IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

SUIT NO.269 OF 2018

Plaintiff : Mst. Safooran and another.
Through Mr. Ahmed Ali Ghumro advocate

Defendants : Province of Sindh and others.
Through Mr. Pervez Ahmed Mastoi, AAG.

Date of hearing & short order : 02.11.2023.

J U D G M E N T

Plaintiffs pleaded that they had purchased 2-0 acres of industrial/commercial/residential land out of 4-0 acres of land from Naclass 21, Deh Dozan, Sector No.44, Scheme 33, Karachi, that the lessee Muhammad Tayyab was allotted land measuring 4-0 acres for residential/commercial/flat purpose for 99 years lease vide order dated 13.06.1995 which was subsequently cancelled alongwith subsequent transactions in respect thereof, thereafter in pursuance of section 4(2) of the Ordinance, loss caused to the government as determined by the committee as provided under Rule 3(1) and approved by Chief Minister Sindh, was offered for payment to Muhammad Tayyab in respect of land measuring 4-00 acres situated at Naclass No.1, Deh Thoming, Scheme No.33,Karachi, the differential malkano amount of Rs.27,16,000/- was paid at rate of Rs.800,000/- per acre on 19.05.2005; that land was previously allotted to previous owner of land was restored by the Member LU BoR on 22.06.2005, that after payment of differential malkano land has been regularized in name of previous owner; that thereafter execution of lease in favour of previous owner whereas the land was allotted to him in year 1995 and land was cancelled under Ordinance

of 2001 and after payment of differential malkano of land was regularized and transferred in favour of plaintiff through sale deed and possession was handed over to plaintiff; that plaintiff applied for NOC for sale of that land but defendant No.2 informed that Mukhtiarkar concerned has cancelled that land. Plaintiffs prayed :-

> (a) that both the plaintiffs through her predecessor in interest are of the lawful owner of land 2-0 acres out of 4-0 acres of land from Naclass No.21, Sector 44 of KDA Scheme No.33, Karachi.
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> (b) To declare that both plaintiffs are owner of 2-0 acres of land out of 4-0 land from Naclass No.1, Deh Dozan, Scheme No.33, Karachi.
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> (c) To direct the defendant No.1 to cancel the Notification No.09-294-03/SO-I/293/SO-I Land Utilization Department, Govt. of Sindh and notification No.03-/SO-I-294 dated 21.09.2015 and Notification No.03/SO-I/503 dated 29.09.2015 issued by (LU) Department, Govt. of Sindh, Karachi.
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> (d) To direct the defendants not to disturb the peaceful possession of land of the plaintiff.
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> (e) To direct the defendants, their subordinates, manager, attorney, representative or any other person/persons on his behalf not to create third party interest in the suit property.
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> (f) To grand any other relief/reliefs deem fir and proper under the appropriate circumstances of the case.

2. Defendant No.2 and 3 were declared exparte whereas defendant No.1 filed written statement stating that initially land measuring 4-00 acres from Naclass No.1, Thoming Scheme 33 on 99 years was allotted to the predecessor of the plaintiff vide allotment order dated 13.06.1995 however land was not available, predecessor of plaintiff was adjusted an equal area out of Naclass No.21 Deh Dozan, sector No.44, Scheme 33, Karachi by order dated 22.12.2009 passed by the District Officer Revenue and subsequently 2-00 acres land out of 4-00 acres was sold out by the predecessor to the

plaintiff, such sale deed was executed on 06.08.2010 in favour of plaintiff; that notification dated 21.09.2015 and letter dated 21.09.2015 entries of exchange of state land under section 17 of the Colonization of Government Lands Act 1912 have been cancelled but said predecessor has executed 2-00 acres sale deed in favour of plaintiff in the year 2010 much prior to the cancellation notification dated 21.09.2015, besides the defendant has no power under the law to cancel the registered document so defendants will avail the remedy before competent forum for cancellation of sale deed in favour of plaintiff hence notification dated 21.09.2015 will not affect the land of plaintiff that was adjusted in year 2010.

