

IN THE HIGH COURT OF SINDH AT HYDERABAD

R.A. 08 of 2019 : Hamal Khan & others
For the Applicant/s : Mr. Pirbhulal U. Gokhlani, Advocate.
For the respondent/s : Nemo.
Date/s of hearing : 01.11.2023
Date of announcement : 01.11.2023

ORDER

Agha Faisal, J. F.C. Suit No.231 of 2012 was filed before the Court of Ist Senior Civil Judge, Nawabshah and the same was dismissed, after demonstrable appreciation of evidence, vide judgment dated 13.12.2017. The operative part is reproduced herein below:

“Plaintiffs has got cancelled the lease/allotment in favour of the ancestor of the defendant NO. 4 & 5, thereafter, taking advantage of such order of Honorable Hgh Court plaintiff No. 1 and his brothers have occupied the more area of four acres of the Asaish land and they do not allow to construct the road on surface side of the plot of the Asasih land. Asaish land can be used for the common interest of the villagers, in the matter in hand there are about hundreds houses are located in the village, road is the basic and necessary facility. Thus, suit of the plaintiff is barred by section 42 of the specific relief Act. Moreover, injunction cannot be granted under section 56 of specific relief act, against the approved scheme of the Government. Issue is answered in Positive. Since, from the above discussion it appears that plaintiff have filed this suit only to deprive the other villagers from their basic rights and wanted to usurp more and more area of the Asaish land. Therefore, they are not entitled for the relief claimed. Issue is answered in negative. In view of consequence of the above issues, the plaintiffs could not prove their case against the defendants; thus, their suit / is dismissed with no order as to costs.”

2. Thereafter, the applicants filed Civil Appeal No.07 of 2018 before the Court of 4th Additional District Judge, Shaheed Benazirabad and vide judgment dated 04.12.2018 that was also dismissed. The operative part is reproduced herein below:

“After hearing the learned counsel for the appellant, I have gone through the evidence available on record. From perusal of pleadings of the plaintiffs/ appellants it appears appellants has filed this suit for Declaration, and Injunction praying that construction of road in k No. 109 /2 of Dell 15 Nusrat be declared illegal, unlawful. Now question is that whether development work including construction of road can be termed as unlawful and illegal. The construction of metal road in area cannot be declared illegal because it is basic facility for the people of locality which are guaranteed under the Constitution of Pakistan. Learned counsel for the appellant/plaintiffs further contended that due to old enmity the defendant No.4 and 5 are bent -upon to construct the road by demolishing, the houses of the appellants/ plaintiffs, record reveals the defendant No. 4 and 5 are private persons and resident of the area. Record further reveals appellants have not produced lay out plan and sketch of approved road as well as his village to prove that as per lay out plan of road will cross from the houses of appellants or construction of road will be carried out after demolish their houses. However it is responsibility of the Govt, functionaries /works department that they shall carry out the construction of road to facilitate the public and not to disturb peoples of locality by demolishing their house. Moreover, during course of arguments learned counsels for the parties admitted that the alleged road is being constructed under the development program by the Government but on inquiry the learned counsel for the appellants failed to explain which department has approved the road and providing funds for its constructions. Perusal of title of the plaint also reveals that the appellants/ plaintiffs has not joined the department who has approved lay out plan and providing funds for constructions of the road. Therefore suit of appellants also suffer for non joinder of the necessary parties. In view of the above I do not find any illegality or irregularity, miss-reading of evidence in the judgment of learned trial Court and learned trial court has rightly dismissed the suit. In view of the above discussion I do not find any illegality or irregularity and miss-reading of evidence in the judgment of learned trial Court and same does not require interference, hence appeal in hand is dismissed with no orders as to costs.”

3. Learned counsel submits that the evidence was appreciated in its proper perspective; hence, *de novo* appreciation thereof is merited in revision.

4. Heard and perused. The case of a claimant may sink or swim predicated on the strength of the evidence adduced; lawsuits are decided

on preponderance of evidence; and the Court has to see which party has discharged the onus of proof¹. In the present case the applicants were unable to discharge the burden of proof. The judgments impugned appear to have been rendered upon deliberated appreciation of evidence and no infirmity in such regard could be identified before this court. Even otherwise the present proceedings are not yet another stage of appeal and the remit hereof is circumscribed per section 115 C.P.C.

5. The learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the either impugned judgment is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the judgments impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum. In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine*, along with listed applications.

Judge

Ahmed/Pa,

¹ Per *Muhammad Ali Mazhar J* in the yet unreported judgment dated 20.09.2023 in *SNGPL vs. Muhammad Arshad (CP 3598 of 2020)*.

² Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.