

2015 M L D 1688

[Sindh]

Before Muhammad Shafi Siddiqui, J

AFTAB HUSSAIN through Attorney---Plaintiff

versus

GOVERNMENT OF SINDH through Chief Secretary and 2 others---Defendants

Suit No.873 of 2013, decided on 24th February, 2014.

(a) Civil Procedure Code (V of 1908)---

---O. VII, R. 11---Specific Relief Act (I of 1877), Ss. 42 & 56---Lease agreement---Scope---Suit for permanent injunction , recovery of amount incurred on the maintenance and renovation of suit property and security deposited for the same---Rejection of plaint---Scope---Contention of plaintiff was that defendant had assured that he would not be evicted from the suit property and licence would be extended for another three years and he had incurred amount on the maintenance and renovation of premises and security for the same was also paid to the defendant---Validity---Neither declaration to the effect that plaintiff was a lessee was made nor he could maintain the present suit as a licensee---Expenses incurred on the renovation of premises would not give any cause of action to the plaintiff as agreement was silent with regard to construction or renovation work---Claim of damages was maintainable only in case the defendant had withheld the permission to use the premises without notice which was not the matter in the present case---Alleged claim of compensation/damages was not maintainable as plaintiff was given notice not to enter into the suit property---Plaintiff had no cause of action and no injunction could be granted of any nature---Present suit was hit by Ss. 42 & 56 (f) of Specific Relief Act, 1877---Application for rejection of plaint was accepted and plaint was rejected in circumstances.

M.A. Naseer v. Chairman Pakistan Eastern Railways PLD 1965 SC 83; Messrs Zaidi's Enterprises v. Civil Aviation Authority PLD 1999 Kar. 181; Hyderabad Electronic Industries v. Sony Corporation 1999 MLD 850; Messrs Sign Source v. Road Trip Advertisers 2005 CLC 1982 and Gulistan Khan (Mehmand) v. Federation of Pakistan 2009 MLD 322 ref.

(b) Words and phrases---

---"Lease" and "licence"---Distinction---Lease was transfer of interest in property whereas in a licence such element was excluded; exclusive right of possession was granted to the lessee and the lessor was totally excluded from such right; right granted to the lessee was assignable and transferable while in a licence it was not so; licence was a personal right which was purely permissible right; notwithstanding the permission, the grantor would retain control over the property.

Faisal Siyal for Plaintiff.

Muhammad Ali Hakro for Defendant No.3.

Date of hearing: 19th February, 2014.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J.---These are two applications, one at Sr. No.1 filed by the defendant under Order VII, Rule 11, C.P.C. for rejection of the plaint while the other is filed by the plaintiff seeking injunction. Since the very maintainability of the suit is challenged in application under Order VII Rule 11, C.P.C. I deem it appropriate to decide the same first.

It is the case of the plaintiff that the suit property i.e. Bungalow No.E-26, 4th Gizri Street, Karachi, was confiscated vide judgment dated 3-10-2001 by the Court of III-ATC Karachi and was taken over by defendant No.3 and in pursuance of Reference No.13 of 2011 in Criminal Revision No.12 of 2002 in terms of order dated 17-12-2011. The offer of the plaintiff was accepted and he was permitted to enter and use the premises as licensee at licence fee of Rs.1,25,000 per month. A licence agreement dated 22-5-2012 in that regard was executed between the plaintiff and defendant No.3. The salient features of the agreement are as under:--

"4. The monthly Licence of Rs.1,25,000 (Rupees One Lac Twenty Five Thousand Only) is payable in advance before 10th of every English Calendar month.

(5) The license of Bungalow shall be for the period of one year which is renewable on mutual consent of both the parties.

(6) The Licensee is responsible to pay electricity, gas and water sewerage bills from the date of possession of bungalow whereas the Licensor will pay property tax and will clear all previous utility dues."

