

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

IIND Appeal No. 15 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGE

25.09.2023.

FOR ORDERS ON C.M.A. 2351/2023.[O.1 R.10]
FOR HEARING OF MAIN CASE.

Mr. Jawad Ahmed Qureshi advocate for the appellant.
Mr. Babar Ali Bohio Advocate for applicant / intervenor.
Mr. Rafique Ahmed Dahri A.A.G. Sindh.

Muhammad Shafi Siddiqui, J.- Appellant is disputing over some survey numbers disclosed in the prayer clause. That land claimed to have been either purchased from the private owners and/or acquired from the government. Form-VII at one point of time was not accepted by the trial court, however, the case was remanded by this Court for considering the same in accordance. Even I am of the tentative view that only Form-VII alone, unless coupled with title, does not make a case of an absolute ownership.

Mr. Qureshi, however, submits that had he been provided an opportunity by the trial court, he would have exhibited all those documents concluding as title, but the trial court was convinced that this Court never remanded the matter for recording additional evidence. I am however, of the view that although the respondent No.1 was adjudged to be a trespasser and is unlawful occupation of the land identified in the plaintiff's prayer but still as far as the possession of the land is concerned, that could only be adjudged if the plaintiff could have been provided an opportunity to record evidence along with the documents.

Learned A.A.G. submits that the trial court on the strength of evidence available passed a lawful judgment which was maintained by the appellate court hence if the appellant has missed an opportunity he cannot be given this opportunity yet again.

Mr. Babar Bohio is also in attendance pressing an application under order 1 rule 10 wherein he said that he has purchased the subject land (suit

land) from private owners separately. This land (suit land) is in addition to the land purchased by him from respondent No.1 i.e. Indus Steel Pipe Factory Private Limited.

Mr. Qureshi does not dispute the exclusive land of Indus Steel Pipe Factory Pvt. Limited, however, subject dispute pertains to an additional land which abuts at the back of appellant's Factory and appellant claimed to have a right on it, having been acquired from its lawful owners and Provincial Government/Revenue Authority.

Be that as it may, since the appellant was deprived of a right to record evidence and submit documents in this regard, I deemed it appropriate to remand the case back to the trial court, yet again, for recording evidence and if desired, for submitting relevant documents only to the extent of the land identified in the prayer clause of plaint and evidence in defence by those denying title, whereafter the trial court may pass a Judgment afresh, looking into the veracity of the evidence and documents likely to be adduced and filed. The two orders to the extent of possession of the suit land, having denied to the appellant is set-aside and not declaration against the defendant / respondent and the case is remanded to the trial court for framing appropriate issue only to the extent whether the plaintiff is entitled for the possession of the land in question, identified in the prayer clauses.

Insofar as Mr. Bohio's application is concerned, since I am disposing of this matter, he may move an application before the trial court if it is so advised where his application be considered in accordance with law and in case the court is inclined to add him as a party then a shortest possible duration be given to parties of this suit, not only for filing written statement by the applicant / intervenor filing an application under order 1 rule 10 but also for written statement and recording evidence cumulatively, it may not take more than four [04] months to decide. In case such written statement is allowed to be filed the appellant may be given an opportunity for amending the plaint if so required.

With this understanding the appeal is disposed of.

JUDGE

A.