

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S-52 of 2015

Applicants : Adil Shabbir and another, through
Mr. Sajjad Muhammad Zangejo, Advocate.

Respondent No.1 : Government Employees Co-Operative
Housing Society (*Nemo*)

Respondents No.2 : Province of Sindh, through Secretary
Communication, Karachi through Mr. Ahmed
Ali Shahani, Assistant Advocate General-
Sindh.
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Date of Hearing : **21-10-2022**
Date of Order : **21-10-2022**
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ORDER

ZAFAR AHMED RAJPUT, J.- Respondent No.1 herein filed F.C Suit No.133 of 2007 for declaration and permanent injunction against the applicants and respondent No.2 , alleging therein that a plot bearing No.54, measuring 600 sq. yards, situated in Block-A of Government Employees Co-Operative Housing Society, Sukkur (*"the plot"*) was allotted and leased out by it to the applicant No.1 through Allotment Order and Lease Deed, both dated 16.03.2005 for residential purpose with certain conditions including condition No.(vi) of the Allotment Order and the condition No.(vii) of the Lease Deed that. It was case of the respondent No.1 that the applicants in violation of aforesaid terms and conditions of the Allotment Order and the Lease Deed started installing cellular tower on the plot without its prior permission; as such, a notice dated 25.05.2005 was issued to the applicants advising them to stop installing cellular tower on the plot allotted/leased out to the applicant No.1, who leased out the same to the applicant No.2 in violation of the terms and conditions of the Allotment Order and Lease Deed. Hence, cause of action accrued to the respondent No.1 to file aforesaid suit with the following prayer:

“a). To declare that the said installation of mobile phone tower in the plot No.54-A is illegal against the terms and conditions of allotment order and lease deed.

b). To direct the defendant No.2 to stop the working of above Mobile Phone Tower and remove the said mobile Phone Tower, which is illegal, so also direction may be issued to defendant No.1 submit reply regarding rented out the residential plot to defendant No.2 for installation of mobile Phone Tower, which is clear violation of terms and conditions of allotment order and lease deed.

c). To grant permanent injunction by restraining the defendant No.2 to stop the working of mobile Phone Tower from the residential plot No.54-A of Govt. Employees Co-Operative Housing Society Ltd Sukkur and also dismantle the mobile Phone Tower”.

2. On being served, the applicants contested the said suit by filing their respective written statements. On the divergent pleadings of the parties, the learned 1st Senior Civil Judge, Sukkur framed the following issues:

1. *Whether the installation of the mobile phone tower in the plot No.54-A is against the terms and conditions of the allotment order and lease deed?*
2. *Whether the suit is hit under mis-joinder and non-joinder of necessary parties?*
3. *Whether the plaintiff allowed the installation of mobile tower at the annual cost of Rs.12000/- per annum and Rs.20000/- as NOC fee?*
4. *Whether the suit is maintainable according to law?*
5. *What should the decree be?”*

3. The learned trial Court after recording pro and contra evidence of the parties dismissed the suit vide judgment, dated 07.09.2010, and decree drawn on 14.09.2010. Against that, the respondent No.1 preferred Civil Appeal No.120 of 2010, which was heard and allowed by learned 3rd Additional District Judge, Sukkur vide judgment and decree, dated 22.06.2015, setting aside the impugned judgment and decree passed by learned trial Court and decreeing the suit of the respondent No.1. It is against these conflicting findings of the Appellate Court that the instant Civil Revision Application has been preferred by the applicants.

4. Heard learned counsel for the applicants as well as learned Assistant A.G and perused the material available on record with their assistance.

5. It is a matter of record that learned trial Court recorded its findings on issue No.3 in “*Negative*”, but despite of such fact trial Court dismissed the Suit of the respondent No.1. It is also a matter of record that condition No. (vi) of the Allotment Order provides that “*the plot and the construction shall not be used for purposes other than approved by the Society*” and the condition No.(vii) of the Lease Deed stipulates that “*the said plot shall not be diverted to other use without prior consent in writing of the lessor whether it may be commercial or residential*”. The learned counsel for the applicants has failed to controvert the aforesaid terms and conditions of the Allotment Order and Lease Deed. On the contrary, he has admitted that the plot is meant for residential purpose only and installation of cellular tower amounts to carrying on commercial activities on it, which even otherwise is not permissible under the terms and conditions of the Allotment Order and Lease Deed issued and executed in favour of the applicant No.1.

6. For the foregoing facts and reasons, there appears no illegality or irregularity in the impugned judgment and decree of the Appellate Court, requiring any interference by this Court in its revisional jurisdiction. Hence, this Civil Revision Application being devoid of merit is hereby **dismissed** accordingly along with pending application, with no order as to costs.

JUDGE

Ahmad