

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 3649 of 2012

(Hassan Ahmed & others v. P.O. Sindh & others)

Present:

Mr. Zulfiqar Ahmad Khan, J.

Mr. Abdul Mobeen Lakho, J.

Date of hearing : **18.09.2024**

Date of decision : **18.09.2024**

M/s Muhammad Moez Shamsi and Shahbaz Hussain Bajwa,
Advocates for petitioners.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

ORDER

Zulfiqar Ahmad Khan, J. – The petitioners filed a suit (F.C. Suit No.57 of 1984) for declaration and injunction in respect of agricultural land bearing Survey Nos.729 and 730 of Deh and Taluka Pano Aqil, which was decreed in their favour by the learned Senior Civil Judge, Ghotki vide judgment dated 15.11.1993 and decree dated 17.11.1993. The respondent (Town Committee, Pano Aqil) filed an appeal (Civil Appeal No.02 of 1994), which was dismissed by the learned IInd Additional District Judge, Sukkur through judgment dated 29.09.1996. Subsequently, the respondent filed Civil Revision No.03 of 1997, which was dismissed on two occasions, first for non-prosecution on 27.03.2003, and second on 27.02.2006 upon a statement of withdrawal. After a protracted period, two CMAs were filed in 2007, which were also dismissed in default on 27.03.2009.

2. In the meantime, the petitioners initiated Execution Application No.08 of 2003, which was allowed by the learned IInd Senior Civil Judge, Sukkur vide order dated 21.01.2004. A writ of possession was issued on 22.06.2006, but the execution was impeded as the Bailiff's report indicated that 72 different persons were in occupation of the suit land. Another writ

of possession was issued, to be executed through Mukhtiarkar, Pano Aqil, who also submitted the same report. Thereafter, petitioners / decree-holders filed an application under Section 151 CPC before the learned executing Court for calling the persons who are in illegal occupation over the suit property, which was dismissed vide order dated 17.09.2007, holding that the petitioners had failed to include the 72 persons occupying the land in the original suit, despite knowledge of their possession. The Court ruled that the decree could not be executed unless the occupants were made parties to the suit, as they were not included in the earlier proceedings.

3. Aggrieved by this decision, petitioners / decree-holders filed Civil Revision No.28 of 2007, which was allowed by the learned IInd Additional District Judge, Sukkur by order dated 27.05.2009, setting aside the impugned order and remanding the matter back to the leaned executing Court with directions to hear the claims of the occupants of the land and dispose of the matter according to the law.

4. Despite the remand order, the learned executing Court vide order dated 24.06.2010, once again dismissed the application, observing that the possession of the respondents appeared to be without documentation and that the petitioners could seek relief through other competent legal provisions, including the Illegal Dispossession Act. The petitioners challenged that order in Civil Revision No.27 of 2010, which too was dismissed by the learned Ist Additional District Judge, Sukkur through judgment dated 18.10.2012. Hence, this petition has been filed against the said proceedings.

5. The record shows that on 25.02.2015, this Court directed service through publication against private respondents No.8 to 83 in two newspapers: Sindhi and Urdu. In compliance, learned Counsel for the petitioner, through his statement dated 30.03.2015, submitted publications

made in two newspapers: Daily Kawish dated 26.03.2015 and Daily Khabrain dated 27.03.2015. On the subsequent date i.e. 01.04.2015, when no one was present on behalf of private respondents, the service was declared as held good against them. Later on, Mr. Sarfraz A. Akhund, Advocate filed *vakalatnama* on behalf of respondents No.8 to 83 on 30.11.2017. Since 08.03.2022, when Mr. Akhund was present, the matter has been listed for 10 occasions, including twice on urgent applications, yet Mr. Akhund has not appeared on any of those occasions. On two dates, some other Counsel held brief on his behalf. It is important to note that despite a considerable period of 12 years having passed since filing of this petition, none of the private respondents have filed any objections.

6. Learned Counsel for the petitioners has contended that while the learned Ist Additional District Judge, Sukkur, in his judgment dated 18.10.2012, noted that the learned Illrd Additional District Judge, Sukkur, on 28.05.2011, had impleaded 72 persons and that the amended title was subsequently filed by the petitioners' Counsel, he failed to take this into account. Learned Counsel has further argued that, in fact, all 72 individuals took possession during pendency of the execution application. He has prayed for setting aside the impugned order dated 24.06.2010 and judgment dated 18.10.2012, and direction for the learned executing Court to implement the decree passed in F.C. Suit No.57 of 1984 in accordance with the procedure prescribed under the law.

7. With consent of the parties present, the petition is hereby **allowed**, and the impugned orders / judgments dated 24.06.2010 and 18.10.2012 are set aside. The matter is remanded to the learned executing Court, which shall proceed to execute the decree passed in F.C. Suit No.57 of 1984 in Execution Application No.08 of 2003, wherein a writ of possession has already been issued in favour of the petitioners. The learned executing Court is directed to follow the procedure laid down under Order

XXI, Rules 97, 98, and 99, CPC, and to employ police force, if necessary, to ensure execution of the decree. The concerned Government officials, including the Deputy Commissioner and other relevant authorities, are directed to extend full cooperation and support to the learned executing Court in this regard.

The petition stands **disposed of** in the above terms.

J U D G E

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Abdul Basit