Learned counsel for the plaintiff submitted that plaintiff has carried out renovation work at the premises which include masonry, electric, plumber, kitchen work and so also colouring, swimming pool and lawn work and in all has incurred Rs.30 lacs and so also the work of interior designing on which he spent Rs.35,60,000. Learned counsel submitted that though the licence agreement executed on 2-5-2012 was for one year however the learned Official Assignee assured the plaintiff verbally that he will not be evicted from the suit property and the licence would be extended for another three years. However, on 20-6-2013 ejection letter was issued hence this suit has been filed with the prayer to direct the defendants to refund the security deposit in the sum of Rs.5 lacs and has also claimed damages. It was further prayed that the defendants be restrained from ejecting the plaintiff without due course of law. However during the course of arguments he prayed to renewal of license agreement.

On the other hand learned counsel for defendant No.3 has contested the claim of the plaintiff and has argued that the plaintiff has no cause of action as he does not enjoy any legal status or right to file the instant suit. Learned counsel further submitted that the plaintiff is only a licensee which licence agreement is executed and which is also not denied and that the agreement was only for one year. Learned counsel further submitted that clause 5 of the agreement, which provides the renewal of the agreement, was not an obligation or compulsion upon defendant No.3 as it was required to be renewed by mutual consent of both the parties and not otherwise. Learned counsel submitted that the relief claimed by the plaintiff is barred under Easements Act and Specific Relief Act and hence the plaint is liable to be rejected under Order VII, Rule 11, C.P.C. as no cause of action has accrued to the plaintiff.

Learned counsel for defendant No. 3 has further submitted that throughout the period he remained habitual of late payment of the licence fee and has defaulted on many occasions. Learned counsel further contended that the defendant No.3 had invited offers from the interested parties for the suit property on payment of licence fee on "as is where is basis" through public notices published in Daily Jang and Daily Dawn dated 5-2-2011 and in pursuance of such public notice the plaintiff came forward and agreed to enter into a licence agreement and whatever amount he has incurred cannot be claimed by him as he has done it on his own desire and wishes. Learned counsel further submitted that in view of clear fact that he is licensee of the premises, he cannot maintain this suit as he has not acquired any legal status in terms of sections 42 and 56 of the Specific Relief Act.

Learned counsel for defendant No.3 further submitted that mere fact that the office of the Official Assignee has issued a rent receipt would not make it a case of leased property in view of the facts and circumstances of the case as this inadvertence would not washout the earlier proceedings whereby a categorical stance was taken by the defendant No.3 in the public notices which were published in the newspapers and was accepted by the plaintiff consequent upon which licence agreement was executed. He submitted that the cashier who is receiving the payment only had inadvertently mentioned rent instead of licence fee which is otherwise in view of execution of the licence agreement is not permissible. Learned counsel in support of his contentions has relied upon the cases of M.A. Naseer v. Chairman Pakistan Eastern Railways (PLD 1965 SC 83), Messrs Zaidi's Enterprises v. Civil Aviation Authority (PLD 1999 Karachi 181), Hyderabad Electronic Industries v. Sony Corporation (1999 MLD 850), Messrs Sign Source v. Road Trip Advertisers (2005 CLC 1982), Gulistan Khan (Mehmand) v. Federation of Pakistan (2009 MLD 322).

I have heard the learned counsel for the parties and perused the material available on record.

On the face of it, it appears that there is no declaration claimed by the plaintiff that he is lessee of the suit property. Learned counsel for the plaintiff has only argued that the licence agreement under the law is renewable in terms of clause 5 of the agreement though that has also not been prayed for. Hence all that has been claimed in the plaint is that of injunction, recovery of the amount incurred on the maintenance and renovation of the suit property and the security deposit etc. and that he may not be evicted without due process of law and ultimately he argued that the license agreement be renewed. Thus by limiting the claim to the extent as mentioned above he has conceded that he is only a licensee of the suit property.

In order to withstand the storms of the provisions of Easements Act, learned counsel for the plaintiff has relied his claim on the expenses incurred by the plaintiff over the suit property. The law in this regard as to whether a licensee could maintain a suit or not by now is established and it needs no detailed discussion that a licensee cannot maintain suit for declaration/injunction or for any direction except that, of course, on leaving the premises he would be entitled for refund of the security amount which could be claimed by the plaintiff.

