

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Ms. Sana Akram Minhas

High Court Appeal No. 39 of 2024

Province of Sindh & others

Versus

Muhammad Faisal & others

Date of Hearing: 22.05.2024

Appellants: Through Mr. Sandeep Malani, Assistant Advocate General.

Respondents No.1 to 8: Through Mr. Ahmed Ali Hussain Advocate.

Respondents No.2: Through Mr. Zaheer-ul-Hassan Minhas Advocate

Applicant/Intervener: Through Mr. Asadullah Memon Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Impugned in this High Court Appeal is an order passed on 15.11.2023 in a suit filed for declaration, permanent and mandatory injunction in respect of 126 Acres of land in NC-309, Deh Joreji, Bin Qasim Town, Karachi, in respect whereof, the suit was decreed, without trial.

2. We have heard learned counsel appearing for the parties and perused material available on record.

3. Firstly, the title of the suit reflects that subject suit, out of which this appeal has arisen, was not even registered and objections to such effect were not decided by the learned Judge while passing/awarding decree to plaintiffs. The office objections were fixed for hearing at Sr. No.6 as referred in the order sheet and flagged as "A" when the impugned order was passed.

4. A long disputed case history is disclosed in the impugned order which is not relevant at all as we are faced with a consequential legal question.

5. The conclusion in paragraphs 5 and 6 of the impugned order is based on alleged admission; there is no such admission which could have allowed the learned Single Judge to have decreed the suit in terms of Order XII Rule 6 CPC. There was/is no admission within the frame of Order XII Rule 6 CPC, yet consent was “pictured” in the order, which consent is seriously denied by Mr. Sandeep, Assistant Advocate General. In applying order XII Rule 6 CPC affidavits must be seen within the frame of law and oral pictured consent should not be showcased for allowing a decree to be passed. It seems to be a contentious matter involving 126 Acres of land which originally was for 30 years lease having been expired and some documents (pertaining to its conversion for 99 years), being seriously contested by parties, were made basis of such conclusion.

6. Impugned order also emphasized on Order X and XV read with Order XII Rule 6 CPC for an earlier disposal but its applicability is not demonstrated in the order. Effects of such provision could only be seen/applied if such a situation is available for their applicability, which is missing here. If the parties are not at issue, it only shows that there is no cause to litigate and their presence before Court is not justified, yet it was decreed.

7. It is also pertinent to mention that the learned Single Judge has relied upon the provisions of Order X and XV of the CPC to the effect that by invoking these provisions dispensation of justice will be expeditious. We are afraid that the prerequisites to apply these provisions of law is the pleadings of the parties, particularly those of the defendants (in the suit), which had not come on record when the impugned order was passed. Even the case law¹ on the basis of which impugned order is passed talks about a statement and clauses (a) and (b) thereof. No such material is available in the instant case.

¹ Directorate of Small Industries, Govt. of Baluchistan v. Civil Aviation Authority (1993 MLD 1836)

8. So also no written statement appears to have been filed by any of the defendants in the suit and hence question of examination of parties by the Court in terms of Order X does not arise. Parties seem to be at issue on facts and law. Indeed, it appears to be a dispute between the government and the private parties/plaintiffs and in terms of paragraph 4 of the impugned order learned Assistant Advocate General has categorically disputed the claim of the plaintiffs/respondents over the land in question during course of his arguments by stating that the regularization was not effected in the record of rights and in the record of rights the status of the land is shown as cancelled. How did respondents (plaintiffs in the suit) managed to get their 30 years lease regularized for 99 years is a triable issue.

9. Even if we presume the impugned order to be a consent order/decree, while passing such consent decree it is to be carefully seen if the relief granted is within the frame of the suit, particularly when the land originally belongs to the government and there is every possibility of collusive proceedings in connivance with the government functionaries/officials passing such oral instructions, which aspect has not been considered in the instant matter. Whereas, learned Assistant Advocate General during the course of his arguments has categorically stated, as is mentioned in paragraph 4 of the impugned order, that the land is not yet regularized and its status in their record is shown to have been cancelled.

10. In the above circumstances, we do not approve such hasty and undetermined questions for the conclusion drawn which may have an element of hurried burial. Consequently, the appeal is allowed; impugned order is set aside and the case is remanded back for proceedings in accordance with law.

Dated:

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