

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial.

High Court Appeal No.111 of 2019

M/s. Pakistan State Oil Co. Ltd.
Versus
M/s. Ahmed Brothers & another
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Date of hearing: 15.02.2024

M/s. Asim Iqbal, Farmanullah Khan and Syeda Maryam, Advocates for the Appellant.

Mr. Saadat Yar Khan, Advocate for Respondent No.1.

Mr. Neel Keshav, Advocate for Respondent No.2.
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Appellant M/s. Pakistan State Oil hereinafter referred as PSO.

Respondent No.1 M/s Ahmed Brothers hereinafter referred as M/s. AB.

Respondent No.2 Khaliq Raza Khan hereinafter referred as KRK.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- M/s AB/Respondent No.1 filed a suit for declaration, cancellation of document, possession and mesne profit. Appellant PSO defended the suit whereas Respondent No.2 KRK supported the plaintiff M/s. AB. PSO in the suit was the occupant of the land inducted as Tenant/Sub-lessee by Respondent No.2 KRK originally.

2. Brief facts to understand the controversy are that PWD, being a lessor, executed a lease in favour of KRK for a fixed period with understanding that it could also be sub-leased. The lessee KRK then executed a further indenture of sub-lease in favour of PSO, who was handed over possession to operate the patrol pump thereon. After the expiry of the original lease between PWD and KRK, AB, which claimed to be a registered partnership firm, then got the lease executed in their favour through PWD. Partners of M/s AB (a registered firm) are

the sons of original lessee. It is their (AB) case in the suit that since the original lessee KRK had only a limited period of lease, he could not have executed a sub-lease in favour of PSO for an extended period that is beyond the period of his own lease and hence instead of Rent Case under Sindh Rented Premises Ordinance, 1979 [SRPO, 1979], filed suit for possession, treating them as trespasser.

3. Notices and summons were issued. PSO filed its written statement wherein they have denied that their status could be adjudged as that of a trespasser since they become a statutory tenant after the conclusion and/or expiry of lease between PWD and KRK.

4. In view of the pleadings, an application under Chapter-III Rule 22(3) and (7) of Sindh Chief Court Rules (O.S) read with Order-XV and Section-151 CPC was filed that since the dispute does not require resolution of factual controversy (according to AB/plaintiff), and was based on documents, it may be considered as a "short cause". The said application was opposed by a counter affidavit which was filed by the authorized representative of PSO. The counter affidavit was also filed by KRK who conceded to the application, as apparently being in relation with AB. The AB has also filed an application under Order-XII Rule-6 CPC for a decree on admission, which was also resisted by PSO in terms of the counter affidavit. The two applications were dismissed on 30.10.2017 with reasons that it was not a case to be treated as a short cause and the adjudication of issues requires evidence. The learned single Judge observed that it is not one of those cases which is filed depending on the point of law alone or where a decision could be made without evidence.

5. The parties then proposed the issues and on 25.04.2018 following issues were framed:-

1. *Whether the suit for possession of suit property against defendant No.1, a tenant is maintainable?*
2. *Whether in the plaintiff Firm namely M/s. Ahmed Brothers, all the partners are real brothers and defendant No.2 is real father of all the partners? If yes, its effect.*
3. *Whether defendant No.2 has realized the entire rent for the period of 15 years from 18.08.2003 to 17.08.2018, if yes, its effect.*
4. *Whether by virtue of Lease deed dated 30.09.2009 the Plaintiffs' Firm is the owner of the suit property?*
5. *Whether the tenant can be ejected by new owners, who acquired the property on 3.9.2009 without application of Rent Laws?*
6. *Whether the plaintiffs are entitled to mense profit in terms of para-13 of the plaint? and damages as claimed in terms of prayer clause-6?*
7. *Whether the plaintiff and his other two brothers, and father executed partnership deed dated 07.05.2009?*
8. *Whether the defendant No.2 real father of the partner of plaintiff Firm has informed defendant No.1 about cancellation of lease given by PPWD? If yes, its effect.*
9. *What should the decree be?*

6. List of witnesses and list of documents were filed by the AB and PSO. There is however no process of admission and denial in terms of Order-XI Rule-12 CPC. Despite dismissal of the two applications referred above, the plaintiff filed another application under Order-XIV Rule-1 and 2 CPC for reframing fresh issues. The application was opposed through counter affidavit of PSO, however, on 12.11.2018, in contradiction of the earlier findings, learned single Judge observed that since it is a case where only possession was sought on the basis of documents attached with their respective pleadings, therefore, only two issues are required to be framed and it is disclosed in the order that the counsel have agreed that there being no factual controversy, the matter be decided on the basis of hearing of the reframed issues. Appellant's counsel has seriously denied the agreement (consent) as

noted by the learned Judge for disposal of suit as a short cause, in view of earlier order. The reframed issues are as under:-

1. *Whether this court has jurisdiction in the matter in presence of the exclusive jurisdiction as provided under Sindh Rented Premises Ordinance, 1979?*

2. *To what relief the plaintiff is entitled?*

7. The matter was then fixed for final arguments.

8. On the basis of these facts and circumstances, we have heard learned counsel for the parties and perused the material available on record.

9. To our surprise, the earlier order that is 30.10.2017, whereby the two applications, including one filed for declaring the suit as a short cause were dismissed, were ignored by the learned single Judge and reviewed it on its own. The application was filed for reframing of issues only whereas the status of the case as not a short cause was already decided. Earlier order suggests that it is not a short cause or a case which require no evidence. It is disclosed to have been a consent order but the counsel appearing for the PSO/appellant has vehemently denied in view of the facts that not only the earlier application was resisted but an order in this regard was also passed that it was/is not a controversy which could have been decided on the basis of legal issues alone.

