

**ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
AT HYDERABAD**

R.A No.100 of 2019

Muhammad Zaheer Vs. District Judge, Tando Allahyar and others.

Applicant: In person.

Respondent No.1&3: Formal party.

Respondent No.2: Through Syed Shafique Ahmed Shah advocate.

Respondents No.5to7: Mr. Wali Muhammad Jamari Assistant A.G. Sindh.

Date of hearing: 18.01.2021.

Date of decision: 18.01.2021.

O R D E R

ARSHAD HUSSAIN KHAN, J: - The applicant through instant Revision has challenged the Order & Decree dated 09.04.2019 and 12.04.2019 respectively passed by the learned District Judge, Tando Allahyar maintaining the Order & Decree both dated 01.11.2018 respectively passed by 2nd Senior Civil Judge, Tando Allahyar, whereby plaint of the suit filed by applicant being F.C. Suit No.252 of 2017 [Mohammad Zaheer v. Shoukat Ali & others] was rejected under Order VII rule 11 CPC on the application of respondent No.2/defendant No.1, hence, the applicant preferred instant revision application with prayer to set aside the aforementioned orders and decrees.

2. Brief facts leading to the filing of this revision application are that the applicant/plaintiff filed suit bearing No. 252 of 2017 for cancellation of Sanad and permanent injunction against the respondent No.2/defendant No.1 and others, in the court of learned 2nd Senior Civil Judge Tando Allahyar, stating therein that he owns an agricultural land of 2 acres bearing S.No.551/4 situated in deh Hingorani Taluka Jhando Mari. There was a civil litigation between the respondent No.2/defendant No.1 and relatives of the applicant over a plot of applicant out of his said S.No.551/4 area 7500 sq. feet. According to him, the respondent No.2 got prepared a fake Sanad and

deh Form-II in his favour in respect of an area 7500 sq. ft. from the land of applicant/plaintiff in collusion with revenue authorities by way of fraud and on the basis of such fake Sanad, respondent No.2/defendant No.1 filed a F.C. Suit No.68/2014 against the relatives of applicant/plaintiff namely Nazeer, Jameel and others in the Court of Senior civil Judge, Tando Allahyar without impleading him as a party, however, as soon as he came to know he was got impleaded as party in that suit on his application under Order 1 rule 10 CPC but subsequently, respondent No.2/defendant No.1 had withdrawn the said suit. Later on, the applicant/plaintiff filed the subject suit seeking following prayers:-

- a) To pass Judgment & Decree in the favour of the plaintiff.
- b) To direct the defendant No.2 to cancel the fake Sanad which has no legal effect in the eyes of law.
- c) To grant permanent injunction against the defendant No.1 whereby restraining and prohibiting the defendant No.1 not to occupy suit land by himself or through his agents, servants, subordinates, assignees, attorneys etc. directly or indirectly in any manner whatsoever.
- d) Cost of the suit may be saddled upon the defendant.
- e) Any other relief which this Honorable Court may deem fit and proper may be awarded in favour of plaintiff.

3. Upon notice of the above said suit, the respondent No.2/defendant No.1 preferred application under Order VII rule 11 CPC for rejection of the applicant's plaint on the ground that applicant/plaintiff has no legal character to file said suit. The said application was contested by the applicant/plaintiff. Learned trial court after hearing the learned counsel for parties, vide its order dated 01.11.2018 rejected plaint of suit. The applicant/plaintiff then challenged the said order before learned District Judge, Tando Allahyar in Civil Appeal No.78 of 2018. Learned District Judge, Tando Allahyar after hearing the counsel for respondent No.2/defendant No.1 and District Attorney for official respondents, while maintaining the order of learned trial Court, dismissed the said Civil Appeal. The applicant has challenged the above said orders and decrees in the present revision application.

4. Applicant present in person submits that the subject area of 7500 sq. feet of agricultural land belongs to him, however, respondent No.2 by way of fraud got mutated same in his favour with collusion of

the revenue authorities, hence, the impugned orders and decrees are liable to be set aside.

5. On the other hand, learned counsel for the respondent No.2 has contended that the applicant has no legal character to file suit in respect of the plot, which belongs to respondent No.2. He further urged that the claim of ownership of the applicant without any support of the title documents and whereas respondent No.2 has title documents of the subject area and he is enjoying possession thereof, hence, the impugned orders and decrees have rightly been passed by the courts below. He prayed for dismissal of instant revision application.

6. Learned Assistant A.G. Sindh, appearing on behalf of respondents No.1, 3 to 5, while supporting the impugned orders, opposed the Revision Application.

7. The applicant through the instant revision application has challenged the concurrent orders of the courts below. It is well settled that revision is a matter between the higher and subordinate Courts, and the right to move an application in this respect by the Applicant, is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; First part enumerates the conditions, under which, the Court can interfere and the second part specify the type of orders which are susceptible to revision. From bare reading of the section 115, C.P.C., it is manifest that on entertaining a revision petition, the High Court exercises its supervisory jurisdiction to satisfy itself as to whether the jurisdiction by the courts below has been exercised properly and whether the proceedings of the subordinate Court do suffer or not from any illegality or irregularity. Reference may be placed in the case of *Muhammad Sadiq v. Mst. Bashiran and 9 others (PLD 2000 SC 820)*.

