

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 24 of 2021

(Muhammad Naeem & others v. Federation of Pakistan & others)

Date of hearing : 19.08.2024

Date of decision : 19.08.2024

Mr. Shafqat Rahim Rajput, Advocate for applicants.

Mr. Ghulam Abbas Akhtar, Advocate for respondents No.3 & 4 / Pakistan Railways.

Mr. Ghulam Murtaza Korai, Advocate for respondent No.12 / PTCL.

Mr. Muhammad Aslam Jatui, Assistant Attorney General.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

.....

J U D G M E N T

Zulfiqar Ahmad Khan, J. – Through this civil revision application, the applicants are challenging the judgment and decree dated 04.11.2020, passed by learned 2nd Additional District Judge / Civil Model Appellate Court, Sukkur in Civil Appeal No.112 of 2019, which upheld the order dated 25.09.2019, passed by learned 1st Senior Civil Judge, Sukkur, in F.C. Suit No.63 of 2017, whereby applicants' plaint has been rejected under Order VII Rule 11, CPC.

2. The applicants, claiming to be in possession of the Suit property, filed a Suit for declaration, cancellation, mandatory and permanent injunction, praying as under:

(a) *To declare that the suit properties bearing C.S No.C-613 measuring 09-0-2-7 acres/yards and C.S No.C-616, measuring 37070-2 Sq. Yards, known as Freek Hill Colony Kumbhar Para Sukkur, belongs the Sukkur Municipal Corporation in the light of notification dt: 29-September-1987 and other notification which has been annexed with the plaint and also joint inspection report dt: 10.06.1990, the suit properties have been declared as Katcha Abadi by the all defendants.*

(b) *To cancel and deliver-up the lease deed dt: 17.02.2012, M.F Roll No.U-332/7302, dt: 12.05.2014, as the same is result of fraud,*

because in the light of the letter dt: 08.03.1997 annexed as annexure “B” with the plaint, the defendant No.9 and 10 have transferred the suit properties in favour of the defendant No.1 and subsequently the defendant No.1 had transferred the suit properties in favour of the defendant No.6 and said properties have been declared as Kachi Abadi in presence of the such letters the defendant No.9 and 10 were not owners of the properties to lease out the suit properties to anyone, hence the said lease deed is liable to be deliver-up, then cancel by this Honourable Court, as the same is result of fraud and forgery.

- (c) To declare that the defendant No.12 has no legal and lawful right over the suit properties bearing C.S No.C-613 measuring 09-0-2-7 acres/yards and C.S No.616, measuring 37070-2 Sq. Yards, known as Freek Hill Colony Kumbhar Para Sukkur, and the act of the defendant No.12 is illegal and unlawfully, ab initio, and without any legal force, because the lease deed dt: 17.02.2012 is result of fraud.*
- (d) To direct the defendants No.5 to 8 to lease out the aforesaid properties for the 99 years in favour of the plaintiffs according to their possession over the suit properties without any delay in the light of letter dt: 19.07.2011 and also other letter which have been annexed with the plaint and the defendant No.5 to 8 also lease out the other properties and it also be declare that the plaintiff are legally and lawful occupation and possession of suit properties and they are entitled to lease out the property as per their possession according to Martial Law Order No.183, as the defendant No.6 issued many letters in favour of the plaintiff regarding Haq-e-Milqiat.*
- (e) To grant mandatory and permanent injunction by restraining the defendants either themselves or through their servants, subordinates, agents or any other agency from dispossessing the plaintiffs from the properties bearing C.S No.C-613 measuring 09-00 acres and C.S No.C-616, measuring 37070-2 Sq. Yards, known as Freek Hill Colony Kumbhar Para Sukkur, till disposal of the instant suit.*
- (f) To direct the defendant No.2 to 14 to produce the original relevant documents in respect the properties bearing C.S No.C-613 measuring 09-00 acres and C.S No.C-616, measuring 37070-2 Sq. Yards, known as Freek Hill Colony Kumbhar Para Sukkur, before this Honourable Court for resolving the controversy of the case.*

(g) *To grant any other relief which this Honourable Court may deem fit and proper under the facts and circumstances.*

3. Though written statements were filed by respondents No.3 & 4 (Pakistan Railways), 9 & 10 (Military Lands / Estate) as well as respondent No.12 (PTCL), but in addition, respondent No.12 also filed an application under Order VII Rule 11, CPC, which was allowed by the learned trial Court vide order dated 25.09.2019 and the applicants' plaint was rejected. Being aggrieved, the applicants filed a civil appeal, which too was dismissed by the learned appellate Court vide judgment and decree dated 04.11.2020 maintaining the order of the learned trial Court, which have been assailed in the instant civil revision application.