10. Be that as it may, in respect of the suit which was for cancellation of documents, which in fact was a sub-lease in favour of PSO, for recovery of possession/mesne profit and compensation/damages, the issues which were earlier framed were recalled, which to our understanding are material and goes to the root of the case and would require evidence. Learned single Judge in fact framed only one issue that whether it had jurisdiction in presence of a jurisdiction

provided under the SRPO, 1979. Without prejudice to above, jurisdiction is one step only, merit is yet to be discovered via evidence if at all M/s AB was entitled, on merit, for possession.

11. Para-10 of the impugned judgment discussed issue No.1 as described above. In para-11 learned single Judge gave its mind that KRK being a lessee of a limited period of five years could not have granted a sub-lease for a period of 15 years. The learned single Judge observed, while assuming the jurisdiction, as under:-

“In the present case it is an admitted position that the ownership of the land is with PWD from how (whom) the defendant No.2 had an earlier lease and by virtue of the said lease defendant No.1 was taken in as a tenant. The present plaintiff has also acquired the same right but the same are independent to the person having the same status earlier. This matter of the earlier lease being of limited period and the defendant No.2 not having any right to create any right beyond the said period naturally resulting in a negative conclusion on the basis of the basic legal doctrine of “no one qualified to give a better title to what is holding” need not be deliberated as the same has also expired and as such is of no consequential value.”

12. We do not agree with this reasoning under the circumstances of the case. First of all if the original lease is of a limited period of five years and had it been subleased to PSO for a period of five years, then after its expiry, the sub-lessee would have become the statutory tenant however if the lease has expired earlier or was not shown to the appellant, the status of the sub-lessee would not turn to that of a trespasser automatically. In the normal circumstances, if a lease of 99 years expires and the original lessee does not opt for a renewal or get its renewal for his sons or for any other entity, forgoing his rights as seen in this case, the sub-lessee's status would not turn to a trespasser; the sub-lessee becomes a statutory tenant/lessee of either PWD or to whom such powers would be delegated by PWD in the form of lease/fresh lease. In this case also after expiry of lease,

the lessee did not opt for renewal and got it renewed in favour of a partnership firm and partners are none others but his sons.

13. Since the two sons of the original lessee got the lease renewed, they issued notices of such renewal and change of ownership upon the sub-lessee PSO, perhaps under Section-18 of SRPO, 1979.

14. In our understanding, the appellant's status could not be adjudged to be of a trespasser to bestow jurisdiction to civil court for recovery of possession. If at all a sublease was executed for a period of more than the period of the original lease, then at the most at the conclusion of the lease between PWD and KRK, PSO could at least be treated as a statutory tenant, if not of KRK then of PWD. Once a new lease in favour of two sons of the original lessee as partnership firm was executed as being an entity, the new lessee acting on behalf of PWD will then be treated as new landlord under Section-18 of the SRPO, 1979 stepping into the shoes of their/its predecessor. It would be strange to adjudge a person, who has been admitted to possession as a tenant and after the expiry of the original lease, suddenly be treated as a trespasser.

15. It is no doubt that the plaintiff is entitled to pursue its remedy for possession and/or eviction as permissible under the law but it is the frame of SRPO, 1979 which could adjudge and resolve the dispute between them not in a suit for possession treating the appellant only as a trespasser without any legal justification to seek possession which conditions are separately identified, as required in terms of Section-14 and 15 of the SRPO, 1979.

16. It is claimed in the pleadings that the rent has already been paid in advance to the previous landlord that is KRK, however, since no evidence was recorded, the findings could not be considered as

conclusive insofar as the payment of rent is concerned. The learned single Judge in last para of the impugned judgment surprisingly observed that PSO is liable to pay an amount of rent at the same rate as was paid to the previous lessee that is KRK, yet does not admit to the relationship of statutory tenant or a tenant of a newly assigned lessee of PWD. The learned single Judge observed that the appellant has a right of removing any structure/goods belonging to him. The learned single Judge also adjudge M/s AB, being plaintiff in the suit, as entitled to a money decree against the appellant from the date when they (plaintiff AB) acquired the rights and the said defendant/PSO lost his entitlement. Such decree was along with profit/markup at the banking rate till recovery of the same. This was all done without evidence being recorded and without any process of admission and denial of document to be conducted before Additional Registrar under Order-XI Rule-12 CPC.

17. We could have very conveniently remanded the matter back to the trial court for recording evidence on issues which were earlier framed, however, we are of the view that the parties are since in a relationship of landlord and tenant in terms of above findings, the learned single Judge had no jurisdiction and for a remedy/relief in the suit insofar as possession/eviction is concerned, the parties may exhaust their remedy available to them under SRPO, 1979.

18. In view of the above, the impugned judgment and decree is set aside. For a claim of damages and compensation, it is up to the M/s AB/plaintiff to decide as to whether they would continue to exhaust the remedy of learned single Judge (O.S) for the recovery of damages etc., or would restrict themselves to avail the jurisdiction of Rent

Controller first as far as the eviction of the appellant is concerned, as for the purpose of possession/eviction civil court has no jurisdiction.

19. The instant Appeal is allowed in the above terms along with pending applications.

Dated: -20.02.2024

JUDGE

JUDGE

Ayaz Gul