

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

HCA No. 19 of 2023

Present:

Nadeem Akhtar, J
and Yousuf Ali Sayeed, J

Muhammad Khalid Ali Khan-----Appellant

Versus

Najam Ahmed and others-----Respondents

03.10.2023.

Appellant Muhammad Khalid Ali Khan is present in person.
Mr. Ali Azad Saleem, Advocate for Respondent No.1.
Mr. Naeem Akhtar Talpur, AAG, Sindh.

YOUSUF ALI SAYEED, J. - The Appellant stands aggrieved by the rejection of the Plaint in Suit No.1717/2019 filed by him before this Court on the Original Side, hence the captioned Appeal impugning the Order dated 08.11.2022 made by the learned Single Judge in that regard.

2. A perusal of the impugned order reflects that the Suit was found by the learned Single Judge to be barred by virtue of earlier proceedings where a declaration of title had been made in favour of the Defendant No.1 in respect of the very immovable property that formed the corpus of the aforementioned Suit. Furthermore, another suit had earlier been filed by the Appellant along similar lines and been unconditionally withdrawn. The relevant excerpt from the Order made by the learned Single Judge reflecting the reasons that prevailed for rejection reads as follows:-

“In the above referred Suit No.37 of 2011 [filed by Defendant No.1], the Court has decreed the Suit by declaring the present Defendant No.1 as lawful owner of the Suit Property purchased through a registered Sale Deed of 04.03.1989 and **present Plaintiff as a trespasser**, who was directed to handover the possession of the Suit Property to Defendant No.1, apart from paying the mesne profit. Once the substantial issues of the present **Lis, inter alia**, seeking declaration of the ownership [for the Suit Property] in favour of present Plaintiff and cancellation of documents including the Sale Deed dated 04.03.1989, which were directly and substantially the subject matter of earlier Suit [**ibid**] instituted by present Defendant No.1, have been determined/decided by the Court, the same cannot be interfered with in the present **Lis**. Present **Suit** is barred by Section 11 of CPC and the instant proceeding is nothing but an attempt to dilute the above Judgment and Decree in a collateral proceeding. It is an established rule that a decision of an Authority or Court having jurisdiction to decide the matter, cannot be circumvented in a collateral proceeding, but is only challengeable under the hierarchy mentioned in the relevant statute. The above principle communicated by the Courts has the force of law; thus, present Suit is barred by the above principle and the law.”

More so, the earlier withdrawal of the Suit No.Nil of 2018, without permission to file a fresh case, will also bar this Lis and present proceeding is also hit by Order XXIII, Sub-rule 3 of CPC, because in the earlier Suit and the present Lis, the Plaintiff has sought declaration about his ownership rights, which are already decided against him in the Suit filed by present Defendant No.1 (supra), besides, in both Suits (earlier one, Nil of 2018 and present Lis) cancellation of same Sale Deed dated 04.03.1989, Lease Deed of 26.12.1988 and General Power of Attorney dated 19.02.1989, are sought; and for the same reliefs the above Suit No. Nil of 2018 was filed and later withdrawn but without the permission of the Court to file a fresh Lis.”

3. We too have examined the judgment rendered by the learned IInd Senior Civil Judge, Malir, Karachi in Suit No.37/2011 as well as the Plaint in Suit No. Nil/2018 so as to satisfy ourselves that the immovable property and parties involved in those matters are the same as Suit No.1717/2019, and that the prayers made in Suit No. Nil/2018 were also essentially along same lines as those in the Suit No.1717/2019.

4. That being so, we see no error or infirmity in the impugned Order. Hence, we hereby dismiss the Appeal, along with the pending miscellaneous applications.

JUDGE

JUDGE

MUBASHIR