

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

RA No.10 of 1990.

Date: Order with signature(s) of the Judge(s)

Re-Hearing.

1. For Hearing of CMA No.6028/2013.
2. For Hearing of Main Case.

28th August, 2023.

Mr. Peer Rehman Mehsud advocate for the applicants.
Mr. Mazhar-ul-Islam advocate for Respondent.

Salahuddin Panhwar, J:- Precisely relevant facts are that applicant migrated from Bharat in 1953, occupied the open KMC plot like many other refugees constructed a Katcha house thereon, roofed it with the sheets and was residing with her children. The Respondent being close relative was shelter less, hence, on her request she was allowed to occupy half portion of the house temporarily; the Respondent fraudulently with the help of the employees of Excise and Taxation Department got her named entered into the register in 1963 which is maintained only for the recovery of the property tax under the provision of the West Pakistan Urban Immovable Property Tax Act; the applicant's name was deleted and the Respondent name was inserted in 1968 though the property was into the possession of the applicant; the applicant challenged the said change and ultimately she filed Civil Suit No.967/1970 that suit was dismissed on technical grounds; that after more than ten years Respondent filed Civil Suit in 1980 bearing No. 56 of 1980 for possession against the applicant stating therein that she was owner of the said entire plot and construction thereon; said suit was dismissed by the learned trial court on the point of limitation as the suit was filed after 16 years after dispossession; the Respondent filed appeal and the suit was remanded for the decision on the remaining issues; learned trial court decreed the said suit; applicant being aggrieved with the decree filed appeal which was dismissed by the learned appellate court, hence, this revision.

2. Since 1968, Niece and maternal aunt have been fighting with each other over the subject matter property which is 80 Sq. Yards and both parties are in possession of equal share.

3. Except record of excise department and mutation there is no title in favor of any party. Both parties are claiming that being refugee they occupied the subject matter plot. Suit filed by the appellant was dismissed and then suit filed by Respondent was dismissed on the point of limitation, however, case was remanded back while holding that suit is within time as filed within twelve [12] years.

4. Learned counsel for the applicants while relying upon the case laws reported in 2003 YLR 1112 [Lahore], 2010 YLR 2759 [Lahore], PLD 2002 Karachi 511, 2013 MLD 1818, 2017 YLR Note 39, PLD 1997 Quetta 75 and 2013 YLR 871 [Supreme Court (A.J&K)] and according to counsel for the applicants suit is time barred being filed after sixteen years.

5. Whereas, learned counsel for Respondent while relying upon reported as 2007 SCMR 181, 2000 SCMR 346 [Supreme Court of Pakistan], 2000 SCMR 314 [Supreme Court of Pakistan], SBLR 2015 Sindh 1015 [High Court of Sindh (Hyderabad)], 2010 SCMR 984 [Supreme Court of Pakistan], 1997 SCMR 1139 [Supreme Court of Pakistan] and 2001 SCMR 798 [Supreme Court of Pakistan] contended that counsel for the applicants has no right to agitate issue of limitation as appellate court decided the same and case was remanded while holding that suit is within time. Judgment and decree passed by both courts below are splendid, every aspect has been examined, Respondent is in possession of PT-1 Form, therefore, is entitled for the possession of whole property which is 80 Sq. Yards. He has relied upon 2007 SCMR 181 case law relied by the Respondent is specifically on the issue to decide the validity of the PT-1 Form. As the judgment of apex court, PT-1 Form does not create any legal character in favor of any party and in that case only protection was awarded for the stranger persons who are holding possession of PT-1 Form. Excise department record also reflects entry in favor of applicants.

6. In Case of ***Muzaffar Khan v. Sanchi Khan and another (2007 SCMR 181)***, it was held by the Apex Court that: *"This document is purportedly dated 12-6-1966. Even this document does not tend to confer any right or title in favour of respondent No.1, except the right to*

possession, therefore, merely on the basis of extracts containing entries in his favour in PT-I maintained by Excise and Taxation Office M. Division Karachi could not be held to be the owner of the property. At best the plaintiff/respondent No.1 would be entitled to a decree for protection of possession on the basis of the evidence adduced by him and not controverted by other side. In the absence of any concrete evidence on the question of mesne profits we are in a manner of doubt whether such decree could be passed in his favour as against petitioner and respondent Rehmat Hussain”.

7. In Case of **Maderssa Darul Fazal Halani v. Muhammad Ramzan Kashmiri (2005 CLC 83)**, it was held by this Court that: “Under section 8 of Specific Relief Act a person entitled to the possession of a specific immovable property can recover it in the manner prescribed by the Code of Civil Procedure. The words “entitled to possession” appearing in section 8 of the Specific Relief Act mean a right to possession on the basis of ownership or possession of which the person claiming has been dispossessed. It has been held in a case of Ismail Ariff v. Mahomad Ghous ILR 20 Cal. 834 (PC) that there may be a title by contract, inheritance, prescription or even by possession and the last will prevail where no preferable title is shown. In the same authority it has further been held that lawful possession of land is sufficient evidence as owner as against a person, who has no title whatsoever and who is a mere trespasser. It has further been held in ILR 6 Bombay 215 that possession is a good title against all persons except the rightful owner, and entitles the possessor to maintain ejectment against any other person) than such owner who dispossessed him”.

8. Since both parties have no title on the subject matter land but they being refugee occupied the premises and residing there since decades. In view of the judgment of the apex court possession was protected, hence, it would be in the interest of justice to set-aside the impugned judgment dated 10.12.1989 in view of case law reported in 2007 SCMR 181 with directions to the authorities that both occupants are entitled for protection of this property and no one shall disturb their possessory right on any account in future. Accordingly, instant revision application is disposed of.

JUDGE