

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 37 of 2018

(Muhammad Ali & others v. Province of Sindh & others)

Date of hearing : 16.09.2024

Date of decision : 16.09.2024

Mr. Sikander Ali Junejo, Advocate for the Applicants
Mr. Muhammad Ali Ansari, Advocate for private respondents
Mr. Ghulam Abbas Kuber, Assistant Advocate General Sindh

J U D G M E N T

Zulfiqar Ahmad Khan, J. – This Civil Revision Application is preferred against the concurrent findings of the Courts below, where in fact as per learned counsel, the applicants, who are the legal-heirs of Muhammad Usman filed a Civil Suit No.140 of 2015, against the legal-heirs of Muhammad Shahban, alleging that the plaintiffs have inherited the property bearing No.B-1658 RH T-1426 measuring 130 square yard situated in Munshi Mohalla, Khairpur, and they sought declaration and possession of the suit property, where the defendants/respondents filed an application under Order VII Rule 11 CPC, stating that one of the legal-heirs of Muhammad Shahban namely, Muhammad Siddique had earlier filed a Suit No.18 of 2008 for declaration and permanent injunction which Suit was granted in latter's favour, therefore, the matter attracted the principle of *Res judicata* on the basis of which the trial Court passed order dated 28.02.2017 holding that the matter at hand is the same, between the same parties which has already been decided in Civil Suit No.18 of 2008 vide judgment dated 22.08.2008, hence, the plaint was rejected. Against which an appeal was filed, which was also met the same fate.

2. Learned counsel for the applicants states that the frame of the Suit filed by Muhammad Siddiqui bearing No.18 of 2008 was different as

compared to that of the Suit No.140 of 2015 filed by legal-heirs of late Muhammad Usman, as in the earlier Suit No.18 of 2008 one of the legal-heirs only prayed that he would be given the permission to demolish the house as he was intending to reconstruct it, and a statement was filed by the Advocate of Muhammad Usman family that they will not dispossess the plaintiff without due course of law, whereafter the Suit was decreed Ex-parte. Against which though an Appeal was filed, which was dismissed. Be that as it may, Counsel submits that neither the Suit was between the same parties as in earlier Suit only one of the legal-heirs of Muhammad Shahban was there nor frame of the Suit was the same, as well as, neither the prayers were identical and the earlier Suit was only allowed upon an undertaking given by a Counsel that the defendants will dispossess Muhammad Shahban in accordance with the law, and he was permitted to demolish the property. The issue posed to the latter Suit No.140 of 2015 was with regard to the title of legal-heirs of late Muhammad Usman who believed that they have inherited the property from their father which property was duly registered in his name, hence the latter Court could not have rejected the plaint on the application made under Order VII Rule 11 CPC by placing reliance on the judgment passed in Suit No.18 of 2008.

3. Learned counsel for the private respondents states that there was another Suit between the parties being Civil Suit No.187 of 1985, which was not considered by the trial Court, while granting the application under Order VII Rule 11 CPC.

4. Learned AAG Sindh submits that matter should have been decided on merits by the trial Court, hence, states that the matter may be remanded to the trial Court for decision on merits.

5. In the circumstances at hand, in fact, there is a dispute in respect of the subject property between the legal-heirs of late Muhammad Usman

and legal-heirs of Muhammad Shahban and both sides have filed Suits, however, the first Suit No.187 of 1985 filed by Muhammad Shahban was only disposed of vide order dated 09.04.1987 upon an undertaking given by Muhammad Usman (his brother) himself that he will not dispossess plaintiff Muhammad Shahban except in due course of law and the Suit in fact was dismissed. Not only so, the subject matter was not part of the application made under Order VII Rule 11 CPC, as the order passed on VII Rule 11 CPC clearly reflects that the applicant's Suit No.140 of 2015 was rejected relying on the judgment passed in Suit No.18 of 2008 and the order passed in Suit No.187 of 1985 had no standings. It is also evident not only parties are different between both the subsequent Suits to the extent of Muhammad Siddique being the only plaintiff in Civil Suit No. 18 of 2008 and the issues posed by Suit No.18 of 2008 and Suit No.140 of 2015 are totally different, and in fact Court may have framed an issue as to the maintainability of the Suit and after considering the objections raised and the evidences could have permitted to be led a detailed judgment on merits clearing the dispute as to the title of the property could have been passed. Hence, the rejection of plaint under Order VII Rule 11 CPC was not sustainable in the given circumstances. I thus allow this Civil Revision Application and set-aside the impugned orders passed both the Courts below and remand the matter back to the trial Court to reframe the issues including the issue as to the maintainability of the Suit and after having recorded the evidence pass a speaking judgment purely on merits preferably within four months.

Judge