

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

Criminal Miscellaneous Application No. S—394 of 2023.

Date of Hearing: 13.11.2023.

Date of Judgment: 13.11.2023.

Applicant: Nasreen Qadri Through Mr. Noor ul Haq Qureshi
 Advocate along with Saad Salman Ghani Advocate.

Respondent No.1: Mian Bux Through Mr. Sagar Ali Sathio Advocate.

State: Through Mr. Nazar Muhammad Memon Adl.P.G.

IInd Appeal No. S — 29 of 2022.

Appellant: Mian Bux Through Mr. Sagar Ali Sathio Advocate.

Respondents No.1 to 7: Province of Sindh & others Through Mr. Allah
 Bachayo Soomro, Additional Advocate General
 Sindh along with Farhan Ali Jatoi Mukhtiarkar Taluka
 Qassimabad.

Respondent No.8: Nasreen Qadri Through Mr. Adeel Baig Panhwar
 along with Mr. Ammar Ahmed Khoso Advocates.

J U D G M E N T

MUHAMMAD FAISAL KAMAL ALAM, J.- Due to commonality, both the
 Caption Cases are decided by this Common Judgment.

2. The Criminal Miscellaneous Application is filed against the impugned
 Order dated 30.05.2023, whereby certain issues have been framed by
 exercising purported jurisdiction under Section 47 of C.P.C.

3. In the nutshell the controversy is about alleged encroachment of 11 feet
 of Street / Common Passage by the Respondent (Mian Bux) who has preferred
 his independent IInd Appeal No.29 of 2022.

4. It is necessary to clarify certain facts to appreciate the entire controversy.
 Earlier Applicant / Lady has filed a case in The Anti-Encroachment Tribunal, at
 Hyderabad [**the Tribunal**], which was assigned Miscellaneous Application / Suit
 No.13 of 2019, against Government Officials and various persons including

Mian Bux [for reference only, **the Objector**]. After hearing the Parties and on the Mukhtiarkar's Report, the Order dated 10.10.2019, was passed, directing the Official Respondents to remove the encroachment. Although in the above Proceeding before the Tribunal, besides, Mian Bux / the Objector, other private Persons were impleaded as Defendants, but, the above Order was assailed only by the Objector in Miscellaneous Civil Appeal No.44 of 2019, in this Court, but, unsuccessfully and the Judgment (at page 37), it is observed that illegal construction is done by the Objector in the Street and in that portion which was left by the Applicant / Lady; this Judgment of this Court was challenged before the Honourable Supreme Court, wherein while agreeing with the conclusion recorded by this Court, it was observed that the Objector can seek appropriate remedy regarding his title.

4. The second set of facts pertains to IInd Appeal No.29 of 2022, which is filed against the two impugned decisions whereby plaint of present Objector in F.C.Suit No.502 of 2020, has been rejected.

5. The third set of facts are mentioned in the documents appended with the Written Submissions filed today. Although in all fairness the same should have been filed in the Branch with an advance copy to the other side.

6. It is stated by the Objector's counsel that earlier a F.C.Suit No.113 of 2015, was preferred by Mian Bux/the Objector against JRS Builders and Developers, Imran Ahmed Qureshi and official Respondents with regard to his Sub Lease in respect of RCC Plot No.2 measuring 3600 sq. feet, which was decided in favour of present Objector and the other Sale Deed prepared by the above named persons was adjudged as void and cancelled. He states that since he has a Judgment and Decree in his favour with regard to his Sub-Lease of the above Plot No.2, therefore, the subsequent proceeding of Applicant / Lady is not bonafide and is filed with the ulterior motives, because the Objector has not encroached any part of the Common Passage / Street; further contended that there is no regular Street / Common Passage as such.

7. Conversely Mr. Nor-ul-Haq Qureshi, along with Mr. Saad Salman Ghani Advocates, have argued that once the Decision is given by the learned Tribunal

established under a Special Statute, viz: The Sindh Public Property (Removal of Encroachment) Act, 2010, the same cannot be revisited under the garb of Section 47 of CPC. Contended that the Tribunal can invoke only those provisions of CPC and any other Law which are expressly provided in the Scheme of Statute itself.

8. Arguments heard record perused.

9. The facts narrated herein above are undisputed. Adverting to the contention of the Objector, that no area is encroached and even the Common Passage / Street is not a notified one, the Objections of the Objector filed before the Tribunal in the above Proceeding initiated by Applicant /Lady, has been perused; **in Paragraph-3**, the Objector has stated that *“there is no land / open space and street as alleged sanctioned by any authority but on this space there is Bhada which is filled with Mud now people are crossing from and it is not area of Applicant”*.

9. The above averments means that it is not disputed that there is some space filled up with the Mud in the Street; and thus, the stance of the Objector that the entire Property belongs to him is not correct.

10. The Mukhtiarkar Report submitted before the Tribunal and the finding given by the Tribunal have been upheld up to the Honourable Supreme Court. After exhausting all such remedies when the Applicant / Lady went for the implementation before the Tribunal under Section 16 of the above Act, the Tribunal passed the impugned Order. The reason for exercising jurisdiction under Section 47 of CPC, is mentioned in paragraphs-5 and 6 of the impugned Order, that since Honourable Supreme Court has given the observation about declaration of title of the Objector, thus the Tribunal took it upon itself to decide the same controversy; however, while doing so, it completely overlooked the fact that already that controversy has been decided by the Court in F.C.Suit No.113 of 2015 [*ibid*], earlier preferred by the Objector against other persons in respect of his entitlement. Therefore, the view taken by the learned Tribunal with regard to invoking Section 47 of CPC, is erroneous and not a proper exercise of jurisdiction and was illegal. Consequently, the said impugned Order

is set-aside. Case is remanded to decide the Application for implementation afresh within four [04] weeks.

11. Adverting to IInd Appeal. In both the decisions, no illegality is successfully pointed out; in particular, after the Judgment and Decree in favour of the Objector in his previous proceeding [*supra*], in which he was successful up to the Appellate Court. With his Statement [filed today], *inter alia*, the Counsel has enclosed the Judgment passed in Civil Appeal No. 93 of 2022, preferred by one Imran Qureshi, but, the same was dismissed. Even otherwise, the subsequent Suit of the Objector [of which plaint has been rejected] contains one of the prayer clauses with regard to survey and demarcation, which exercise to a larger extent was already taken by the Officials / Official Respondents earlier which became basis for passing of the Decision by the learned Tribunal which was endorsed up to the Hon'ble Supreme Court. This subsequent Suit No. 502 of 2020, is filed, in order to circumvent the Proceeding of the learned Tribunal, which aspect was correctly captured by the Courts in the impugned Decisions in the Subject IInd Appeal No. 29 of 2022. In view of the above discussion, no interference is required in the impugned Decisions. Consequently, the IInd Appeal is dismissed.

12. While implementing the earlier Order, the learned Tribunal may, if the circumstances are such, can call upon the Officials including Revenue Officials, Survey Settlement and any other concerned Official, to carry out the Survey of both the Plots in question belonging to the Applicant [Lady] and the Objector. However, it is clarified that in the first instance the original width of the subject Street / Lane / Common Passage shall be restored as mentioned in the official record and already directed in the Order dated 10-10-2019.

With the above observations this Criminal Miscellaneous Application and the IInd Appeal are disposed of.

JUDGE

A.