddique & others]

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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Hearing of CMA No. 6630 of 2020.

**01-09-2022**

None present for the Plaintiffs.  
Mr. Muhammad Abdur Rehman, Advocate for Def. No.1.  
Mr. Ghulam Muhammad, Advocate for Defendant No.7.  
Mr. Waleed Khanzada, Advocate for the KMC.  
Mr. Ziauddin Junejo, Addl. A.G.

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**Adnan Iqbal Chaudhry J.-** Plaintiffs are called absent. Record shows that the Plaintiffs' counsel has scarcely appeared. There are repeated cautions, particularly in view of the direction of the Supreme Court in Civil Petition No. 650-K/2019 that this suit be disposed of expeditiously. Therefore, CMA No. 6630/2020 for rejection of the plaint under Order VII Rule 11 CPC is taken up.

2. The background to the suit is as follows:

(i) By letter dated 06.04.2012, the Land Utilization Department required the Deputy Commissioner Malir to allot State land to inhabitants of 70 villages in District Malir as the Chief Minister had approved the same apparently under section 10(1) of the Colonization of Government Lands (Sindh) Act, 1912 read with the "Statement of Conditions for grant of lease hold rights for 99 years to the inhabitants of existing villages or habitations", viz. notification dated 21-11-2008 issued under section 10(2) of said Act. One such village was called 'Darya Khan', allegedly over 16 acres of State land in deh Songal.

(ii) In furtherance of letter dated 06-04-2012, the Deputy Commissioner Malir is said to have issued allotment letters to some of the villagers of Darya Khan. However, subsequently, that letter dated 06-04-2012, along with the allotment letters issued thereunder, was cancelled by the Land Utilization Department by letter dated 01-04-2014, which was a cancellation to the extent of 10 acres earlier approved for village Darya Khan, for the reason that those 10 acres

were claimed as property by the Defendants 1 and 2 (of this suit) in Naclass No.1 of deh Songal, who had already filed Suit No. 1561/2010 to restrain Revenue officers from facilitating encroachers on said land. The cancellation letter dated 01-04-2014 recorded that the grant was cancelled because it had been made on the condition that the land should be free from litigation and duplication. Since the Land Utilization Department did not dispute the title of the Defendants 1 and 2 to said 10 acres, the latter's Suit No. 1561/2010 was decreed on 29-05-2014 in terms of the cancellation letter dated 01-04-2014.

(iii) Against that decree passed in Suit No. 1561/2010, about 198 persons claiming to be inhabitants of village Darya Khan, filed J.M. No. 29/2016 under section 12(2) CPC. The Plaintiffs of the present suit were also amongst those applicants, arrayed at serial No. 1, 7, 10, 76 and 94. After satisfying itself that the Defendants 1 and 2 (of this suit) possessed title documents to 10 acres granted to them by the Land Utilization Department, which documents were not disputed by the Land Utilization Department, whereas persons claiming to be villagers had nothing to show alleged prior possession, this Court dismissed J.M. No. 29/2016 by order dated 19.03.2019. All of these facts are acknowledged in the plaint of the present suit and are also borne from the dismissal order passed in J.M. No. 29/2016.

(iv) Against the dismissal of J.M. No. 29/2016, the applicants thereof, the present Plaintiffs included, preferred H.C.A. No. 190/2019, which was dismissed by judgment dated 09-10-2019. The Plaintiffs (herein) then filed Civil Petition No. 650-K/2019 before the Supreme Court, however, since by that time they had already filed the present suit, the Supreme Court disposed of that petition by directing that this suit be disposed of expeditiously.

3. Out of the 198 persons who filed J.M. No. 29/2016, five (05) of them have filed this suit with the following prayer:

- i) *Declaration to the effect that the suit property i.e 16 acres situated at Darya Khan, Rind Goth, Deh and Tapo Gujro, Songal, Sector-31, Scheme-33, Karachi was rightly regularized by the defendant No.03 in*

*favour of the plaintiffs vide letter dated 06.04.2012 issued by the defendant No.03.*

- ii) Declaration to the effect that the cancellation of the suit property vide letter dated 01.04.2014 issued by the defendant No.03 is illegal and unwarranted and is liable to be cancelled.*
- iii) Declaration to the effect that the letters dated 04.12.1985, 15.09.1991 and 01.09.2007 issued by the defendant No.03 in favour of defendant No.01 & 02 are illegal void and are not sustainable, hence are liable to be cancelled.*
- iv) Permanent injunction against the defendants from interfering from the possession of the plaintiffs.*
- v) Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the suit.*
- vi) Cost of the suit.*

4. The cause of action of the suit, as per para 13 of the plaint, is the cancellation letter dated 01-07-2014 issued by the Land Utilization Department to cancel/recall 10 acres of land approved for village Darya Khan when the same was already land granted to the Defendants 1 and 2. The case set-up by the Plaintiffs is essentially that, as villagers in long standing possession of said 10 acres of State land, they were the ones who were entitled to its grant/regularization and not the Defendants 1 and 2; hence the prayer that documents granting the 10 acres land to the Defendants 1 and 2 may be cancelled [prayer (iii)], and the same land may be granted to the Plaintiffs by setting-aside the cancellation letter dated 01-07-2014 [prayers (i) and (ii)].

5. The foremost ground taken for rejection of the plaint is that the suit is time-barred. As apparent from prayer clause (iii), the documents sought to be cancelled include the letter dated 15-09-1991 whereby the Land Utilization Department granted the 10 acres to the Defendants 1 and 2 under section 10(1) of the Sindh Colonization and Disposal of Government Lands Act, 1912, and then the letter dated 01-09-2007 issued by the Land Utilization Department to regularize the same under Sindh Ordinance III of 2001. Per para 13 of the plaint, it is the Plaintiffs' case that they came to know of said documents on the issue of the cancellation letter dated 01-04-2014. If

the 3 year period prescribed for the relief of cancellation in Article 91 of the Limitation Act is computed from 01-04-2014, then the instant suit filed on 24-09-2019 for such relief is time-barred by more than 2 years. It is not the Plaintiffs' case that a period has to be excluded for computing limitation. Per Order VII Rule 6 CPC, such plea has to be specifically taken.

6. The question now to be considered is, what of the relief of declaration sought in the suit for which the law prescribes a greater period of limitation (assuming the same can even be granted) ? That question is addressed by the case of *Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad* (PLD 2015 SC 212). There, it has been held by the Supreme Court that where the plaintiff seeks multiple reliefs in a suit, some time-barred and some within limitation, the test is to see which is the main relief and which relief is only ancillary, dependent or consequential, and if the main relief is time-barred, then the ancillary, dependent or consequential relief, even if attracting a larger period of limitation, has to go along with the main relief.

7. It is manifest from the plaint, the suit is primarily for cancellation of the title documents of the Defendants 1 and 2, and the other relief sought in the suit are either dependent on cancellation or consequential to it, for until and unless the documents of the Defendants 1 and 2 are cancelled, the underlying 10 acres of land does not become available for grant to village Darya Khan or the Plaintiffs. Therefore, the main relief of cancellation being clearly time-barred, none of the other reliefs sought can save the suit from dismissal under section 3 of the Limitation Act, 1908. The plaint is thus rejected.

**JUDGE**