

**2016 C L C Note 10**

[Sindh]

**Before Muhammad Shafi Siddiqui, J**

**MOBEEN RAZA and another----Plaintiffs**

**Versus**

**Messrs ALLOO AND MINOCHER DINSHAW and others----Defendants**

Suit No.549 of 2008, decided on 9th December, 2014.

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

---S. 42---Suit for negative declaration seeking only the disentitlement of defendants in suit property---Maintainability---Interpretation of S.42, Specific Relief Act, 1877---Plaintiff sought declaration to the effect that the defendants had no interest in the suit property and were not entitled to sell or dispose of, the same---Question before the High Court was whether plaintiffs could seek such negative declaration in relation to the disentitlement of the defendants without claiming in ownership, interest or legal character for themselves in relation to the suit property ---Held, that plaintiffs had not sought relief in respect of property in question for themselves, nor any legal character had been attributed to suit property, hence no entitlement in terms of S.42 of the Specific Relief Act, 1877 was available to the plaintiffs---Plaintiffs had sought declaration to the effect that defendants had no locus standi or right in relation to the suit property; however such prayer would not entitle the plaintiffs to file suit for declaration when they were not claiming any interest, title or legal character in the property, and especially when defendants had established their interest in the property by placing a registered sale deed---Suit for negative declaration was only maintainable in certain exceptional cases---When a plaintiff demonstrated some interest in the property to which some legal sanctity could be attached only then plaintiffs could seek some legal character in terms of S.42 of the Specific Relief Act, 1877---Suit for declaration, in the present case, sought declaration to the disentitlement of the defendants, and was not maintainable---Suit was dismissed, accordingly.

Abdul Rehman Mobashir and others v. Syed Amir Ali Shah Bokhari and others PLD 1978 Lah. 113 and Anjuman Arain Bhera v. Abdul Rashid and others PLD 1982 SC 308 ref.

Muneeruddin for Plaintiff No.1.

Ms. Naheed Naz, State Counsel.

Muhammad Jawed Bangash for Plaintiff No.2.

Irfan Hassan for KMC.

Zafar Iqbal Dutt for Defendant No.2.

Muhammad Farooq for BOR.

**JUDGMENT**

**MUHAMMAD SHAFI SIDDIQUI, J.**---The plaintiffs have filed this suit seeking declaration that the defendant No.1 have no locus standi to transfer this Trust properties for consideration and that the defendant No.2 neither was nor is the owner of properties and no title vest with defendant No.2 in respect of immovable properties and that defendant No.1 (trust) played fraud throughout in the aforesaid sale transaction and that the suit property belongs to the Government. The plaintiff prayed as under:-

- a) It be declared that the defendants No.1 have had no locus standi to transfer the six on visages Trust Properties for any consideration to any person in violation of the provisions contained in section 92, C.P.C. and registered Settlement Deed.

- b) It be declared that the Defendant No.2 was still Not the owners, valid Transferees and/or vendees of the six Immovable Properties recorded in the Sale Deed dated 9.9.1980.
- c) That the Defendant No.1 (viz. The Trust and Trustees) as well as Defendants Nos.2 and 3 have played fraud throughout in the sale and purchase of the Six properties.
- d) That the Suit properties belong to the Government in terms of Article 172 of the Constitution of the Islamic Republic of Pakistan, 1973.
- e) That the acts of demolition, renovation, domain over the Six Trust Properties, administration, control and Management etc. by the defendants Nos.2 and 3 was a biotic void, illegal, bad in law and based on principles of antinomy.
- f) It be declared that the responsible officers/personals and institutions have not performed their functions and duties in perspicuous manner.
- g) It be declared that the sub-registrar under the active control, administration and supervision of the District Registrar, Karachi registered as Sale Deed in respect of Six immovable.
- (h) It be declared that the plaintiffs have the Legal right as defined under Article 126 of the Qanun-e-Shahadat, 1984.
- i) Order be passed for the grant of compensation, damages and costs throughout against the defendants to be reimbursed and paid to the plaintiffs with bank rate interest from the day of the institution of the suit until realization together with such other relief(s) and benefit as this Honorable court be pleased to give and grant under the circumstances.
- j) Grant permanent injunction to the plaintiffs against the defendants to keep themselves away and divested from the business and corpus of the Six Immovable Properties and take no action, charge, domain over and existence etc. of the Six Immovable Properties and properties surrounded in the vicinity on any pretext until disposal of the suit and termination of the proceedings.
- k) The Sale Deed dated NIL of Six Trust Properties be cancelled."