4. It appears that the applicants / plaintiffs are not seeking declaration of ownership of Suit property in their favour, but in fact in favour of Sukkur Municipal Corporation, and further that the same is a Katchi Abadi and may be leased out to the applicants / plaintiffs for 99 years as they are in its possession since long. The applicants / plaintiffs' further prayer is with regard to cancellation of a lease deed executed between Military Estates Officer and PTCL in the year 2012, as they claim it to be fraudulent.

5. Respondents-Pakistan Railways' assertion is that the entire Suit land is the property of Pakistan Railways and the applicants / plaintiffs are only encroachers, who have raised katcha / pakka structures on the same. The said land cannot be regularized as a Katchi Abadi without obtaining "No Objection Certificate" from the Railway Department, which has never been issued.

6. The claim of respondents No.9 & 10 is that as per revenue record, the Suit property belongs to Military Department and a piece of land measuring (9-32) acres of Survey No.613 as well as whole Survey No.616 is in possession of Pakistan Railways since 1930 under a Government Order. However, an area measuring (2-88) acres of Survey No.613 has

been leased out in favour of PTCL Department in the light of directions of Government of Pakistan, Military of Defence, Rawalpindi issued vide letter dated 29.08.2011, and the remaining area of Survey No.613 as well as Survey No.616 have been encroached by the applicants / plaintiffs and other general public by constructing katcha / pakka houses. Moreover, the applicants / plaintiffs are claiming ownership on the basis of Haq-e-Milqiyat and utility bills, which do not confer the same right upon the applicants / plaintiffs. In fact, Director General, Sindh Katchi Abadi wrote a letter to Director General, Military Lands for obtaining no objection certificate in respect of Suit property for its regularization as Katchi Abadi, but in reply, the Director General, Military Lands obtained detailed comments / report, and the finalization remained incomplete.

7. Respondent No.12's case is that some of the portion of Survey No.613 was leased out to PTCL Department for 99 years, upon which a PTCL Colony consisted upon 29 quarters, which were allotted to their employees, and a dispensary was established, whereas, remaining area allotted to PTCL Department has been encroached by the applicants / plaintiffs, and some of them are retired employees of PTCL Department.

8. Heard learned Counsel for the parties and perused the record. The moot points for any revision filed are (a), (b) and (c) under Section 115 of Code of Civil Procedure, 1908, which are as follows:

- (a) *to have exercised a jurisdiction not vested in it by law, or*
- (b) *to have failed to exercise a jurisdiction so vested, or*
- (c) *to have acted in the exercise of its jurisdiction illegally or with material irregularity.*

9. It is evident that the applicants / plaintiffs, private individuals, are seeking a declaration of ownership on behalf of Sukkur Municipal Corporation, which has not come before the Court. It is settled law that an individual, without having a legal authority to act on behalf of an entity,

cannot initiate legal proceedings related to that entity's interests. Here in this case, the applicants / plaintiffs have failed to demonstrate that they have the authority to act on behalf of Sukkur Municipal Corporation seeking declaration of ownership of the Suit property. A single Judge of the High Court (AJ&K) in the case of Mst. Khalida v. Raja Muhammad Khurshid Khan (2008 CLC 1570) held that when it is established that the plaintiff has no legal right regarding disputed property then he has no *locus standi* to file a suit. The plaintiff can seek declaration only if he is entitled to some legal character or any right as to any property, otherwise, the Court will refuse to give any declaration under Section 42 of the Specific Relief Act.

