

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

R.A. No.241 of 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
Applicant	: Muhammad Sadik & others through Sunder Das Advocate.
Respondent	: Respondents Nos.1 to 4 through Mr. Allah Bachayo Soomro Addl Advocate General Sindh.
Respondent No.5	: Nawab Asghar Khan/Azkar Ahmed through Mr. Jagdesh R. Mullani Advocate.
Date of hearing	: 07.09.2015.
Date of decision	: 14 .09.2015

NAZAR AKBAR, J.- The applicants have assailed Judgment and Decree dated 21.05.2010 passed by learned District Judge, Hyderabad in Civil Appeal No.117/2008, whereby applicant's appeal against dismissal of their F.C. Suit No.445/1999 by learned trial court, was dismissed.

2. The brief facts leading to this revision are that the applicants filed representative suit against the respondents claiming that the applicants and others in all about 60 families were settled in Govt. Naqbooli land No.547 Deh Abri Taluka and District Hyderabad since their forefathers and this area is known as village Sadik Khaskheli. Applicants and others have constructed their houses, Masjid, shops etc over the land in question which never remained under cultivation. The applicants approached the respondent No.3 for issuance of Sanads under Sindh Gothabad Scheme, however, respondents No.1 to 4 managed to set up claim of respondent No.5 showing that the land in question was allotted to the respondent No.5 and T.O. form dated 20.06.1997 was issued in his favour. The applicants moved application for regularization of their village and respondent

No.3 rejected the said application. The applicants preferred appeal against the order of refusal of regularization of suit land as village before the respondent No.2. Their appeal was dismissed by order dated 04.01.1999 with directions to the applicants to vacate the land or purchase the same at the market rate. The applicants, thereafter filed suit with following prayers;-

- a) To declare the suit village in occupation of plaintiffs are naqbooli No.547, Deh Abri Taluka and District Hyderabad is village land and the defendant No.5 has no right, title or interest in the same and the grant order and T.O. dated 26.06.1997 in favour of defendant No.5 and order dated 11.08.1998 and 04.01.1999 by defendant No.2 and 3 are illegal, void and malafide and not binding on the plaintiffs;
- b) Mandatory injunction for directing the defendants to issue Sanads under Goth Abad Scheme to the plaintiffs.
- c) Permanent injunction for restraining the defendants from interfering with possession of the plaintiffs in any manner.
- d) Any other relief.
- e) Costs.

3. The respondents No.1 to 4 did not contest the suit before the learned trial court, however, respondent No.5 contested the suit and filed written statement. The respondent No.5 claimed Naqabooli No.547 to be his private land and stated that during heavy rain of 1992, the applicants sought permission from him and settled there, however, subsequently they encroached upon the same illegally and constructed their huts/houses. The respondent No.5 also questioned maintainability of the suit of the applicants.

4. Learned trial court framed following seven issues out of the pleadings of the parties:-

- i. *Whether S.no.547 of Deh Abri is Naqabooli government land called village Sadik Khaskheli?*
- ii. *Whether grant order and T.O dated 26.06.1997 in favour of defendant No.5 and orders dated 11.08.1998 and 04.01.1999 passed by the defendants No2 & 3 are illegal, malafide and not binding on the plaintiffs?*
- iii. *Whether plaintiffs are entitled for issuance of Sanads under Gothabad Scheme?*

- iv. *Whether the suit is not maintainable?*
- v. *Whether the suit is barred by law?*
- vi. *Whether the suit is undervalued and insufficiently stamped?*
- vii. *What should the decree be?*

In order to prove their case, the applicants examined Muhammad Sdaiq at Ex.75 and closed their side. Respondent No.5 examined himself at Ex.78 and produced documents at Ex.79 to 89 and closed his side.

5. Learned trial court after hearing learned counsel for the parties dismissed the suit. The applicants preferred Civil appeal No.117/2008 against Judgment and Decree of the trial court. The appeal met with the same fate and the order of dismissal of their suit was maintained. This Revision is directed against the concurrent findings of courts below.

6. Heard learned counsel for the applicants and private respondent.

7. Learned counsel for the applicant has contended that the two courts below have failed to appreciate that the applicants were in occupation of the village known as Sadiq Khashkheli and therefore they have failed to appreciate that the grant of T.O dated 26.6.1997 in favour of respondent No.5 was illegal malafide and not binding on the applicants. However, they have not been able to satisfy the two courts below that under what circumstances and how the plaintiffs can claim to be resident of village Sadiq Khashkheli without any documentary proof of the fact that the property in their possession could have been declared as Goth under Gothabad Act, 1987. The very fact that the plaintiffs filed suit and prayed for the declaration was enough to understand that their status was not that of village / Goth. The relevant prayer from the plaint is as under:-

“Declare that the land in occupation of plaintiffs are Naqbooli No.547, Deh Abri Taluka and District Hyderabad is a village land.”

Even in the pleadings, the applicants themselves have admitted that the official respondents by order dated 11.8.1998 had rejected their application whereby they have sought declaration that the land in their possession is village. Their appeal by respondent No.2 against the order of rejection of application passed by respondent

No.3 was also dismissed by order dated 4.1.1999 and the applicants had not impugned the two orders before the Appellate Court nor they filed any constitutional petition or any other proceedings to set-aside the findings of respondent No.1 refusing to regularize the suit land as village.

8. Admittedly the plaintiffs / applicants had no legal character or right in the suit land and therefore they had no locus standi to challenge the grant of land to respondent No.5. The initial burden of proof of issue No.1 and issue No.3 was on the applicants to prove entitlement for issuance of sanads under Gothabad Scheme was decided against the applicants for want of evidence. In absence of title to assert any right over the suit land, the suit was out of the purview of **Section 42** of Specific Relief Act 1877. The 1st Appellate Court and the Trial Court both have held that the land in question was private land and not government land on the basis of documents produced by respondent No.5. The applicants through their pleadings right from plaint to appeal and even in the present Revision have failed to even refer any law under which they claim any title or interest in the suit land. Mere possession under whatever circumstances cannot be a ground to seek declaration of title in any immovable property. In any case the government has refused to entertain the request of occupants / applicants to regularize the suit land as village land is sufficient to establish that that applicants have no right or title to continue possession of the same or claim any right protected under the law of land. Another aspect of the case is that judicial orders passed by statutory authorities under special law conferring such power on the official concerned cannot be set-aside in civil suit.

9. In view of the above facts and circumstances, this Revision Application against the concurrent findings has no merits, the same is dismissed with no order as to costs.

JUDGE