

IN THE HIGH COURT OF SINDH AT KARACHI

Present
Mr. Justice Muhammad Jaffer Raza

Miscellaneous Appeal No. 31 of 2025

Syed Naveed Hussain ShahAppellant

Versus

M/s. KDA Employees Cooperative
Housing Society Limited & another.....Respondents

Miscellaneous Appeal No. 32 of 2025

Mrs. Fouzia Athar Appellant

Versus

M/s. KDA Employees Cooperative
Housing Society Limited & another Respondents

Miscellaneous Appeal No. 33 of 2025

Muhammad Yousuf Shah Appellant

Versus

M/s. KDA Employees Cooperative
Housing Society Limited & another Respondents

Miscellaneous Appeal No. 34 of 2025

Adnan Yousuf Appellant

Versus

M/s. KDA Employees Cooperative
Housing Society Limited & another Respondents

Miscellaneous Appeal No. 35 of 2025

Wajid Ali Khan Appellant

Versus

M/s. KDA Employees Cooperative
Housing Society Limited & another Respondents

Miscellaneous Appeal No. 36 of 2025

Ebadat Maqbool Appellant

Versus

M/s. KDA Employees Cooperative
Housing Society Limited & another Respondents

Miscellaneous Appeal No. 37 of 2025

Bushra Naveed Appellant

Versus

M/s. KDA Employees Cooperative
Housing Society Limited & another Respondents

Date of hearing : 09.05.2025.

Date of announcement : 15.05.2025.

Mr. Riaz Ahmed Phulpoto, Advocate for the Petitioners.
None for the Respondents.

J U D G E M E N T

Muhammad Jaffer Raza, J: Through this common Judgment, the
aforementioned Miscellaneous Appeals shall be adjudicated. All the appeals have
been filed against impugned judgments dated 31.01.2025 passed in the below
mentioned Society Suits:

Sr. No.	Suit No.	Parties name	Subject Property
1	791/2023	Naveed Hussain Shah v. The Registrar Co-operative Societies, Sindh & another.	Plot No.R-38, Sector 15-A/3, KDA Scheme No.33, Super Highway, measuring 100 sq. yds. KDA/ECHS, Karachi.
2	792/2023	Mrs. Fouzia Tahir v. The Registrar Co-operative Societies, Sindh & another.	Plot No.R-57, Sector 15-A/3, KDA Scheme No.33, Super Highway, measuring 100 sq. yds. KDA/ECHS, Karachi.
3	934/2023	Muhammad Yousuf Shah v. The Registrar Co-operative Societies, Sindh & another.	Plot No.R-39, Sector 15-A/3, KDA Scheme No.33, Super Highway, measuring 100 sq. yds. KDA/ECHS, Karachi.
4	941/2023	Adnan Yousuf v. The Registrar Co-operative Societies, Sindh & another.	Plot No.R-58, Sector 15-A/3, KDA Scheme No.33, Super Highway, measuring 100 sq. yds. KDA/ECHS, Karachi.
5	1352/2023	Wajid Ali Khan v. The Registrar Co-operative Societies, Sindh & another.	Plot No.R-88, Sector 15-A/3, KDA Scheme No.33, Super Highway, measuring 100 sq. yds. KDA/ECHS, Karachi.
6	1353/2023	Ms. Ebadat Maqbool v. The Registrar Co-operative Societies, Sindh & another.	Plot No.R-59, Sector 15-A/3, KDA Scheme No.33, Super Highway, measuring 100 sq. yds. KDA/ECHS, Karachi.
7	1354/2023	Mrs. Bushra Naveed Shah v. The Registrar Co-operative Societies, Sindh & another.	Plot No.R-40, Sector 15-A/3, KDA Scheme No.33, Super Highway, measuring 100 sq. yds. KDA/ECHS, Karachi.

2. The common facts in all the aforementioned Society Suits are that a direction was sought against the Defendants/Respondents for issuance of No Objection Certificate (“**NOC**”) in favour of the respective Plaintiffs/Appellants for construction on their respective plots. Further direction was sought against the Defendants/Respondents not to interfere in the peaceful possession of the above respective Plaintiffs/Appellants.

