

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

**R.A No.250 of 2010**

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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1. For hearing of CMA-740/2010
2. For hearing of main case.

**Date of Hearing** : 17.04.2023.  
**Date of Order** : 17.04.2023.

Mr. Irfan Ahmed Qureshi, Advocate for Applicants.  
Mrs. Razia Ali Zaman Khan, Advocate for private Respondents.  
Mr. Ayaz Ali Rajpar, Assistant A.G.

**ORDER**

**MUHAMMAD FAISAL KAMAL ALAM- J,-** This Revision is filed against the Order passed by the learned Trial Court on the Application filed by the Applicants under Section 12(2) of CPC (At Page-137), challenging the Judgment and Decree passed by the Trial Court dated 20.08.1999 and 24.08.1999 respectively (At Pages-67 to 85). The learned Trial Court was not convinced with the ground mentioned in the Application under Section 12(2) of CPC and passed the Order dated 02.08.2004 (At Page-165), which was Appealed against but without any positive result in favour of present Applicants.

2. The basic facts are that private Respondents have challenged the T.O Forms given in favour of present Applicants in respect of the land bearing Block Nos.514/1 and 2, 515/1 to 4, 516/1 to 4, total admeasuring 36-05 Acres situated in Deh Kheeryoon Taluka Golarchi / Shaheed Fazil Rahu District Badin.



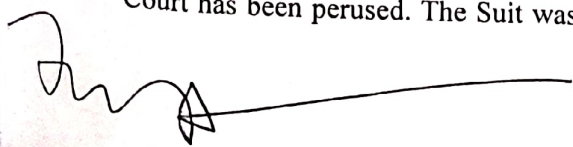
3. Learned Counsel for the Applicants states that both decisions are not within the parameters of law, as it has not considered the fact that the earlier Judgment was *ex parte* and ample opportunity was not provided to present Applicants. Learned Counsel has also drawn attention to the fact that allegedly present Respondents at the relevant time were residents of District Hala and not Badin when the land was granted and in this regard has referred to the NICs of private Respondents.

4. Learned Counsel for the private Respondents has rebutted this contention and has read the judgment of the learned Trial Court in which it is mentioned that one Muhammad Ishaque had filed Vakalatnama on behalf of present Applicants, but he did not contest the matter and therefore, the Judgment (of 20.08.1999) was passed.

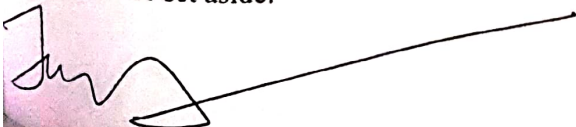
5. According to learned A.A.G, as per Land Grant Policy, the lands can only be given to the residents of the area. At this juncture, Mrs. Razia Ali Zaman Khan, Advocate for private Respondents, has rebutted the contention of learned A.A.G and has stated that the lands in question were granted to private Respondents, but it was illegally cancelled.

6. Arguments heard and record perused.

7. In Paragraphs 17 and 18 of the Plaint (of present Respondents), it is mentioned that during pendency, official Respondents had granted T.O Forms (**Transfer Order Forms**) in favour of present Applicants, which was an illegal act. The entire controversy revolves around the grant of land as per the Land Grant Policy of the relevant time (Copy whereof is at Page-23) and issuance of T.O Forms to present Applicants. The Judgment (20.08.1999) of learned Trial Court has been perused. The Suit was decreed merely on the ground that since



stance of Respondent (Plaintiff) was not rebutted by present official Respondents and Applicants, the version of present private Respondents was accepted. No reasoning is given by the learned Trial Court for reaching the conclusion. It is a settled rule of jurisprudence that even if the matter is not contested by the opponent, the Court has to apply its judicial mind to the contents of the pleadings, available record as well as applicable law. If, admittedly, the private Respondents themselves are acknowledging the fact of issuance of T.O Forms in favour of present Applicants (though illegally or malafidely), at least the learned Trial Court should have examined the official Respondents as the land is a State land, in order to ascertain the veracity of the claim of private Respondents. Secondly, T.O Form in favour of present Applicants confirms their interest in the subject land, which cannot be brushed aside, as is done in the present case. In the second round of litigation when Application is filed by present Applicants under Section 12(2) of CPC, the learned Trial Court through the impugned Order has made a cursory enquiry, primarily with regard to service of notice and the fact that one of the co-sharer of present Applicants, Mahar son of Taj Muhammad Mallah was not alive at the time of institution of Suit by present Respondents. The impugned Order has neither discussed the Status of the Subject Lands, nor considered the Land Grant Policy of the relevant time and official version in respect of the entitlement of present Applicants, which resulted in miscarriage of Justice. Similarly, the learned Appellate Court did not apply its judicial mind to the facts of present case and without giving plausible reasons, maintained the Decision / Order of the Trial Court passed on the Application of Applicants, filed under Section 12(2) of CPC. Consequently, in view of the above discussion, both the impugned Orders / Decisions are not sustainable in law and are set aside.






8. Consequently, this Revision is accepted, both Judgments are set aside.

The learned Trial Court will give fresh decision in the following manner:

- (i) Within two weeks from the date of receipt of this Order, written Statements will be filed by Applicants and official Respondents: if they failed to do so, the matter can be proceeded exparte.
- (ii) Once the written Statements are filed alongwith official record, issues will be framed and evidence will be led. Once the evidence starts, no adjournment will be given and the entire evidence shall be completed preferably within two (02) months.
- (ii) The decision should be handed down within three (03) months from the receipt of this Order. Learned A.A.G is put on notice that if the official Respondents avoided to file written Statement, then separate disciplinary proceedings shall be conducted against them.

The Revision Application is disposed of in the above terms.

  
JUDGE

Shahid