JUDGMENT SHEET
IN THE HIGH COURT OF SINDH AT KARACHI.
R.A. No.228 of 2000.

JUDGMENT

Date Of hearing: 9.4.2003.

Applicant: Province of Sindh others, through
Mrs. Tabasum Ghazanfar, AAG.

Respondent : Haji Muhammad Tayyab through
Mr. Jhamat Jethanand, Advocate.
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MUHAMMAD SADIQ LAGHARI, J. The property in dispute is an evacuee house bearing Custodian No. B-52 area 184-8 Sq. Yards situated in Choohar Jamali Town (hereinafter called "The house"). On 9.3.1960 it was put to auction and Mehboob Hussain Shah offered the highest bid. His bid was confirmed but the transfer was cancelled on 2.11.1967 due to non payment of the price. After that the house was transferred to Respondent Haji Muhammad Tayyab by order of Deputy Settlement Commissioner on 20.8.1973. After full payment and finally transfer order was issued in his favour on 29.10.1987 by the Additional Commissioner (Evacuee Branch Thatta).

In 1988 the transferee filed a Rent Case under Section 15 of the Sindh Rented Premises Ordinance, against one Luqman an employee of Forest Department, on the ground of default pleading therein that he had let out the house to Luqman in August 1987 at the rate of Rs.100/= P.M. Luqman denied the relationship, claiming the house to be the property of Forest Department, Government of Sindh. He also alleged the transfer of the house in favour of Respondent Haji Muhammad Tayyab to be fraudulent. As the relationship could not be established the Rent Case was dismissed on 25.4.1990. Appeal against the judgment of Rent Controller was also dismissed for non-prosecution on 21.11.1990.

Thereafter on 30.4.1994, the Respondent Haji Muhammad Tayyab filed Suit for possession of the house and mesne profits against province of Sindh through Secretary, Government of Sindh Forest Department, 2. Divisional Forest Officer Thatta, 3. Range Forest Officer, Sujawal and Forest Incharge (Badhipur). Only DFO Thatta and RFO Sujawal, filed written statement and resisted the Suit. In their joint written statement they pleaded that they were in adverse possession of the house since the day when it was vacated by its Hindu owner, and the department had perfected title over it, therefore, they were not liable to be dispossessed. They also challenged the genuineness of the transfer documents in favour of Haji Muhammad Tayyab and raised the objection on the maintainability of Suit.

The Senior Civil Judge Thatta decreed the Suit for possession declining the grant of mesne profits. The DFO Thatta challenged the judgment and decree dated 23.12.1998 and 26.12.1998, respectively. The Government of Sindh, however, did not challenge them. The learned IInd Additional District Judge Thatta dismissed the appeal on the legal ground that DFO Thatta an Officer could not challenge the judgment and decree through appeal. After that Province of Sindh, Divisional Forest Officer, Thatta, Range Forest Officer Sujjawal and Forest Incharge Badhipur filed present Revision Application against the judgment of the learned Appellate Court.

Learned State Counsel Mrs. Tabasum Ghazanfer contended on behalf of the Applicant that DFO was party to the Suit and decree was passed against him also therefore, he in his official capacity could competently file the appeal against the judgment and decree. According to her the Appellate Court wrongly held that DFO could not file Appeal.

It is clear from the pleadings that the applicant/defendant except Province of Since had pleaded in the written statement that the Forest Department had become owner of the house on account of their adverse possession since the day it was vacated by Hindu owner. Obviously, Forest Department means the Province of Sindh, but the Province of Sindh in capacity of Defendant No.1 in the Suit did not file the written statement. After passing of the decree in favour of Respondent/plaintiff by the learned Senior Civil Judge the Province of Sindh did not challenge it through appeal. Although DFO Thatta, the Applicant No.2 challenged the judgment/decree through Civil Appeal No. 9/99 but the Officers of Forest Department were not claiming the possession over the house in personal capacity and had pleaded that the house was in possession of the Department. The Department is integral part of the Government of Sindh/Province of Sindh and Suit was also decreed against it as the main defendant. Therefore the appeal filed by DFO in his that capacity was not maintainable under the law. Section 79 provides that in the Suit by or against the Provincial Government the province of Sindh is to be named as plaintiff/defendant whereas order 27 Rule 2 provides for person authorised to act for Government in respect of judicial proceedings.

In present case DFO Thatta, was not the person authorised to act for province of Sindh in the judicial proceedings. Therefore, the learned Appellate Court rightly held that the appeal was not maintainable under the law.

No doubt the province of Sindh has filed this revision together with DFO Thatta and others but the position about the basic legal defects in the appeal and justification for dismissal thereof remains unchanged. Therefore, the judgment of the appellate Court assailed through Revision Application does not suffer from any jurisdictional or other legal defects warranting interference in revisional jurisdiction.

Above are the reasons for short order whereby the R.A. was dismissed on 9.4.2003.

JUDGE

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