3. Notices were issued to the Defendants/Respondents through all modes and the service upon Defendant No.2/Respondent No.1 was held good on 15.01.2024 in all the aforementioned Society Suits. Thereafter, memo of appearance was only filed on behalf of Defendant No.1/Respondent No.2 in the said Suits. Subsequently the Defendants were debarred from filing the written statement on 27.07.2024. Thereafter the Plaintiffs/Appellants in their respective Suits, filed their respective affidavit-in-ex-parte proof and exhibited documents pertaining to their respective properties. All the aforementioned Society Suits were dismissed vide impugned judgment.

4. Learned counsel for the Appellants has argued that the learned Trial Court has erred in holding that the Suits of the respective Plaintiffs/Appellants were not maintainable. He has relied upon Section 73 of the Sindh Cooperative Societies Act, 2020 (“**the Act of 2020**”) and stated that the same is special law and must be given preference over the Specific Relief Act, 1877 (“**the Act of 1877**”). He has further argued that even if the Act of 1877 is applicable to the proceedings under the Act of 2020, even then the aforementioned Suits were maintainable as framed. According to learned counsel, the suits were maintainable without seeking a declaration of title under Section 42 of the Act of 1877.

5. The instant Miscellaneous Appeals were presented on 20.02.2025 and notices were directed to be issued to the Respondents on 05.03.2025 for 21.03.2025. On 21.03.2025 it was ordered that notices be repeated to the

Respondents for 08.04.2025. It is apparent from the order dated 24.04.2025 that no one has affected appearance on behalf of either of the parties and the matter was adjourned for 09.05.2025, when no one has appeared on behalf of the Respondents. I have no cavil in adjudicating the instant Miscellaneous Appeals in absence of the Respondents, for the reason that notices were served upon them repeatedly. The failure of the Respondents to appear in the respective Suits as mentioned above, also buttresses the notion that the instant Miscellaneous Appeals may be heard and decided with the able assistance of learned counsel for the Appellants.

6. Prior to delineating on various aspects of the impugned judgment, it will be expedient to reproduce Section 42 of the Act of 1877 as under:

“42: Discretion of Court as to declaration of status or right. Bar to such declaration.— Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”(Emphasis added)

7. It is clear that the relief of Section 42 is only to be sought in cases where either the title of the Plaintiff is denied or any person is interested in the said title. In the instant case the counsel for the Appellants has specifically stated that there is no dispute regarding ownership of the subject properties and hence no person is denying or is interested to deny the entitlement of the Appellants. I agree with the contention of learned counsel for the Appellants and hold that under the given facts and circumstances surrounding the presentation of the Suits, there was no need for the respective Appellants to seek a declaration of title and their respective suits were maintainable as framed. The legal question before me is whether the above-mentioned suits were maintainable in the absence of a prayer for declaration. Light was shed into the matter by the Honourable Supreme

Court in the case of **Muhammad Ilyas Hussain versus Cantonment Board, Rawalpindi**¹ wherein it was held as under: -

“It is not always necessary for him to have sued for the declaration of his title as a substantive relief and asked for the injunction as a consequential relief only.”

8. Relying on the judgement cited above, a generous view on a similar proposition was adopted by a learned single judge of this court, which I concur with, in the case of **Clifton And Defence Traders Welfare Association Versus President, Clifton Cantonment Board, Karachi and 4 others**². Relevant excerpts of the judgment are reproduced below: -

“I had occasion to examine similar objection in a Suit No. 131 of 2001 Khalid and Co. v. Cantonment Board (unreported) relying on the case of Muhammad Ilyas Hussain (PLD 1976 SC 785), it was held as follows:

‘Courts are sanctuaries of justice are not to be persuaded by the technicalities and wherever possible and circumstances so require act in the aid of justice and adopts such interpretation or mould relief that may serve the cause of justice and suppress the mischief. Technicalities cannot be allowed to be used to frustrate such cause. Jurisdictions are guarded jealously by the Court. Ouster or barring clauses are to be strictly construed. In the very provision under subsection (4) to section 273, it is postulated that suit of injunction is very much maintainable even without notice and provision of subsection (1) to section 273 are not attracted in case where the claim is for injunction. Reason being obvious, as spelt out from the very provision, by issuance of such notice the object would be defeated.’

Where, there are several reliefs claimed then the Courts always lean in favour of extending such relief if permissible under the law. In the instant case, the plaintiff as stated above, has spelt out the relief for declaration and the injunction separately as well as is reflective from the valuation clause mentioned above, where the relief claimed is separable and if any of the relief for any reason is barred and cannot be granted then the Court lean in favour of the relief, which can be extended or granted to suppress mischief and redress a wrong.”

