

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No.38 of 2001

[Wali Muhammad Vs. The Secretary Health & others]

R.A. No. 72 of 2001

[Medical Superintendent PMCH Nawabshah & others versus Baksh Ali]

Date of hearing: **07.11.2022**

Date of judgment: **28.11.2022**

Mr. Parkash Kumar, advocate for applicant in R.A. No.38 of 2001 and for respondent in R.A. No.72 of 2001.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh for applicant in R.A. No.72 of 2001 and for respondent in R.A. No. 38 of 2001.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. Since both these revision applications pertain to the same property/hospital, as such it would be in the best interest of justice to decide the same by this single judgment.

2. **Facts of R.A No.38 of 2001:** Facts of this revision, in brief, are that applicant Wali Muhammad filed F.C Suit No.206 of 1999 before learned 1st Senior Civil Judge, Nawabshah pleading therein that he was allotted an area of 33 x 43 sq. ft within the premises of PMCH Hospital Nawabshah through order bearing No.3979/80 dated 05.05.1996 on certain terms and conditions whereupon he constructed a Canteen by spending an amount of Rs.12,00,000/-. He further claimed that initially the rent of above Canteen was fixed @ Rs.1000/- per month; however, later on, it was enhanced to Rs.2000/-. He also claimed that in the year 1996 respondents issued threats of ejecting him unlawfully hence he filed Suit No.185 of 1996 seeking declaration and permanent injunction on the premises that his canteen allotment issued by respondent No.2 was legal and valid said suit was decreed in his favour as prayed on 28.04.1998 since then applicant was running canteen smoothly by paying rent of Rs.2000/- up to date but despite of fruits of decree in favor of the applicant, respondents No.2 again started to blackmail applicant for ejecting him then he filed contempt application which annoyed respondent No.2 who issued letter No.17872-99 of 11.12.1999 informing Government of Sindh Health Department vide letter No.SOVI(H)8-199 dated 04.12.1999 canceling his canteen allotment in violation of the judgment dated 28.4.1998 passed Civil Court thereby allotment of the canteen in the name of the applicant was declared lawful but the letter of respondent No.2 merely

showing cancellation order issued by respondent No.1, hence he filed the suit for declaration and injunction.

3. Mr. Parkash Kumar, learned counsel for applicant, has argued that applicant constructed pucca construction on his own expenses as is reflected from findings of learned Trial Court on issue No.1 even then both the Courts below committed illegality that he was holding only licensee and not lessee; that in written statement filed earlier Suit No.185 of 1996 by the respondents wherein they admitted the applicant being tenant of subject premises; that claim of applicant in respect of constructing subject premises at the cost of Rs.12 lacs after getting approved plan from the Engineering Department has been established through evidence; that bare leading of two orders dated 04.12.1999 and 11.12.1999 shows that lease of applicant was not canceled by any authority hence the decisions of learned Courts below being erroneous not sustainable under the law; that respondents has failed to prove the plea in respect of subject premises was required for construction of ICU and the decision of learned Trial Court based on issue No.7 was of no evidence, therefore, he prays for allowing instant civil revision application by setting aside the impugned judgments of Courts below.

4. After concluding the trial, learned Senior Civil Judge Nawabshah dismissed the suit of the applicant and he being aggrieved by and dissatisfied with the dismissal of the suit filed Civil Appeal No.45 of 2000 which too met with the same fate, hence he has maintained instant Civil Revision Application against the concurrent findings of two Courts below.

5. Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh has supported the judicial decrees of both the courts below and submitted that there are concurrent findings of facts and law against the applicants in RA No.38 of 2001, as such no interference of this Court is required in the matter and prayed for the dismissal of the revision application filed by the applicant.

Facts of R.A. No.72 of 2001

6. Respondent Baksh Ali has supplicated in his plaint that in the year 1990 he was allotted an area of 12 x 13 sq. ft within the premises of Medical peoples Medical College Hospital Nawabshah for construction of P.C.O which he raised on his expenses thereafter he moved the application to respondents seeking permission to open a Medical Store, same was granted vide letter dated 01.04.1999 in pursuant thereto respondent No.1 and applicant No.1/plaintiff agreed whereupon respondent on his own accord handed over possession of constructed building of PCO to applicant No.1 free of cost and

raised construction of the new building over an area of 12 x 16 sq. ft allotted to him for construction of the medical store and an amount of Rs.1,94,000/- was incurred upon the construction of said shop while in respect of purchasing medicines an amount of Rs.13,00,000/- was also spent. It is further averred that on 17.11.1999 a letter was issued by applicant No.1. addressing to applicant No.2 seeking therein to cancel the allotment of a medical store as well as canteen from the premises of PMCH Nawabshah on the premises that the same was the cause of nuisance to female students, nursing staff, and patients thereafter applicant No.1/respondent No.1 sent a letter to respondent Bux Ali informing him that his allotment has been canceled by the Government of Sindh Health Department Karachi vide letter dated 04.12.1999 by directing him to vacate the premises within seven days after receipt thereof, hence he filed subject Suit No.199 of 1999 for declaration and permanent injunction against the respondents.

7. After concluding the trial learned Senior Civil Judge Nawabshah dismissed the suit of the respondent vide judgment dated 28.4.2001 and Decree dated 2.5.2001, and he being aggrieved by and dissatisfied with the dismissal of the suit filed Civil Appeal No.21 of 2001 which was allowed vide judgment and decree dated 11.6.2001, hence applicants have filed instant Civil Revision Application against the conflicting findings of two Courts below.