8. From perusal of the impugned orders, it appears that learned courts below, after hearing the counsel for the parties and taking into account the material facts as well as law on the point, have passed speaking orders. For the sake of ready reference relevant portion of the impugned orders of trial Court as well as appellate Court are reproduced as under:

Relevant portion of order dated 01.11.2018 passed by the trial court.

“Plaintiff has filed this case for cancellation of the Sanad and the permanent injunction. It is pertinent to say here that

plaintiff has filed this case without relying on any single document in his favour showing his right, title related with suit property. Therefore, I am of the view that suit for permanent injunction cannot be filed without any right or the title of the suit property.

Reliance is placed on the case law reported in 2008 CLC 418 wherein it was held as under:-

(a) Specific Relief Act (I of 1877)---

---S. 54---Suit for permanent injunction--- Maintainability-Conditions---Suit for permanent and mandatory injunction is not maintainable unless plaintiff shows some right, title and interest in suit property.

From the perusal of material available on record it reveals to undersigned that defendant No.1 filed one FC Suit for declaration and permanent injunction in respect of same suit property bearing No.68/2014 against the official and some private defendants before learned Senior Civil Judge, Tando Allahyar wherein, defendant was seeking the declaration of possession of the suit plot in his favour so also the restriction against private defendant No.4 to 7 from dispossessing him of suit plot, wherein, private defendants filed a statement that they will not dispossess the plaintiff from the suit property without due course of law hence, same suit was withdrawn by present defendant No.01.

From perusal of such record it reveals that possession of the suit plot was with defendant NO.1 moreover, if plaintiff was dispossessed by the defendant No.1 he has not even attached any such document or the complaint moved before any forum showing his possession of the suit property.

Moreover, while considering the nature of the case I am also relying on the case of Ghous Bux Vs Mohammad Suleman and others reported in 2001 MLD 1159

“Order VII Rule 11 CPC rejection of plaint --- Relief not possible to be granted --- Effect --- where the suit was meritless and ultimately it was not possible to grant relief sought or no fruitful result thereof was expected to come out provision of O. VII R 11 CPC would come into play.”

In view of above discussion, I find no other alternate way except just to reject the plaint U/O 7 R 11 CPC, thus the suit of the plaintiff is hereby rejected U/O 7 R CPC. Let such decree be drawn accordingly.”

Relevant portion of order dated 09.04.2019 passed by the lower appellate court.

“The cause of action is the heart of the complaint, which is the pleadings that initiates a law suit. Without an adequately stated cause of action, the plaintiffs case can be dismissed at the outset. It is not sufficient merely to state that certain events occurred that entitle the plaintiff to relief. All the elements of each cause of action must be detailed in the complaint. The claims must be supported by the facts, the law, and the conclusion that flows from the application of the law to those facts.

For the aforesaid reasons I find that appellant/plaintiff has filed the present suit against respondent/defendant for Cancellation of Sanad and Permanent Injunction as discussed supra only without seeking the declaration of his character title over the suit plot and illegal acts of the respondent/defendant, therefore, the suit in present nature for the relief of Cancellation of Sanad and Permanent Injunction alone is not competent and maintainable, as held in PLD 1988 Karachi 433 Re- Mst. Fatima Khanum Vs Ashiqu Ali. Hence, I am of the

humble view that learned trial court has rightly rejected the plaint of appellant/plaintiff through an order and decree dated 1st November 2018, which are well reasoned and do not call for any interference. The present appeal filed against the impugned order and decree is devoid of any merit, hence the same is hereby dismissed with no order as to cost. Decree sheet be prepared accordingly and R & Ps of the case be sent to the trial Court.”

9. It is also settled law that an incompetent suit should be laid at rest at the earliest moment so that no further time is wasted over what is bound to collapse not being permitted by law. It is necessary incidence that in the trial of judicial issues i.e. suit which is on the face of it incompetent not because of any formal, technical or curable defect but because of any express or implied embargo imposed upon it by or under law should not be allowed to further encumber legal proceedings. Reference can be placed on the cases of Ali Muhammad and another v. Muhammad and another [2012 SCMR 930] Ilyas Ahmed v. Muhammad Munir and 10 others [PLD 2012 Sindh 92].

10. The upshot of the above is that there is no illegality or gross irregularity and infirmity in the concurrent findings of both learned courts below; more particularly, the impugned orders are not passed without jurisdiction. The applicant has also failed to point out any error and or any illegality, infirmity or jurisdictional error in the impugned orders, which could warrant interference by this Court in exercise of its revisional jurisdiction. Consequently, the revision application in hand, being devoid of any force and merit, is **dismissed** along with all pending applications.

JUDGE