

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

M.A. No.07 of 2024

Appellant: Shahid Ali Son of Muhammad Habib
through Barrister Jawad Ahmed Qureshi
Advocate along-with Osama Yousuf Parhyar.

Private respondents: Sajid Habib & others through Mr. Aqeel
Ahmed Siddiqui, Advocate.

Official Respondents: Province of Sindh & others through Mr.
Wali Muhammad Jamari, Assistant Advocate
General, Sindh along-with Niaz Ali
Mukhtiarkar and Nadeem Pervaiz City
Surveyor.

Date of hearing: **12.10.2026**

Date of decision: **12.10.2026**

ORDER

Muhammad Humayon Khan J.- Through this appeal, the appellant has assailed the order dated 11.03.2024 passed by the learned Anti-Encroachment Tribunal, Hyderabad, in Suit No. 65 of 2023, whereby the suit was dismissed as not maintainable.

2. The appellant's case, as set out in the plaint, is that his father had taken Shop No. 08 on rent in Ashfaq Market, near the Main Bus Stop and Liaquat Gate, Tando Allahyar, about fifty years ago. The market is stated to be situated on Survey No. 07. The appellant alleges that, when he expressed an interest in purchasing the shop, he discovered that a substantial portion of the market, measuring approximately 4,320 square feet, had been constructed on adjoining government land bearing Survey No. 06. He therefore sought proper measurement of the site and action for removal of the alleged encroachment.

3. Learned counsel for the appellant argued that the suit was dismissed at the preliminary stage without determining whether any part of the market occupied government land. He submitted that the question could not be decided without examining the relevant revenue and survey record, obtaining a proper demarcation and

allowing the parties to lead evidence. Reliance was placed on **Mst. Shahnaz v. Iqbal Hussain and 10 others** (2022 CLC 556).

4. Learned counsel for the private respondents opposed the appeal. He submitted that the appellant is a tenant or sub-tenant and raised the allegation to frustrate the landlord-tenant relationship. According to him, Ashfaq Market stands entirely on Survey No. 07 and no government land has been encroached upon. He supported the impugned order and relied upon **Muhammad Farid and others v. Municipal Committee** (PLD 1999 SC 41).

5. I have heard learned counsel for the parties and examined the record. The plaint alleges that part of Ashfaq Market has been raised on Survey No. 06, whereas the respondents maintain that the entire market lies within Survey No. 07. The appellant's status and the location and extent of the alleged encroachment are disputed. These matters could not be resolved merely by accepting one side's version at the threshold.

6. The principles governing rejection of a plaint under Order VII, Rule 11, C.P.C. require the Court to examine the plaint and determine whether a ground for rejection is made out on its face. Where the decision depends upon disputed facts requiring evidence, the plaint cannot be rejected by resolving those factual disputes at the preliminary stage. Here, the controversy regarding the location of the market, the boundaries of the two survey numbers and the appellant's asserted interest called for determination on the pleadings and evidence.

7. In Mst. Shahnaz (supra), this Court held that a private person is not, merely by reason of being a private person, barred from approaching the Tribunal under the Sindh Public Property (Removal of Encroachment) Act, 2010, where the person claims to be adversely affected and the concerned officials have failed to address the alleged encroachment. The Tribunal is required to decide the dispute within the limits of its statutory jurisdiction.

8. The principle in Muhammad Farid (supra) is that the Tribunal cannot grant relief beyond the jurisdiction conferred by the statute. That limitation does not justify dismissing the present suit without examining its pleadings and the nature of the relief sought. The learned Tribunal was required to consider the appellant's claim within the statutory framework and, where necessary, determine the

factual questions after recording evidence. Any relief ultimately granted must, of course, remain within the Tribunal's jurisdiction.

9. In view of the pleadings and the rival positions, the following questions, among others, arise for determination. The learned Tribunal may frame or recast them as issues in accordance with the pleadings:

A Whether the appellant is an adversely affected person entitled to maintain the proceedings before the learned Tribunal?

B Whether any part of Ashfaque Market, including the portion alleged to measure approximately 4,320 square feet, is situated on government land bearing Survey No. 06, or whether the market lies entirely within Survey No. 07?

C If an encroachment is established, what relief, if any, can be granted by the learned Tribunal within the jurisdiction conferred upon it by law?

10. The proper location and boundaries of Survey Nos. 06 and 07 are central to the dispute. The learned Tribunal should, therefore, obtain a proper demarcation through the competent authority, such as the Director Settlement and Survey, the Mukhtiarkar (Revenue), or the City Survey authority, as may be appropriate to the record and location of the land. The parties shall be afforded an opportunity to examine the relevant record, contest the demarcation and lead such other evidence as may be necessary.

11. For the foregoing reasons, the appeal is allowed. The order dated 11.03.2024 passed by the learned Anti-Encroachment Tribunal, Hyderabad, in Suit No. 65 of 2023 is set aside. The matter is remanded to the learned Tribunal for decision afresh on its merits, in accordance with law and in the light of the observations made above. The learned Tribunal shall frame appropriate issues, obtain a proper demarcation through the competent authority, afford the parties an opportunity to lead evidence and decide the suit through a reasoned order/judgment within three months of receipt of this order.

12. The observations made herein are tentative and shall not prejudice the parties at the trial. There shall be no order as to costs. All pending applications, if any, stand disposed of.

JUDGE