8. Mr. Parkash Kumar, learned counsel for the respondent has supported the judgment and decree of the learned appellate court. He further submitted that the decision of the appellate Court is quite correct based on proper evidence. Learned counsel further submitted that the appellant is the lessee of the shop in terms of Section 105 of the Transfer of Property Act and findings on issues No.4 & 5 by the trial Court are erroneous and rightly upset by the appellate Court and prayed for dismissal of the revision application filed by the applicants.

9. Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh appearing for the applicants submits that the findings of the learned Appellate Court are the result of misreading and non-reading of evidence same needs to be interfered with by this Court. He further argued that no area of P.C.O was ever allotted to the respondent even the allotment if any made was based on political grounds; that respondent raised construction on his own while he showed an exaggerated amount incurred thereupon with ulterior motives; that there are the number of medical stores just by side of boundaries of PMC Hospital Nawabshah right in front of its gates with easy excess and all sorts of medicines available on competitive rates because of

competition; that medical store of the respondent was the source of a nuisance as it was allotted upon exerting political pressure which allotment has already been canceled on the directions of higher authorities, therefore, he prays for restoring the impugned judgment passed by learned Trial Court by reversing the findings of learned Appellate Court.

10. I have heard the learned counsel for respective parties, and have also gone through the record with their assistance.

11. The question involved in the present proceedings is whether the licensee could continue to occupy the suit properties and be entitled to maintain the subject suits for running the private business on the premises of PMCH Hospital Nawabshah.

12. Primarily the word License is well defined in the Easement Act which provides that where one person grants to another, a right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful. It is well settled that a license is not a transferable or heritable right, but is a right purely personal between the grantor and licensee. Unless a different intention appears it cannot be exercised by the licensee's servants or agents. Representatives of a tenant on permission are mere trespassers since they cannot be regarded as succeeding to any interest in the tenancy. Thus the status of a licensee is essentially different from that of a trespasser or a tenant. The possession of the licensee is an occupation with the permission of the licensor. While the actual occupation remains with the licensee, the control or possession of the property is with the licensor through his licensee. Primarily, a licensee after revocation of the license is under an obligation to surrender the possession of the property to the licensor. He cannot avoid action for recovery of the possession on such a purported plea that he is legally occupier of the subject shop with permission of ex-licensee.

13. Touching the core issue, it is well settled that section 42 would be attracted to a case in which the plaintiff approaches the Court for the safeguard of his right to legal character or property, but where the right to his legal character or property is not involved, the Suit is not maintainable as such no declaration can be issued outside the provisions of Section 42 and Courts' power to make declaratory decrees is, therefore, limited to the case contained in Section 42. No declaration can be allowed unless it can be brought within the four corners of the section. The term "legal character" has been well defined in the plethora of judgments and discussed in detail, and

there are certain principles and circumstances under which a suit should be dismissed.

14. On the point of the jurisdiction of the civil court to entertain civil suits, primarily, it is well settled that the civil courts have jurisdiction to try all suits of a civil nature except suits of which their cognizance is either expressly or impliedly barred. The word jurisdiction signifies the scope of power and authority. Jurisdiction is the extent of the power that is conferred upon the court by its constitution to try a proceeding. It is a power of a court to hear and determine a cause, adjudicate, or exercise judicial power over it. Section 9 of the CPC only empowers a court to entertain actions of a civil nature. Any proceeding which involves the assertion or enforcement of a civil right is civil. A civil proceeding is a process for the recovery of individual rights or redress of individual rights. Civil courts have jurisdiction over all suits of a civil nature unless their cognizance is either expressly or impliedly barred. A suit of a civil nature is a proceeding, the object of which is the enforcement of the rights and obligations of citizens. It is a fundamental principle of law that any person having a right has a corresponding remedy to institute suits in a court unless the jurisdiction of the court is barred. Whenever the object of the proceedings is the enforcement of civil rights, a civil court has jurisdiction to entertain the suit independently.

15. In the present case, the applicant in R.A. No.38 of 2001 and respondent in R.A. No.72 of 2001 have not annexed the title document requiring to file suit under the provisions of section 42 of the Specific Relief Act, 1877 and instead made assertions that they being the licensee of the canteen and PCO in question derived its title so there is/was the case of prejudicing their right; further, failure to produce any legal entitlement to hold the subject premises, they are precluded to maintain suit proceedings before the learned Civil Court. The applicant in R.A. No.38 of 2001 and respondent in R.A. No.72 of 2001 did not have any document to establish that they acquired a vested right in respect of the canteen and PCO, which was necessary for filing a suit for declaration of title/ownership in respect of the immovable property under Section 42 of the Specific Relief Act.

16. It appears that the learned Senior Civil Judge Nawabshah dismissed the suit of the applicant in R.A. No.38 of 2001 and Civil Appeal No.45 of 2000 which too met with the same fate, therefore, both the learned Courts correctly non-suited the applicant in R.A. No.38 of 2001 as there was no need to further proceed with the suit when the same was having no legal entitlement. However in R.A. No.72 of 2001, the suit of the respondent was

dismissed and in the Appeal, the same findings were reversed without any justification, though the respondent had no legal right to maintain the suit proceedings in terms section 42 of the Specific Relief Act, 1877, thus findings of the appellate court are perverse and based on erroneous conclusion and are liable to be set aside.

17. In view of what has been discussed hereinabove, I am of the humble view that prima facie it appears that the plaint based on its averments and prayer clause itself discloses that the suit of the applicant in R.A. No.38 of 2001 and respondent in R.A. No.72 of 2001 was not maintainable by Law of Specific Relief Act, 1877 as they have no locus standi to file the civil suits, therefore, both the learned Courts correctly non-suited the applicant in R.A. No.38 of 2001 as no illegality or irregularity has been committed by the Courts below while passing impugned orders and decree hence same are maintained and instant civil revision application No. 38 of 2001 is dismissed, whereas civil revision application No.72 of 2001 is allowed.

J U D G E