

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
Const. Petition No.D- 1204 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For Katcha Peshi.
2. For Hearing of M.A No.5830/2014.

26.8.2014

Mr. Prem Chand, advocate for petitioners.
Mr. Munawar Ali Abbasi, Assistant A.G.
Mr. Abdul Qadir Abro, advocate for Respondents No.3 and 4.

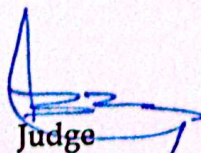
Impugned in this petition are two orders of the trial Court as well as of the appellate Court. The trial Court has dismissed the application under Order 14 Rule 5 CPC and the appellate Court has maintained the order. The controversy appears to be that the respondent No.3 and 4 have filed a suit for possession, declaration, mesne profits and permanent injunction against the petitioner and others. Learned counsel for the petitioners at the very outset submit that although rent agreement dated 14.9.1994 were relied upon, however the fact of the matter is that the petitioners are not in possession of the premises against whom the respondent No.3 and 4 are seeking reliefs including the relief of mesne profits. Learned counsel for the petitioners has argued that there are two agreements i.e. the agreement as alleged in Para No.5 dated 14.09.1994 which petitioners claim to be fake and the agreement of 04.10.1996 which they relied. He maintains that the earlier agreement of 1994 is forged and fabricated and whereas the agreement of 1996 hold the field wherein Kishan Chand is stated to be tenant. Kishan Chand who is father of petitioner No.1 is still alive and is also depositing rent in court. Learned counsel for the petitioners submit that such decree, if at all passed, cannot be executed against the petitioners as they are neither in occupation nor they have any interest in the property in question and Kishan Chand has not been made party in suit who in terms of above agreement is in possession.

Learned counsel for the respondent No.3 and 4 submits that in fact the son of Kishan Chand namely Nanik has been in occupation along with defendant No.2 and 3 (in suit) which fact is denied by learned counsel for the petitioners.

We have perused the issues framed by the trial Court and it appears that the plaintiff in suit intends to obtain a judgment and decree including mesne profits against the petitioners who does not claim to be in possession of the suit property and petitioner No.1's father in fact is in possession as tenant as alleged. Since it is a disputed question of fact as to whether the petitioners are or not in possession of the property in question, therefore, to this extent learned counsel for the respondent No.3 and 4 concedes that the issue may be framed as to whether the petitioners are in occupation of the premises in question so that in case a decree if passed could be implemented. Hence this petition is disposed of by consent with the direction to the trial Court to frame additional issue as under:-

"1. Whether the Defendant No. 1,2 and 3 or any one of them is in occupation of the premises in question, if yes, in which capacity?"

The petition along with pending application stands disposed of. The orders of the trial Court and that of the appellate Court are modified as above.


Judge


Judge