9. In the case of **KPT Officers Cooperative Housing Society Limited, Karachi Versus Government Of Sindh through Chief Secretary and 23**

¹ P L D 1976 Supreme Court 785

² P L D 2003 Karachi 495

others^{3a} learned single judge of this court expounded in the proposition above elaborately and held as under: -

*“17. An austere look to the substratum of the plaint unequivocally demonstrates and confirms that this is essentially a suit for injunction. The plaintiff has not approached or walked up to entreat a declaration of their ownership rights or title but they have knocked the door to claim relief of injunction alone. Here according to the plaintiffs' counsel, the defendants never denied the ownership of the plaintiffs but called upon to stop development work. In the case of *Naseem-ul-Haq v. Raes Aftab Ali Lashari*, (2015 YLR 550), I have discussed the niceties and exactitudes of Section 42 of Specific Relief Act, 1877 and held that any man's legal character is generally taken as the same thing as a man's status. Words "right as to any property" are to be understood in a wider sense than "right to property" and words "interested to deny" denotes that defendant is interested in denying right of plaintiff or his legal character. Denial of right constitute a cause of action to maintain an action under Section 42 of Specific Relief Act, 1877. Relief of declaration is a discretionary relief that can be granted in the case where substantial injury is established and in absence of denial of right no relief of declaration can be granted. In the case of *Ilyas Ahmed v. Muhammad Munir* (PLD 2012 Sindh 92), again I held the expression, legal character has been understood as synonymous with the expression status. Section 42 of the Specific Relief Act applies only to a case where a person files a suit claiming entitlement to any legal character or any right to property which entitlement is denied by the defendants or in denying which the defendants are interested. Section 42 would be attracted to a case in which the plaintiff approaches the court for the safeguard of his right to legal character or property but where right to his own legal character or property is not involved the suit for declaration is not maintainable. In the case of *Nizar Ali v. Noorabad Cooperative Housing Society Ltd.* (PLD 1987 Karachi 676), the plaintiff asserted that she is owner of the property and the defendant be restrained from disposing of the same, the court held that under Section 54 of the Specific Relief Act, a mandatory injunction can be issued even when there is a threat of invasion over the right of the plaintiff. Where the title of the plaintiff is not denied by the defendant, a suit for injunction is maintainable. Likewise, in the case of *Sultan Mahmood Shah v. Muhammad Din* (2005 SCMR 1872), the Apex court held that if the title of the property is in dispute, the simple suit for permanent injunction or possession, without seeking declaration of title would not be maintainable. The pleading of the parties and the evidence would clearly show that the controversy between the parties was confined only to the extent of possession and the title of property was not in dispute hence the suit for permanent injunction was maintainable. In the case of *Hazratullah and others v. Rahim Gul* (PLD 2014 SC 380), the Apex court held that in a suit under Section 8 of the Specific Relief*

³ 2019 Y L R 1671

Act, the declaration of the entitlement is an inbuilt relief claimed by the plaintiff of such a case. Once the plaintiff is found to be entitled to the possession, it means that he has been declared to be entitled, which includes the declaration of title of the plaintiff qua the property and this is integrated into the decree for possession. In the case of Haji Muhammad Hussain and others v. Muhammad Abbas (2001 YLR 1767), the learned Judge of Lahore High Court referred to the case of Mst. Sahar Begum v. Salabuddin (1991 MLD 1594) wherein this court held that if a person claims to be in peaceful possession, based on a semblance of title, a suit for such relief would be maintainable, the proceedings being governed by section 54 of the Specific Relief Act and controlled by Section 56 of that statute. If this be so, the appellant/ plaintiff cannot be non-suited by rejection of the plaint.

18. Mindful to the nitty-gritties of the case, I feel no reluctance to hold that this suit for permanent injunction is maintainable without seeking relief of declaration. The issue No.1 is answered accordingly.(Emphasis added)

10. In light of what has been held above, the instant Miscellaneous Appeals are allowed and the impugned judgment is set aside with direction to the learned Trial Court to decide the matter afresh **on merits** within sixty (60) days from today. Compliance report should be sent to this Court by the concerned Trial Court through MIT-II.

JUDGE

Nadeem Qureshi "PA"