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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Civil Revision No.41 of 2009.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For Katcha Peshi.
2. For Hearing of C.M.A.No.168/2015.
3. For Hearing of C.M.A.No.173/2009.

25.11.2016.

Mr. Gulab Rai C. Jesrani, advocate for the applicant.

Mr. Faiz Muhammad Larik, advocate for the respondents.

Mr. Abdul Hamid Bhurgari, Addl. A. G.

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The applicant/plaintiff filed a Civil Suit bearing No.377 of 1996 before the Court of Ist Senior Civil Judge, Larkana, against the respondents for declaration and injunction in respect of immoveable property i.e. agricultural land bearing S.No.469, admeasuring 01 acre 25 Ghuntas situated in deh Nangar Sangi, taluka Larkana, which was allegedly purchased by them through registered sale deed dated 02.01.1994. The suit was contested by the respondents/defendants. The learned trial Court after framing the issues and recording pro and contra evidence of the parties decreed the same vide judgment dated 23.12.2003 in favour of the applicant/plaintiff. Being aggrieved, the respondents/defendants preferred Civil Appeal No.08/2004 which was allowed by the learned appellate Court vide judgment dated 14.09.2009 and remanded the matter to learned trial Court to decide the same afresh. It is against this judgment, the applicant/plaintiff has preferred this Civil Revision Application.

For the sake of convenience, the relevant findings of learned appellate Court is reproduced as under :

".....Since Revenue Official (Assistant Mukhtiarkar Estate, Larkana) has deposed that said land belongs to Central Government. Therefore question arises that how this Allah Bux became the owner of suit land as well question arises that from whom Allah Bux purchased the suit land. On these points learned trial Court has not framed any issue. It was quite important before learned trial Court to examine defendant No.1 Allah Bux and/or to call the original record of suit land from concerned department in order to reach at the definite conclusion. Thus considering the aspects of the case, following additional issues are to be framed.

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Whether the suit land still belong to central government :

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Whether defendant No.1/respondent No.2 Rehmatullah was competent to sale out suit land to the Plaintiff/Respondent No.1.

Learned Trial Court should provide the opportunity to parties to lead the evidence on above issues and to call original record of suit land from concerned department. After examining all the aspects learned trial Court should decide the matter afresh. The judgment and decree dated 23.12.2003, passed by learned trial Court in above matter are set aside. Matter in hand is remanded to learned trial Court to decide the same afresh after affording the opportunity to parties to lead their evidence. Appellants may assist learned trial Court. Appeal in hand is allowed accordingly, with no order as to costs."

Heard the learned counsel for the parties and perused the material available on record.

It is an admitted position that, with reference to the pleadings of the parties, it is not the case of either party that the suit land was ever belonged to Central Government. In this regard specific issue has been framed by the learned trial Court viz issue No.3, i.e. "whether the subject land is barrage land" and that issue has been decided by the trial Court in favour of the applicant.

There is no cavil to the proposition that the issues are framed on the divergent pleadings of the parties, therefore, the Judgment of the appellate Court being erroneous is not sustainable under the law. Resultantly the Civil Revision is allowed and the matter is remanded to learned appellate Court to decide Civil Appeal No.08/2004 afresh on merits in accordance with law. Since the matter is old one, therefore, learned appellate Court is expected to conclude the same preferably within a period of three months from the date of this order.


Judge

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