

HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision No. 20 of 2018
[Assistant Manager NADRA & others versus Jumo]

Dates of hearing : 22.02.2019 & 28.02.2019
Applicants : Assistant Director NADRA and others
through Mr. Safdar Kamal, Advocate.
Respondent : Jumo in person.

ORDER

Adnan Iqbal Chaudhry J. – Vide order dated 10.06.2017 the plaint of F.C. Suit No. 80/2017 filed by the Respondent against the Applicants/NADRA for correction of his name, date of birth and address in his CNIC was rejected by the trial court¹ on the ground that a previous suit (F.C. Suit No.19/2015) on the same cause of action having been dismissed for non-prosecution (on 22.06.2015) under Order IX Rule 8 CPC and no application for restoration thereof having been moved, the subsequent suit was barred by Order IX Rule 9 CPC. However, on the appeal of the Respondent, the rejection of the plaint was set-aside² (the impugned order dated 08.02.2018) and the case was remanded to the trial court by holding that the since the second suit was based on a fresh cause of action, which was a recurring cause of action, the bar of a fresh suit contained in Order IX Rule 9 CPC would not be attracted; hence this Civil Revision by NADRA.

2. Learned counsel for NADRA submitted that on the dismissal of the first Suit under Order IX Rule 8 CPC, the remedy of the Respondent was to apply for a restoration and a fresh Suit on the same cause of action was barred by Order IX Rule 9 CPC. He submitted that the cause of action for the second Suit was the same as for the first Suit and thus the Appellate Court erred in holding that the cause of action was a recurring one.

¹ Senior Civil Judge, Kandhkot

² By the 1st Additional District Judge, Kandhkot in Civil Appeal No. 29/2017

3. The Respondent, who appeared in person, stated that he could no longer afford to engage legal counsel and that he supported the order passed by the Appellate Court.

4. The prayer made in the second suit was :

“(a) To declare that actual name of plaintiff is ‘Jumo’, his date of birth is ‘10.03.1995’ and address is Mail Ahmed Khan Bijarani, but the defendants have wrongly mentioned his name as ‘Jumo Khan’, date of birth as ‘01.01.1987’ and address as Tanqwani District Kashmore vide his CNIC No. 43502-0347117-9 issued on 30-12-2014 respectively.

(b) To direct NADRA Authorities/defendants to issue fresh CNIC to the plaintiff with his correct and actual name, date of birth and address as mentioned above.

(c) To award costs

(d) To award any other relief.....”

A similar prayer had been in the previous suit except that the prayer made in the second suit was improved and added to.

5. It was the case of the Respondent that the NADRA had refused to entertain his application for correction in his CNIC. The CNIC in which correction was sought, was said to have been issued on 30-12-2014, and if that statement was correct, then the second suit, if otherwise maintainable, was not time-barred. Though the previous suit was not disclosed in the second suit, it was alleged in the plaint of the second suit that the cause of action arose “.... *thirdly when about one week back plaintiff approached to defendant No.1 for same purpose but he refused and advised him to get decree/judgment from this Honourable Court for issuance of fresh CNIC with correct and factual data as mentioned herein. Thereafter, it is accruing on each and every day till today filing of this suit.*” In other words, it was pleaded that the cause of action was a recurring one. That aspect is of importance as the trial court was deciding an application for rejection of plaint. It is settled law that against a continuing wrong, a fresh cause of action accrues each day the wrong continues, and to such cases the bar to a fresh suit contained in Order IX Rule 9 CPC is not attracted. As to what constitutes a continuing wrong and a recurring cause of action,

guidance can be sought from the case of *Niamat Ali v. Dewan Jairam Dass* (PLD 1983 SC 5)].

6. It is to be noted that insofar as the prayer for injunction was concerned, the suit was essentially seeking enforcement of NADRA's statutory obligation contained in Rule 13 of the National Database and Registration Authority (National Identity Card) Rules, 2002 which reads as under:

"13. Change and duplicate card: For the incorporation of a change in the card, the Authority may, on an application made in the appropriate form provided in the regulations and subject to surrender of the original card, issue a new revised card incorporating the change:

Provided that, where applicable, the applicant may be required to satisfy the Authority as to fulfilment of necessary legal requirements before incorporating the change in the card:

Provided further that the applicant deposits the prescribed fee and other sums for the issuance of the new card as notified under rule 7 and provisions of the said rule shall, *mutatis mutandis*, apply to the payment of the fee and other charges under this sub-rule.

(2) The authority may, for any card lost, stolen, or otherwise rendered useless, as the case may be, on an application for issuance of duplicate card made in the appropriate form provided in the regulations and subject to surrender, if possible, of the original card, issue a duplicate card:

Provided that the applicant deposits the prescribed fee and other sums for the issuance of duplicate card as notified under rule 7 and provisions of the said rule shall, *mutatis mutandis*, apply to the payment of fee and other charges under this sub-rule."

Therefore, even assuming that a fresh suit for declaration was hit by the bar of Order IX Rule 9 CPC, there was nevertheless the question whether the alleged refusal by NADRA to perform its

statutory obligation can give rise to a recurring cause of action for a suit for injunction, or in the very least, whether such question was a mixed question of law and fact for which the plaint could not be rejected. Therefore, and also for the reason that since the impugned order dated 08-02-2018 passed by the Appellate Court is one of remand, I am not inclined to upset the same. Consequently, this Revision is dismissed with the observation that the trial court will be free to decide the question whether there was a recurring cause of action or not.

Dated: 16-08-2019

JUDGE