

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.5-64 of 2021

[Abdul Sattar Kashmiri Vs. Province of Sindh & others]

Applicant: Mr. Aqeel Ahmed Siddiqui, Advocate.

Respondents: Mr. Allah Bachayo Soomro, Addl. A.G, Sindh.

Date of hearing & order: 28.10.2022

JUDGMENT

ADNAN-UL-KARIM MEMON, J. Through this revision application, the applicant has called in question the legality of Judgment and decree dated 13.02.2021 & 19.02.2021 passed by learned District Judge/Model Civil Appellate Court, Tando Allahyar in Civil Appeal No.34 of 2020 (Re-Abdul Sattar v. Province of Sindh & others) maintaining the order dated 18.01.2020 passed by 2nd Senior Civil Judge, Tando Allahar rejecting the plaint under Order VII Rule 11 CPC.

2. Brief facts of the case for deciding the instant revision application are that the claim of applicant is that he derived the title of shop of Municipal Corporation Tando Allahyar from original licensee Phool Muhammad through sale agreement and got its physical possession on 30.06.1992; however, after lapse of more than two decades respondents 3 & 4 directed him to vacate the premises as early as possible else the same will be demolished; this gave the cause of action to him for filing Suit for declaration, permanent and mandatory injunction before learned 2nd Senior Civil Judge, Tando Allahyar.

3. That respondents /defendants 5 & 6 applied under Order VII Rule 11 C.P.C, who after hearing parties' counsel rejected the plaint observing that the applicant failed to establish the factum of acquiring subject shop from Phool Muhammad as he was not possessing title documents; as far as, the applicability of Section 42 of Specific Relief Act, 1877 is concerned its requirements were missing as admittedly he was not the owner of shop in question so rejected the plaint which was appealed before learned District Judge Tando Allahyar who held that shop No.5 claimed by the applicant did not exist at the spot as it was demolished being encroachment.

4. Mr. Aqeel Ahmed Siddiqui learned counsel for the applicant contends that the applicant was second licensee of the suit shop derived from its licensee but under the garb of pressure put forward by Mandar Committee his shop was demolished showing encroachment; learned counsel emphasized that the

correct position in law is that the licensee may be the actual occupant but the licensor is the person having control or possession of the property through his licensee even after termination of license. The licensee may have to continue to be in occupation of the premises for some time to wind up the business if any. In such a case licensee cannot be treated as trespasser; that the licensee's occupation does not become hostile possession or the possession of a trespasser, the moment the license comes to an end. The Licensee has the right to file suit which is maintainable; that the applicant was using shop on permission having been granted by the ex-licensee and he was/is not claiming a legal interest in the said shop as he was/is not claiming its ownership; his possession was purely gratuitous; that it is settled law that */is* is to be decided on merits rather than technicalities hence evidence was required to be recorded in the Suit but was ignored by both the courts below; that learned Appellate Court has committed illegality while delivering the impugned order dated 13.02.2021 instead judgment; that learned Appellate Court while delivering the impugned order dated 13.02.2021 failed to frame points for determination thereby made violation of Order 41 Rule 31 C.P.C as well as Order 21 Rule 5 C.P.C, hence both the impugned orders are liable to be set-aside and prays for remanding the matter to the trial court for decision afresh.

5. Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh while refuting the above arguments advanced by learned counsel for applicant has argued that the impugned orders are well reasoned and speaking need not require any interference in its limited revisional jurisdiction vested in this Court; that applicant has failed to prove his claim hence there was no need to proceed further as it is well-settled law that bad suit must be buried at its inception, therefore, he prays for maintaining the impugned orders and dismissal of instant Revision Application; that a suit can only be filed by the title holder whereas the applicant is simply an occupier of the subject shop of a licensee, thus not entitled to maintain a suit under Specific Relief Act.

6. I have given due consideration to the arguments advanced by learned respective counsels, having also gone through the record with their assistance.

7. The question involved in the present proceedings is whether the previous licensee could hand over the shop in question to the applicant and whether he could continue to occupy the suit property as licensee and be entitled to maintain the subject suit for retaining the shop.

8. 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 different intention appears it cannot be exercised by the licensee's servants or agents. Representatives of 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 tenant. The possession of licensee is an occupation with the permission of 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 license is under an obligation to surrender the possession of property to the licensor. He cannot avoid action for recovery of possession on such a purported plea that he is legally occupier of the subject shop with permission of ex-licensee.

9. 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 section. The term "legal character" has been well defined in plethora of judgments and discussed in detail, and there are certain principles and circumstances under which a plaint should be rejected under Order VII Rule 11 CPC.

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

is barred. Whenever the object of proceedings is the enforcement of civil rights, a civil court has jurisdiction to entertain the suit independently.

11. In the present case, the applicant has not annexed the title document requiring to file suit under the provisions of Section 42 of Specific Relief Act, 1877 instead made assertions that he being the second licensee of the shop in question derived its title from Phool Muhammad so there is / was the case of prejudicing his right; further, failure to produce any legal entitlement of Phool Muhammad was observed by *fora* below showing him legal person to transfer his purported shop to present applicant was also observed. The applicant did not have any document to establish that he acquired a vested right in respect of the demised shop, which was necessary for filing a suit for declaration of title/ ownership in respect of immovable property under Section 42 of Specific Relief Act. It is settled principle of law that to reject a plaint, the same must be shown to be barred under some law based on averments made therein and the Court has to confine itself to the contents of plaint and the documents annexed therewith; however, the court cannot go beyond the pleadings while deciding the application for rejection of plaint and every allegation made in the plaint has to be accepted as correct while rejecting the plaint under Order VII Rule 11 CPC; the fact that plaintiff might not ultimately succeed in establishing the allegations in the plaint could not be a ground for rejecting the plaint. It appears that the applicant is showing himself to be the owner of suit shop being derived from 1st licensee Phool Muhammad, however, the record of suit land has not been produced or brought instead there is a case of respondents that he was encroaching the shop in question which was legally demolished; therefore, learned trial Court correctly rejected the plaint as there was no need to further proceed with the suit when the applicant having no legal entitlement, as the subject shop which was long ago demolished even the respondents claimed that Phool Muhammad was not licensee as claimed by applicant.

12. In view of what has been discussed hereinabove, I am of the humble view that prima facie it appears that plaint based on its averments and prayer clause itself discloses that the suit of applicant was not maintainable by Law of Specific Relief Act, 1877 as applicant has no locus standi to file suit; therefore, the plaint has rightly been rejected as there was no need for framing issues and then recording of evidence 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 is dismissed.

JUDGE