3. Heard, perused the record. Order X Rule 1 CPC provides for recording the admissions and denials of the parties to the suit at the "first hearing of the suit" which comes after the framing of the issues and then the suit is posted for trial, i.e. for production of evidence. Such an interpretation emerges from the conjoint reading of the provisions of Order X Rule 1; Order XIV Rule 1(5); and Order XV Rule 1 CPC. The cumulative effect of the above referred provisions of CPC comes to that the "first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. On the date of appearance of the defendant, the Court does not take up the case for hearing or apply its mind to the facts of the case, and it is only after filing of the written statement and framing of issues, the hearing of the case commences. The hearing presupposes the existence of an occasion which enables the parties to be heard by the Court in respect of the cause. Hearing, therefore, should be first in point of time after the issues have been framed. The date of "first hearing of a suit" under CPC is ordinarily

understood to be the date on which the Court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the “first hearing of the suit” prior to determining the points in controversy between the parties i.e. framing of issues does not arise. The words the “first date of hearing” does not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken. In order to understand the meaning of the word “at issue”, it is necessary to turn to the scheme of the provisions of Order XIV read with Order XV of the C.P.C. Issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Material propositions are those propositions of law or fact which a plaintiff must allege in order to constitute his defence. The issues are of two kinds:- (a) issues of fact and (b) issues of law. (Order XIV Rule 1 C.P.C.). Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. Court may frame issues from (a) allegations made by the parties, their agent or pleaders, (b) allegations in pleadings or in answer to interrogation, (c) contents of documents produced by either parties (See Order XIV Rule 3 C.P.C.). When the pleadings are not exhaustive, the Court is at liberty to examine the parties so as to find out provisions of law and facts at which they are at variance. The function of the Court lies in ascertaining the real dispute between the parties from the pleadings i.e. plaint and written statement or by examining the parties and/or by hearing the counsel with respect to

the proposition on which there is a dispute. If there is no contention between the parties, no issues arise and therefore, the Court is not called upon to go into any dispute at all. Then it is said that parties are not at issue. Order X Rule 2 C.P.C. empowers a Court at the stage of hearing or at any subsequent stage to orally examine any party appearing in person or present in Court or any person able to answer any material question relating to the suit and it further empowers that a Court may put him questions during such examination. However, as per Order XLIX, Rule 3 (2) C.P.C., rule 3 of Order X shall not apply to any High Courts in the exercise of its ordinary or extraordinary original civil jurisdiction. It appears that the defendants Nos.2 & 3 were proceed exparte and the defendant No.1 has admitted the claim of the plaintiffs as contained in the plaint. On careful examination of the pleadings of the parties, it is manifest that there is no material proposition of law, fact or mixed question of law and fact, on which the parties are at variance and the issues could be framed.

4. Every litigant has the right to have justice expeditiously. Trial Courts, adjudicating civil dispute, therefore, should remain alive to the procedures as laid down in the Code of Civil Procedure and use the procedural law as effective tools to secure speedy justice. Provision of Order X of the Code of Civil Procedure is one such basic and effective avenue to tread upon, to secure the goal for dispensation of justice expeditiously, which must be followed scrupulously and in appropriate cases trial Court should invoke the provision of Order XV or Order XII Rule 6 of the Code of Civil Procedure to shorten the lifespan of litigation. In Case of ***Directorate Of Small Industries, Government Of Balochistan through Sales***

Manager, Karachi Airport, Karachi v. Civil Aviation Authority through Director General and another (1993 MLD 1836), it was held by this Court that: *"In view of the above-said statement the learned counsel for the plaintiff agrees that in terms of Order VI (actually XV) Rule 1 C.P.C. the parties do not appear to be at variance on any issue and a decree in terms of clauses (a) and (b) of the above-quoted statement can be passed. By consent, therefore, such decree is passed with no order as to costs. With the decree in the suit all or any of the applications pending in it also stand disposed of"*.

5. Under these circumstances, in view of the admission on the part of defendant No.1, suit of the plaintiff stands decreed as prayed. Costs shall follow the events. Let such decree be prepared in accordance with law.

These are the reasons of short order dated 02.11.2023.

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