

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.944/2019

Plaintiff : Ghulam Nabi
through Mr. Mustafa Lakhani advocate.

Defendants : Province of Sindh and others,
through
Mr. Muhammad Azhar Faridi advocate for
defendant No.3.
Mr. Ghulam Shabbir Shaikh advocate for Board
of Revenue.

Date of hearing : 23.11.2021.

Date of announcement : 10.12.2021.

ORDER

SALAHUDDIN PANHWAR, J: Through application (CMA No.14336/2020), applicant seeks rejection of plaint on the ground that plaintiff has no valid ownership in respect of the land in question and that suit is barred by section 11 of the Sindh Revenue Jurisdiction Act 1876. It is also contended that on subject land estate ban is existing, therefore plaintiff is not entitled to claim subject matter land.

2. Whereas CMA No.11284/2020 seeks production of record by Land Utilization Department and D.C. Malir in respect of alleged allotment and shifting of land to the intervener.

3. Precisely relevant facts, as set out in the plaint, are that plaintiff was allotted an area of 4 acres from Na-class 77, Deh Gangiuro, District Malir, Karachi for dairy farm, that plaintiff is lawful and rightful occupier of suit property and defend No.2 in collusion and connivance with the Revenue Officers intends to usurp the land in question. It is further contended that notice issued under

the Sindh Public Property (Removal of Encroachment) Act 2010 is illegal as plaintiff is legal occupier; that plaintiff is entitled for extension of lease as on similar grounds Revenue Officers have extended lease period for the same purpose; that defendant No.3 claims to be owners of the industrial land in Na-class 77 measuring 8 acres in same Deh whereas plaintiff's land is not the same land but is with different description as well as land claimed by defendant No.3 is fraudulent.

4. It is settled principle of law that while deciding application under order VII rule 11 CPC normally only the contents of the plaint are to be believed as true and correct. In present case there are two claimants of the land for industrial and dairy farm purposes; as well as under the Sindh Public Property (Removal of Encroachment) Act 2010 plaintiff has received notice and he has challenged the same before this court. For arguments of learned counsel for defendant that suit is barred under section 11 of the Sindh Revenue Jurisdiction Act 1876, it would suffice to say that civil court has ultimate jurisdiction and any *malafide* act of revenue officers can be examined, whereas section 53 of the Sindh Land Revenue Act 1967 speaks that declaratory suit can be filed. Here claim by the defendant is that there are factual controversies which cannot be thrashed out without leading evidence. Such contention *itself* makes the application as not-sustainable because what requires evidence can't be rejected Under Order VII Rule 11 CPC because the grounds for such exercise are different. Further, it is not the mere case of adjustment of land. In this regard, reliance can be made to 2006 SCMR 489 (*Abdul Waheed vs. Mst. Ramzanu and others*) wherein it was observed that :-

“It is also a settled principle of law that a plaintiff can only be rejected when the averments made therein if accepted in mode and form, do not entitle him to a relief. Provisions of Order VII, rule 11, C.P.C. could be invoked if there was no room for any other possible approach to the case and no triable issue was made out in case or suit was clearly hit by any mandatory provisions of law justifying rejection of a plaintiff. We have given due consideration to all the judgments previously passed by different fora qua the property in question. As mentioned above, for the purpose of determination whether a plaintiff discloses a cause of action or not, the Court has to presume that every averment made in the plaintiff is true, therefore, power to reject the plaintiff under Order VII, rule 11 must be exercised only if the Court comes to the conclusion that even if all the allegations are proved, the plaintiff would not be entitled to any relief whatsoever. Meaning thereby, the power to reject a plaintiff should not be exercised except in a clear case. None of the grounds mentioned in Order VII, rule 11, C.P.C. existed to non-suit the petitioner/plaintiff as laid down by this Court in Mst. Karim Bibi and others v. Zubair and others 1993 SCMR 2039. It is an admitted fact that a dispute in the present case related to a very valuable property. Contents of plaintiff also disclosed triable issues, therefore, question whether there was a concluded contract for sale between parties could not have been resolved without proper trial, settlement of proper issues and recording of evidence.”

Accordingly, Application (CMA No.14336/2020) is dismissed.

5. Whereas later application (CMA No.11284/2020) is seeking production of record in order to resolve the controversy. Needless to add that it is always the **record** of the revenue Authorities which could *properly* help in resolving the controversies *even* at earlier stage, therefore, it would be justified that the revenue officers shall produce the record with regard to subject matter land as well all entries in respect of that land. Application is allowed.

J U D G E