The first reliance that is placed by learned counsel for defendant No.3 is the case of M.A. Naser (Supra) wherein the Hon'ble Supreme Court has held that from the provisions of Easements Act it is clear that the agreement merely confer a right to carry out business of catering in the refreshment room; they were not given any general right of occupation but only right to use the premises. It was further held that after fully examining the contents of the agreement they had

come to an unhesitant conclusion that the licence does not fall within clause (a) or (b) of Section 60 of the Easements Act, therefore, it was revocable at the will of the grantor and this being revocable licence, the revocation thereof cannot be prevented by injunction. It was held that in such cases licensee is entitled to reasonable notice in accordance with the provisions of section 63 of Easements Act. If however licence is revoked without reasonable notice, the remedy of the licensee is by way of damages and not by way of an injunction. It is further observed that:--

"The learned counsel has not pressed this point before us. Under the provisions of section 42 of the Specific Relief Act a person entitled "to any legal character" or to "any right to property" can institute for a declaratory relief in respect of his title to such legal character or right to property. It will therefore, suffice to say that section 42 does not contemplate a suit like the present one."

Similarly in the case of Hyderabad Electronic Industries (Supra) while maintaining the order of learned Single Judge who was pleased to reject the plaint under Order VII Rule 11, C.P.C. learned Division Bench of this Court observed as under:--

"Under the circumstances, we do not find any deficiency, irregularity or illegality in the impugned order passed by the learned Single Judge and the same is quite within the four walls and within the parameter of the provisions of Order VII Rule 11, C.P.C. based on the Manufacturing License Agreement which is basis of the suit, its subsequent correspondence and refusal of the respondent to renewing the agreement.

For the foregoing facts and case laws, we are of the considered opinion that the appeal is devoid of merits and substance which must fall, the same is hereby dismissed with no order as to costs."

In the case of Messrs Zaidi's Enterprises (Supra) relying on the case of M.A. Naseer (Supra) and after analyzing different covenants of the licence agreement the learned single Judge of this Court was pleased to reject the plaint with cost as being not maintainable.

In the case of Messrs Sign Sources (Supra) learned Single Judge of this Court has rejected the plaint as being hit by section 42 of the Specific Relief Act and it was held that the plaintiff being licensee has no cause of action to file the suit and the plaint was rejected with cost.

Similarly in case of Gulistan Khan (Supra) same view was taken by the learned Single Judge and the plaint was held to be suffering from inherent legal defect and the suit was dismissed with cost along with listed applications.

In the instant case as well there is no denial of the execution of licence agreement and there is marked distinction in between lease and the licence which may be summarily described as under:--

- (i) In a lease there is transfer of interest in property whereas in a licence this element is expressly excluded;
- (ii) In a lease exclusive right of possession is granted to the lessee and the lessor totally excludes himself from this right;
- (iii) The right granted to the lessee is assignable and transferable while in a licence it is not so;
- (iv) A licence is a personal right. It is purely a permissible right. There is no right of exclusive possession. Notwithstanding the permission, the grantor retains control over the property.

Considering the facts and circumstances of the case where neither any declaration to the effect that he is a lessee is made nor he could as he is admittedly a licensee who cannot maintain this suit. The expenses incurred on the renovation would give no cause of action to the plaintiff as agreement is absolutely silent with regard to the construction and/or renovation work. The claim of damages would have been maintainable only in case the defendant withhold the permission to use the premises without notice which is not the case here. The alleged claim of compensation/damages is also not maintainable under the law as he was given due notice not to enter into the suit property hence apparently there appears to be no cause of action and no injunction could be granted of any nature and the suit is hit by section 42 and 56(f) of the Specific Relief Act.

Following the dictum laid down in the above referred cases I have no hesitation to hold that the plaintiff has no cause of action and the suit is hit by sections 42 and 56 of the Specific Relief Act. Accordingly, the application under Order VII Rule 11, C.P.C. is allowed and the plaint is rejected, resultantly the injunction application stand dismissed. However, the security amount that has been deposited with the defendant No.3 may be returned after deduction of any outstanding dues and/or ascertaining damages to the suit property, if any.