On the last date, learned Counsel for the plaintiffs were put on notice to assist as to how this suit is maintainable in terms of section 42 of the Specific Relief Act since no right and legal character in respect of the subject property has been sought by the plaintiffs nor any right in respect of the property was established by the plaintiffs.

Learned counsel for the plaintiff in view of the above legal proposition submits that such provision of section 42 of the Specific Relief Act would not apply in the present proceedings as the plaintiff has sought negative declaration. He relied upon the judgment in the case of Abdul Rahman Mobashir and others v. Syed Amir Ali Shah Bokhari and others (PLD 1978 Lahore 113) and submits that since plaintiff has not filed any suit as to his entitlement or any legal character or any right in the property which entitlement 'is denied by the defendant therefore, such provisions of section 42 of the Specific Relief Act would not apply.

On the other hand M/s. Irfan Hassan and Zafar Iqbal Dutt have argued that the provisions of section 42 of the Specific Relief Act are prima facie applicable to the proceedings. They submit that under Article 199 of the Constitution of Islamic Republic of Pakistan, the points raised in the proceedings may have been taken into consideration but this suit has been filed by the plaintiff which jurisdiction can only be invoked in case any personal right interest and legal character is infringed which he is entitled for. Learned counsel taken me to all the prayer clauses and submit that none of the prayer clause overcomes the provisions of section 42 of the Specific Relief Act. They have relied upon the case of Anjuman Arain Bhera v. Abdul Rashid and

others (PLD 1982 SC 308). They further submit that the sale deed executed by the Trust with permission was executed on 03.12.1980 and the suit has been filed in 2006 and as such suit is also barred by time.

I have heard the arguments of learned counsel and have perused the available record.

I have the benefit of going through the provisions of section 42 of the Specific Relief Act which provides that any person entitled to any legal character or to any right as to any property may entitle him to institute the suit. Admittedly the plaintiffs have not sought any relief in respect of the property in question for themselves nor any legal character has been attributed to this property hence such entitlement in terms of section 42 of the Specific Relief Act is not available. Similarly the Articles of Qanun-e-Shahadat such as Article 126 could be invoked in case plaintiff claims any entitlement to the property. Perusal of the prayer clauses reveals that the plaintiffs have sought declaration to the effect that the defendants have no locus standi or right in the property. I am afraid that the provisions of section 42 of the Specific Relief Act would not entitle such persons to file such suit who would not claim any interest, title or legal character to the property, more importantly when the persons against whom the suit is filed have established their interest in the property by placing a registered sale deed executed by the Trust. No doubt, suit for negative declaration in some exceptional cases is maintainable but such negative declaration must be affiliated with the plaintiff. It is only when the plaintiff demonstrates some interest in the property to which some legal sanctity was attached can be considered to have some legal character in terms of section 42 of the Specific Relief Act, however he having no interest, right, title or legal character could at best be considered a trespasser in occupation hence it is not such interest which may have blessings of law. In view of provisions of section 42 of the Specific Relief Act the suit as framed and filed seeking declaration to the disentitlement of the defendant cannot be maintained.

It is also a matter of fact that the registered sale deed was executed on 03.12.1980 and the instant suit is filed on 27.6.2006 challenging the execution of such sale deed. It is also a matter of fact that such fact that the sale deed is being registered in favour of the defendant was in the knowledge of the plaintiffs, hence apart from the fact that the suit is not maintainable in terms of section 42 of the Specific Relief Act, the suit is apparently barred by time. Hence, the plaintiff has no right to property within the meaning of section 42 of the Specific Relief Act and has no locus standi to seek a negative declaration in respect of right, title and ownership of the property.

In view of the above, it appears that the suit is not maintainable under the law and is accordingly dismissed.

KMZ/M-204/Sindh  
dismissed.

Suit