

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 271 of 2017

HCA No. 300 of 2017

Before : **Mr. Justice Irfan Saadat Khan**
Mr. Justice Fahim Ahmed Siddiqui

Ali Bux and others. Appellants.

Versus

M/s. Islamic Estate Builders
 and others. Respondents.

Date of Hearing: **11.09.2019**

Date of Judgment: _____

Appellants Ali Bux and others in both the appeals through Mr. Muhammad Yasin Khan Azad, advocate.

Respondent No.1 M/s.Islamic Estate & Builders (Pvt.) Ltd. through Mr. Shab Alam, advocate.

Respondent No.8 Pakistan Railways through Mr. Samiullah Shah, advocate.

Respondent No.9 Izhar Alam Farooqui, advocate in person.

Respondent No.10, 11, 13 to 16, 18 and 21 i.e. Ilyas Ahmed Khan, Chan Muhammad advocate, Mst. Salma Khatoon, Muhammad Imtiaz, Mrs. Azra Israr, Mukhtar Ahmed, Miss. Noor-un-Nisa, Mrs. Hajra Tabassum respectively through Mr. Abdul Wajid Wyne, advocate.

Respondent No.4 Government of Sindh through Mr. Abdul Jalil Zubedi, AAG.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- This single judgment will dispose of these appeals, which are initiated against impugned orders dated 13-05-2017 and 27-05-2017 respectively passed by the learned Single Judge of this Court in Civil Suit No. 1150/1991.

2. The backdrop of the instant matter is that the respondents are under litigation in respect of certain landed property. Besides the aforementioned suit, some other cases/suits are also pending, which are consolidated with leading suit mentioned above. The appellants are not party to lis and they have filed CMA No. 8591/2017 under Order-I, Rule 10 of CPC, while contempt applications being CMA No. 7253/2017 & 7254/2017 were also filed. The order dated 13-05-2017 (HCA No. 271/2017) was passed while dealing with the contempt applications and the subsequent order dated 27-05-2017 (HCA No. 300/2017) was passed while disposing the aforementioned CMAs for contempt of Court as well as under Order-I, Rule 10 for impleading the appellants as party to the lis. In the impugned orders, certain directions were given regarding contempt proceedings, while the application of the appellants for impleading them as the party to litigation was declined.

3. Mr. Muhammad Yaseen Azad Khan, learned counsel for the appellants, while pressing both the appeals has argued at length. According to him, the appellants are residing within the land in question since long but this fact was not considered by the learned Single Judge. He submits that in the impugned order, a direction was given that no construction having roof be left standing, as such the appellants apprehend that in the garb of that order, their dwelling places will be pulled down. He further submits that the appellants are highly prejudiced with the said order as they have been residing at the said place since decades. He submits that the appellants will have no objection for raising boundary wall excluding the land/properties belonging to the appellants. In response to a query, he frankly admits that the appellants have no title documents in their favour and possession but his contention is that no such document is in possession of the respondents either. Per him, the restraining order was already in the field and no application for modification of the same was filed, as such the impugned order for demolishing cannot be passed on contempt applications. In the end, he submits that the trial has been completed and now the matter is required to be heard finally for pronouncement of judgment; as such it would be appropriate that till final verdict, the long-standing houses of the appellants may not be disturbed and demolished.

4. On the other hand, Mr. Izhar Alam Farooqui, respondent No.9 submits that the appellants are encroachers and when the matter was at the verge of conclusion, they started raising fresh construction, as such

the contempt applications were filed on which the impugned order was passed. According to him, there is nothing wrong and illegality in the impugned orders and in fact in compliance of the directives of the learned Single Judge, some of the new constructions were demolished but remaining are required to be demolished, as per the police report. He submits that numerous reports of Nazir of this Court are available on the record, which indicates that the appellants are encroachers. In the end, he submits that the appellants have no *locus standi* in the entire case, as such their appeals are not maintainable.

5. The rest of the learned members of the bar adopt the arguments advanced by Mr. Izhar Alam Farooqui, advocate.

6. We have heard the arguments advanced and perused the relevant documents. It is a fact that the appellants are not in possession of any document to substantiate their claim regarding the piece of land, where their dwelling abodes are presently situated. Since, they are unable to establish their claim regarding the subject property or any part thereof; therefore, their plea to join the litigation could not be entertained by the learned Single Judge of this Court. The stay of a person on any piece of land and/or structure built upon the same can only be possible in three conditions i.e. (1) he is the owner of the property having good title of the same, (2) he is the tenant or licensee in respect of the said property, or (3) he is an encroacher. Admittedly, appellants are neither enjoying any title over the said land nor they are tenant/licensee in respect of the same. We are of the considered view that since the appellants could not establish their right over the subject land except their possession; therefore, only on that ground they cannot be impleaded in the lis as party, hence their application under Order-I, Rule 10 was rightly dismissed.

7. As far as their grievance in respect of the impugned orders is concerned, it would be appropriate to point out that since they have no *locus standi* in the matter; therefore, they cannot be granted any relief. Since, the matter is on the verge of conclusion; therefore, we expect that the same will be disposed of expeditiously for which the learned advocates appearing there will extend their full cooperation. Nevertheless, the fate of the appellants be left at the final verdict of the suits pending before the learned Single Judge but the SSP and Deputy Commissioner concerned are directed to ensure that no fresh encroachment/construction be raised on the suit land and any

construction, if raised, the same should be dealt with as per the mandate given through the order dated 13-05-2017 as well as strictly in accordance with law.

8. With these observations, the instant appeals are dismissed alongwith the listed and pending applications.

JUDGE

JUDGE