10. It is stated by the applicants / plaintiffs that in the year 1950-51 their forefathers came into possession of the Suit property, and on the promise of various governments that the same will be allotted to them on very low rates to be recovered through easy installments, their forefathers invested a huge amount for construction of their houses; hence, they cannot be dispossessed, but the fact is that most of the applicants are either themselves or legal heirs of employees of defunct T&T or present PTCL, who were given official quarters for their residence. The basic document establishing their possession is Haq-e-Milqiyat issued under Martial Law Administrator Zone-C's order No. MLO 183 dated 13th October 1982, which itself is mentioning that "*your residence / area is situated at the Military Land, and as and when the Municipal Corporation gets the same land from the Federal Government, you will be issued final allotment order.*" Since there is no proof available that such process has been completed, continuous possession or use of a property is not sufficient to establish ownership without a title document. In the case of Ghulam Muhammad v. Province of Sindh through Secretary, Revenue and 6 others (2008 CLC 960), it was held as follows:

“The plaintiff also admitted in his plaint that the land falls within the ambit of Katchi Abadi and for the purpose of regularization of the Katchi Abadi, the procedure envisaged in Sindh Katchi Abadi Act, 1987 and The Sindh Katchi Abadis Authority (Regularisation, Improvement and Development) Regulations, 1993 are to be followed by the Katchi Abadis Authorities and without following the procedure contained in the Katchi Abadi Act, a Katchi Abadi could not be legally regularized by the Government. The prayer made by the plaintiff in his plaint seems to be completely against the section 42 of the Specific Relief Act and without any lawful status or character over the property in dispute. His claim, therefore, could not be acceded or decreed.

The contents of the plaint also show that the suit has been filed in the capacity of representative suit but the requirements of representative suit as envisaged under Order I, rule 8, C.P.C. have also not been fulfilled by the plaintiff which seems to be an inherent defect in the suit.

For all the aforesaid reasons and circumstances, I find that the suit filed by the plaintiff is not maintainable and the same is hereby rejected under Order VII, rule 11, C.P.C. with no order as to costs.”

11. The other relied documents (utility bills, such as electricity, water or gas bills) might be useful to demonstrate that a person is residing at or using the property, but these bills also do not establish legal right to claim ownership. In the case of Liaqat Ali through L.Rs. v. Khalid Mehmood and others (2013 MLD 1818), the Court held as under:

“7. ----- Merely on the basis of utility bills and receipts regarding payment of taxes one cannot be termed as owner of the said property. Reliance is placed on case reported as Muhammad Zaman v. Muhammad Jamil and 4 others (1992 CLC 873) wherein it has been laid down as under:--

“It appears that both the lower Courts had taken documents relating to the Excise and Taxation Survey, electric connection and the sale agreement to be the proof of ownership of the structure. The documents relating to the Excise and Taxation Department are at best the documents that can entitle the department to recover their taxes from occupants but can never be taken to be the evidence of ownership of a premises.”

In case reported as Muhammad Ismail v. Maqbool Ahmad and 8 others (2001 CLC 252) it has been observed that “The installation of electricity connection does not confer any right on the petitioner. Electricity is not provided to the owners only but any occupant can get the connection after fulfilling the formalities required by WAPDA”.”

12. The applicants / plaintiffs are seeking cancellation of a lease deed, which was executed between Military Estates Officer and PTCL in the year 2012, claiming that the same is the result of a fraud, and such claim is made in the year 2017 by filing the present Suit. For seeking such relief, the limitation period is “three years” as provided under Article 91 of the Limitation Act, 1908. Moreover, the applicants / plaintiffs have no concern with the alleged lease deed as it has been executed between two government departments. In the case of Anwar Khan and others v. Fozia Khan and another (2023 CLC 1039), this Court held as under:

“9. ----- The relief claimed in the suit for cancellation of sale agreement clearly comes within the ambit and scope of Article 91 of the Limitation Act, hence the present suit is time barred under the said Article and not maintainable. Similar view was held in the case of Ilyas Ahmed v. Muhammad Munir and others (PLD 2012 Sindh 92). It is considered pertinent to reproduce the relevant excerpt of the dictum which is delineated hereunder:-

“(d) Specific Relief Act (I of 1877)

S. 39 Limitation Act (X of 1908). Art. 91 Cancellation of document Limitation. Plaintiff came to know about conveyance deed, sought to be cancelled, in the month of June/July, 2005 and suit for cancellation was filed in the month of May, 2009. Suit was filed beyond the period of three years, as for the purposes of cancellation of documents three years of limitation was provided under Art. 91 of Limitation Act, 1908 and time began to run when fact entitling plaintiff to have the instrument cancelled or set aside became known to him. Suit was time barred in circumstances.””

13. In view of above discussion, the Courts below were justified in rejecting the plaint, and such orders / judgments do not warrant any

interference; hence, this revision application is misconceived and is hereby **dismissed** along with pending application. Above are the reasons of my short order dated 19.08.2024.

J U D G E

Abdul Basit