

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1930 of 2022

Date	Order with signature of Judge(s)
------	----------------------------------

1. For hearing of CMA No.19050/2022.
2. For hearing of CMA No.12534/2023.
3. For ex-parte orders against defendants No.2 & 3.

20.02.2024

Syed Muhammad Kazim, advocate for the plaintiffs.
Mr. Aamir Raza, advocate for the defendant No.1.
Ms. Saima Mangi, Assistant Advocate General Sindh.
Ms. Rehmat-un-Nisa, advocate for the KDA.

2. This order determines CMA 12534/2023, being application under Order VII Rule 10 CPC for return of plaint. Learned counsel for the defendant 1 submits that the property is *admittedly* situated outside the Districts of Karachi, hence, this court has no jurisdiction.

Learned counsel refers to paragraph 18 of the plaint and submits that it is *prima facie* perjury, as it is sworn on oath that territorial jurisdiction vests with this court. Statement dated 22.11.2023 is shown, which includes correspondence of the Sehwan Development Authority, newspaper clippings and copies of sale deed to demonstrate that the property is located in District Jamshoro. Learned counsel also draws attention to the title of the suit to demonstrate that the Sehwan Development Authority has been impleaded as a defendant herein, therefore, recognizing the domain and control of the said authority over the suit property.

Learned AAG also submits that the property is located outside the territorial remit of this court.

Learned counsel for the plaintiffs does not deny the authenticity / veracity of the documentation annexed to the Statement referred to supra. On the contrary, he unequivocally *admits* that the property is located in District Jamshoro and not within the Districts of Karachi. However, he submits that this court ought to entertain the suit as some defendants reside in Karachi and an agreement was executed at Karachi.

Heard and perused. It is an admitted fact that the suit property is situated in District Jamshoro.

This court has earlier¹ maintained that whenever any suit is filed in this High Court and is found that it does not relate to any of the Districts of Karachi then the same has to be returned back to the plaintiff for its presentation before a Court of appropriate jurisdiction under Order VII rule 10 of the Civil Procedure Code. The aforementioned judgment was maintained by a Division Bench of this Court and it was held² that the provisions of Order VII Rule 10 are mandatory in nature and adjudication by a court without jurisdiction is *coram non iudice* and when any court lacks pecuniary or territorial jurisdiction, the proper course is to return the

¹ *Muhammad Naveed Aslam & Others vs. Aisha Siddiqui & Others*, reported as PLD 2010 Karachi 261.

² *Muhammad Naveed Aslam & Others vs. Aisha Siddiqui & Others*, reported as 2011 CLC 1176.

plaint for presentation to the proper court and such courts cannot pass any judicial order except that of returning the plaint.

In addition to *Naveed Aslam*³, a subsequent Division Bench of this Court had also maintained the said ratio in *Shamshad Begum*⁴.

The *Landmark judgment*⁵ is a comprehensive treatise on the issue of territorial jurisdiction of the original civil side of this Court and *Muhammad Junaid Ghaffar J* undertook an extensive appraisal of the evolution of the law in such regard in chronological order. In *pari materia* circumstances, i.e. land situated in Jamshoro and suit having been instituted before this Court, the plaint had been returned in *Fateh Textiles*⁶. Similar view was also taken by this Court in *Deluxe Interiors*⁷.

It was contended that since some documentation, ancillary to the issue of rights in the suit property, was executed at Karachi and / or addressed to recipients at Karachi, hence, the Courts at Karachi had jurisdiction to entertain the present suit. This argument is not tenable in view of the findings of the honorable Supreme Court in the case of *Haji Abdul Malik*⁸, wherein it was maintained that if a suit involves a dispute relating to rights in an immovable property, such a suit shall be maintainable at the place where the property is situated.

In view of the foregoing and with the specific reference to the binding ratio of the judgments referred supra, it is observed that this court has no territorial jurisdiction to entertain or adjudicate this suit, therefore, in exercise of the powers conferred by the mandatory provisions of Order VII Rule 10 of CPC, the plaint in the subject suit is hereby returned.

Judge

Khuhro/PA

³ *Muhammad Naveed Aslam & Others vs. Aisha Siddiqui & Others*, reported as 2011 CLC 1176.

⁴ *Mrs. Shamshad Begum & Another vs. Syed Iftikhar Hussain Jafari & Others* (unreported decision of a Division Bench of this Court, dated 17.08.2017, in HCA 13 of 2014).

⁵ Per *Muhammad Junaid Ghaffar J* in *Land Mark Associates vs. Sindh Industrial Trading Estate Limited and Another* (Judgment dated 09-01-2018 in *Suit No. 247 of 2008*).

⁶ *FGBC and Another vs. DG Mines & Mineral Development Government of Sindh and Others* reported as 2019 CLC 267.

⁷ *Deluxe Interiors vs. The Sindh Industrial Trading and Another* reported as 2018 YLR 2091.

⁸ *Haji Abdul Malik & 10 Others vs. Muhammad Anwar Khan & 26 Others* reported as 2003 SCMR 990.