

Judgment Sheet

THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

**Revision Application No. 18 of 2011**

Applicant : Mehboob,  
through Mr. Aqueel Ahmed Siddiqui Advocate.

Respondent : Nadir Hassan,  
through Mr. Rafique Ahmed Advocate.

Dates of hearing : 21.10.2019, 06.12.2019 and 16.12.2019.

**J U D G M E N T**

**NADEEM AKHTAR, J.** – Second Class Suit No.06/1996 filed by the respondent against the applicant for possession and mesne profits was decreed by the learned trial Court vide judgment and decree dated 30.05.2006 and 06.06.2006, respectively ; and, Civil Appeal No.121/2006 filed by the applicant against the said decree was dismissed by the learned appellate Court vide judgment and decree dated 11.11.2010 and 13.11.2010, respectively. The applicant has impugned the concurrent findings of both the learned Courts below through this Civil Revision Application.

2. Relevant facts of the case are that the above Suit was filed by the respondent claiming to be the sole and exclusive owner of property bearing C.S. No.4407, Ward 'G', out of R.S. No.27 and others in Deh Ghangra, situated at Phulelipar, Paretabad, Hyderabad Sindh (**'suit property'**). It was the case of the respondent / plaintiff that the suit property was mutated in his name in the Revenue Record, whereafter a house was constructed thereon by him from his own resources ; at the request of the applicant / defendant, he allowed him to occupy the suit property in September 1995 on temporary basis till some other accommodation is arranged for himself by the applicant ; and, as the applicant failed to vacate the suit property, he demanded vacant possession thereof from him in November 1995, but the applicant refused to vacate the same. In the above background, the Suit was filed by the respondent against the applicant claiming possession of the suit property from him as well as mesne profits at the rate of Rs.800.00 per month with effect from November 1995.

3. The applicant contested the Suit by filing written statement, wherein it was stated by him that he had no concern with the suit property as he was not residing therein. It was claimed by him that he was residing in his own house in Chishtia Colony Hyderabad Sindh, constructed on Budha Land which was declared as a Goth under the Gothabad Scheme. It was averred by him that the

Suit was not maintainable and no cause of action was accrued to the respondent for filing the same.

4. In view of the divergent pleadings of the parties, following issues were settled by the learned trial Court :

- “1. *Whether the plaintiff has no cause of action to file this suit ?*
2. *Whether the suit is not maintainable in law ?*
3. *Whether defendant is in possession of the house No:9 (measuring 1500 sq:ft) built over plot (Formed out of RS:No:27 and others Deh Ghanghra), City Survey No:"G" Noorani Basti, Phulelipar Paretabad, Hyderabad ?*
4. *Whether the premises in possession of the defendant is situated at Bhada land declared by the Government as Gothabadi under the Gothabad Scheme ?*
5. *Whether the defendant is liable to pay mesne profits ? If so, at what rate and since when ?*
6. *Whether the plaintiff is entitled to the relief claimed ?*
7. *What should the decree be ?”*

5. Both the parties examined themselves and produced relevant documents in support of their respective claims. In addition to himself, the applicant also examined three other witnesses. After examining the evidence produced by the parties and hearing their respective submissions, the respondent's Suit was decreed as prayed with no order as to costs. While decreeing the Suit, it was held by the learned trial Court that the respondent / plaintiff had succeeded in proving his case as he had produced the entry in the Record of Rights in his favour in respect of the suit property ; the claim of the respondent in respect of the subject area of 1500 sq. ft. was not specifically denied by the applicant ; the applicant / defendant could not prove that the suit property was declared as a Goth under the Gothabad Scheme or that the property in his possession was different and distinct from the one claimed by the respondent ; and, the above were further supported by the report submitted by the commissioner.

6. The above findings of the learned trial Court were maintained by the learned appellate Court, by further holding that the applicant / defendant had admitted in his cross-examination that the entitlement slips in respect of the suit property had not been issued in his favour, but were issued in the years 1979 and 1985 in favour of other occupants of Chishtia Colony ; he had also admitted in his cross-examination that the competent authority of the Gothabad Scheme had not issued any *Sanad* in his name ; as per the report submitted by the

Inspector Revenue, City Survey Hyderabad Division, who was appointed as commissioner by the learned trial Court, the suit property was situated within the area that was claimed by the respondent / plaintiff, relevant entry whereof in his name was also produced by the respondent ; and, the applicant had failed to produce any proof with regard to his ownership in respect of the suit property and/or the house constructed thereon.

7. Perusal of the impugned judgments and decrees shows that all the aspects of the case have been considered in their true perspective by both the learned Courts below by minutely evaluating the pleadings of the parties and the evidence led by them, and by giving cogent reasons in respect of the findings contained therein. Learned counsel for the applicant has not been able to point out any infirmity or illegality in the concurrent findings of the learned Courts below or any misreading or non-reading of evidence by them, especially with regard to the alleged title or entitlement of the applicant in respect of the suit property. It is a matter of record that the applicant was not able to produce any document in support of his alleged entitlement in respect of the suit property ; whereas, the burden to prove his title in respect of the suit property was successfully discharged by the respondent. It is well-settled that concurrent findings of fact cannot be disturbed in the revisional jurisdiction of High Court. In view of the above, concurrent findings of both the learned Courts below do not require any interference by this Court and as such this Revision Application is liable to be dismissed.

8. The main concern raised on behalf of the applicant was that as the property in his possession is separate and distinct from the one claimed by the respondent, the impugned decree cannot be executed in respect of his property. In this context, it may be noted that there are already concurrent findings against the applicant and this Court has also affirmed the same. Be that as it may, needless to say that the executing Court cannot go behind the decree and the decree shall be executed only in respect of the property described therein after carefully identifying and ascertaining the same.

9. Foregoing are the reasons of the short order announced by me on 16.12.2019, whereby this Revision Application and pending stay application were dismissed with no order as to costs.

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J U D G E