

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
IInd Appeal No. 119 of 2023

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Date

Order with signature of Judge

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1. For orders on CMA No.3679/2023.
2. For orders on CMA No.3680/2023.
3. For hearing of Main Case.

30.05.2023:

Mr. Barner Newton Barni, Advocate for the Appellant.

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1. Counsel for the Appellant has preferred this IInd Appeal under Section 100 of the Code of Civil Procedure, 1908 against the order dated 27 March 2023 passed by the VIIIth Additional District Judge Karachi (Malir) in Civil Appeal No. 56 of 2022 emanating from a judgment and decree dated 22 March 2023 passed by the IInd Senior Civil Judge Karachi (Malir) in Civil Suit No. Nil of 2022 whereby the plaint of the Appellant was rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908.

2. The Appellant had filed a Suit before the court of the 2<sup>nd</sup> Senior Civil Judge Karachi South seeking the following relief:

- “ ...
- a) For Declaration, thereby declaring the Plaintiff and lawful owner of the Plot 76, Measuring 40 square yards (out of 80 Square Yards) situated at Ismail Goth Area 1/D, Landhi No. 2, Malir, Karachi;
  - b) To direct the defendants to install separate gates and also erect wall over the suit property;
  - c) For permanent injunction thereby restraining the defendants for their men, agents, servants, workers, employees, nominees, friends, relatives, laborers, contractors, attorney/s person or persons and/or anyone else acting, posing on their behalf from making any attempt giving an threats for dire consequence and/or eject, dispossess or to sell, transfer, mortgage, gift, alienate, assign, mutate the suit property viz Plot No. 76 measuring 80 square yards situate at Ismail Goth Area, 1/D, Landhi No. 2, Malir, Karachi and or creating any third party interest in respect of this suit properties and/or disturb any amenities of the same in any manner

or whatsoever illegally, unlawfully and unauthorizedly till the pendency of the suit.”

3. The suit was not admitted by the 2<sup>nd</sup> Senior Civil Judge ASJ/RC, Malir Karachi who raised objections regarding its maintainability and rejected the plaint under Rule 11 of Order 7 of the Code of Civil Procedure, 1908 on the failure of the Appellant to disclose her status by attaching any title documents to the Plaint.

4. The Appellant preferred Civil Appeal No. 56 of 2022 before the court of the VIIIth Additional District and Sessions Judge Malir Karachi and at this stage admitted that her only title document was an Agreement of Sale. This caused the VIIIth Additional District and Sessions Judge Malir Karachi to dismiss the appeal and uphold the order passed by the 2<sup>nd</sup> Senior Civil Judge ASJ/RC, Malir Karachi in Suit No. Nil of 2022 rejecting the Plaint under Rule 11 of Order 7 of the Code of Civil Procedure, 1908 on the grounds that as the Appellant was maintaining the Plaint on the basis of an Agreement of Sale no declaratory relief could be granted to her under Section 42 of the Specific Relief Act, 1877.

5. This matter was first listed before me on 25 May 2023 when the counsel for the Appellant appeared before this Court and stated that Appellant is residing at a Plot 76, Ismail Goth Area 1/D, Landhi No. 2, Malir, Karachi admeasuring 40 square yards (out of 80 Square Yards) (the “Said Property”). Admittedly, as conceded by the counsel for the Appellant, the plot is situated in a “un-declared” Katchi Abadi and the status of the Appellant on the Said Property is at best that of a trespasser. The counsel for the Appellant was confronted with this fact and a question was raised as to how he can seek declaratory rights in respect of his status as a “trespasser” under section 42 of the Specific Relief Act, 1877. On that date the counsel for the Appellant requested for time to address this matter, which was given till today. He has now appeared and has

stated that the Appellant is out of the country and he has as such been unable to obtain instructions nor has he been able to confirm whether she has any title documents in her possession and is now requesting for additional time to produce such documents.

6. I have heard the counsel for the Appellant and perused the record. The Said Property is admittedly in an “un-declared” Katchi Abadi. A Katchi Abadi, as is well known, is a phenomena in developing countries caused by the migration of persons from rural area to urban area, who on account of not having any place to live, settle on public land in urban areas. Their status being that of trespassers, so as to confer some proprietary right in their favour, various statutes and marital law orders have been passed over the years conferring “title” to such persons squatting on the basis of their possession of the land. The law regulating such “settlements” in Sindh is now the Sindh Katchi Abadis Act, 1987 (the “1987 Act”). By this statute an authority known as the Sindh Katchi Abadi Authority (the “Authority”) has been created,<sup>1</sup> which has under Section 19 of the 1987 Act been conferred with the power to declare an area as a “Katchi Abadi”. The right to declare an area as a Katchi Abadi is fettered by various criteria and exceptions which are found in sub-section (2) to sub-section (4) of Section 19 of the 1987 Act. The authority has under Section 20 and Section 21 of the 1987 Act been given various powers to “develop, improve and regularise” an area declared as a Katchi Abadi by preparing “schemes” for the improvement of these areas.

7. Regulations known as the Sindh Katchi Abadis Authority (Regularisation, Improvement & Development) Regulations 1993 ( the “1993 Regulations”) have also been notified under Section 41 of the 1987 Act. Regulation 4 of the 1993 Regulations clarifies the criteria by which an area can be declared as a Katchi Abadi. After the development of a

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<sup>1</sup> See Sub-Section (1) of Section 4 of the Sindh Katchi Abadis Act, 1987

scheme in accordance with the 1993 Regulations, various proprietary rights are conferred by Regulation 21 of the 1993 regulations on person in possession of land in the “Declared Katchi Abadi and which rights are as per Regulation 23 in the nature of a lease for a period of 99 years.

8. To seek a declaration of a right, a Plaintiff, generally has to bring himself within the scope of Section 42 of the Specific Relief Act, 1877 which states that:

“ ... **42. Discretion of Court as to declaration of status or right.**

Any person entitled to any legal character, or to any right 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:

Bar to such declaration. 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.

Explanation. A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.”

9. The Appellant in her suit for declaration is as per Section 42 of the Specific Relief Act, 1877 required to show that she has “legal character, or to any right as to any property”. Regrettably the Said Property, as admitted by the counsel for the Appellant, is not located in an area which has been “regularized” by the Authority under Section 21 of the 1987 Act and therefore no right or title can be declared in favour of the Appellant under Regulation 21 of the 1993 Regulations by this Court.<sup>2</sup> This issue has been considered by Mr. Justice Saiyed Saeed Ashaad (as his Lordship then was) in the decision reported as **Abdul Ghafoor vs. Allah Buksh**<sup>3</sup>

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<sup>2</sup> See **Muhammad Iqbal vs. Karachi Metropolitan Corporation** 1997 MLD 2304; **Abdul Ghafoor vs. Allah Buksh** 2001 CLC 370; **Alvia Tabligh Trust through Managing Trustee vs Muhammad Akram** 2009 YLR 381; **Nishat Begum vs. Sindh Katchi Abadi Authority** 2010 MLD 644; **Muhamamd Naser vs Hyderabad Municipal Corporation** 2021 CLC 1987

<sup>3</sup> 2001 CLC 370

wherein while considering the status of properties within a Katchi Abadi it was held:<sup>4</sup>

“ ... It is pertinent to note that the plot in dispute together with the constructions thereon is situated in a Katchi Abadi. According to his own admission the respondent No.1/ Plaintiff had purchased the property in dispute from one Mst. Saira for a sum of Rs. 8,000. There is nothing on record as to what title, interest or right Mst. Saira had in respect of the property in dispute. Obviously she was also an encroacher or a usurper of the plot in dispute and whatever construction had been raised by her was also illegal and without and lawful authority. The alleged sale made by her in favour of respondent No. 1./ plaintiff could not confer on him title right or interest in the demised property better than she herself had, which was that of an encroacher or a usurper. Unauthorised occupation or any encroachment over a property or any other property does not provide a right to the encroacher or a trespasser either for the transfer of the said property or for claiming himself to be the owner/title-holder of the said property. In this connection reliance has been placed on the case of Abdul Ghafoor vs. Settlement Commissioner and other reported in 1968 SCMR 1286. The Supreme Court in the case of Anjuman Arian Bhera vs. Abdul Rashid and other reported in PLD 1982 SC 308, observed that an encroacher was neither entitled to any relief nor he could be said to be an affected or aggrieved person if the land in his possession was allotted, transferred or taken away by another person. It was further observed that illegal and unauthorized possession has not legal sanction and cannot have the blessing of any court.”

10. While, I would have been happy to consider her right to seek her declaration as to her right title or interest in the said Property emanating from her possession of the Said Property under Regulation 4 and 21 read with Regulation 23 of the 1993 Regulations where the Katchi Abadi had been regularized under Regulation 4 of the 1993 Regulations, however I am clear that as the Said Property is located in an area which is an “un-declared” Katchi Abadi, the Appellants status is that of a trespasser and no declaration could have been passed by the the IInd Senior Civil Judge Karachi (Malir) under Section 42 of the Specific Relief Act, 1972.

11. I am therefore of the opinion that the IInd Senior Civil Judge Karachi (Malir) had by its judgment and decree dated 22 March 2023 in Suit No. Nil of 2022 correctly rejected the plaint under rule 11 of Order 7 of the Code of Civil Procedure, 1908 and which order was also properly upheld by the VIIIth Additional District Judge Karachi (Malir) order dated

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<sup>4</sup> *Ibid* at pg.374-375

27 March 2023 passed passed in Civil Appeal No. 56 of 2022. I had also declined, the counsel for the Appellants request for additional time to place documents as this is a second appeal and I cannot admit documents at this belated stage to be examined. There being no infirmity either in the order dated 27 March 2023 passed in Civil Appeal No. 56 of 2022 by the VIIIth Additional District Judge Karachi (Malir) or in the order passed by IIInd Senior Civil Judge Karachi (Malir) in its judgment and decree dated 22 March 2023 in Suit No. Nil of 2022. This appeal is not maintainable and is dismissed along with listed applications with no order as to costs.

J U D G E

**Nasir P.S.**

