

IN THE HIGH COURT OF SINDH AT KARACHI

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

High Court Appeal No. 90 of 2024

Basham Baloch & others
Versus
Province of Sindh & others

Date of Hearing: 11.03.2024, 12.03.2024, 14.03.2024,
15.03.2024 and 18.03.2024

Appellants: Through Ms. Rizwana Ismail and Mr. Noor
Muhammad Advocates.

Respondent No.6: Through Mr. Ayan Mustafa Memon Advocate,
assisted by M/s Muhammad Wasey Noor,
Tahoorah Anwer and Tarawish Javaid
Chhattari Advocates.

Province of Sindh/official respondents: Through Mr. Zeeshan Edhi, Addl. A.G. Sindh.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Appellants having no status attached to the land seek a declaration that they may be declared as tenants/Haris of suit land/property measuring 96 Acres of agriculture land situated in Na-Class 376, Deh Pihai (Land), and are inter alia entitled to 99 years lease. While the two limbs of above declaration offends each other, their independent assessment under the relevant law is also inconceivable considering the facts mentioned in the plaint.

2. Through instant appeal, appellants have impugned judgment dated 27.02.2024 passed by learned Single Judge in Suit No.244 of 2023 in terms whereof applications for rejection of plaint (CMA Nos.6423 and 6746 of 2023) filed by respondent No.6 and Province of Sindh were allowed and plaint was rejected.

3. We have heard the learned counsel appearing for the parties as well as Addl. A.G. Sindh and perused the record.

4. The pleadings/plaint is also contradictory in terms of facts narrated therein. The appellants claim ownership of land in paragraph 1 of the plaint followed by claim of allotment of the same land in paragraph 2 and by afflux of time consider themselves as permanent tenants of the government land. In consequence of the above they applied for 99 years lease in respect of the subject land.

5. Admittedly, appellants in plaint do not disclose a lawful cause of action. Facts mentioned in the plaint alone do not constitute a cause unless such cause or actions have infringed the rights and also lead to a substantive relief provided by law. Court cannot shut eyes and keep the suit pending despite beyond comprehension of law. It is this event that when suit does not view its success via law it relied upon, it is said to be forbidden and beyond the frame of relied law and this is one of those.

6. In support of above purported claim the appellants have although filed nothing but yearly permission from Sindh Livestock Department to operate from the land on yearly Patta basis. This yearly patta permission has no nexus or concern with the above claim pictured in the plaint i.e. either of permanent Haris or of ownership. These permissions to operate over the land on yearly basis were also issued up until 1993 only; no such renewal or grant is available since 1994 onwards whereas suit filed in the year 2023.

7. Besides above, record also shows that on numerous occasions the plaintiffs have approached the Court for redressal of their similar grievances such as (i) Suit No.560 of 1998, (ii) Suit No.506 of 2002 and (iii) Suit No.2536 of 2014. Learned Single Judge took cognizance of such litigation and questioned if there was any way for the instant fresh suit likely to be decreed. This proposition may not have an immediate nexus

with the principles enshrined under Order VII Rule 11 CPC but would ultimately sink with such principles. There are/were divergent views for evaluating the mechanics of Section 42 of Specific Relief Act, however, they are now sink with authoritative view formed in the case of Florida Builders¹. Success of plaintiffs' case has to be viewed within frame of statute that plaintiffs have relied upon and if found beyond comprehension it should be nipped in the bud. If a relief claimed is beyond its permissible frame of statute, the situation then targets principles of Order VII Rule 11 CPC for its application. The jurisprudence as developed in the case of Florida Builders, is such that on the pleadings of the plaint it is to be seen whether there is likelihood of any case to succeed and if not it should be nipped in the bud. With this understanding of law, we have again minutely perused the plaint and in particular the prayer clause.

8. The appellants in the suit as plaintiffs claim to be permanent Haris/tenants of 96 Acres of agricultural land of the Government of Sindh. It is the consistent stance of the appellants that their case is covered under Sindh Tenancy Act, 1950. This law was promulgated to regulate the rights and liabilities of agricultural tenants and their landlords in the Province of Sindh. The tenants are described under section 2(2) whereas the landlords under section 2(3) of the ibid Act. The landlords described as Zamindar means a person under whom a tenant holds the land for cultivation or lessee of such land. Appellants were neither granted any permanent tenancy by the owner of land nor have they become permanent tenants by virtue of provisions of Tenancy Act, 1950. The provisions are not applicable to the appellants keeping in view the definition of tenants and the landlord described above and so also Section 4 of ibid Act which clearly stipulates that it is inapplicable to the government land. The Tenancy Act, 1950 does not envisage any

¹ PLD 2012 SC 247 (Haji Abdul Karim v. Florida Builders (Pvt.) Ltd.)

process of acquiring lease for 99 years from the government of Sindh as the land admittedly belong to Board of Revenue.

9. It is with this background that the plaint is to be seen whether for all intent and purposes appellants could succeed within the frame of Tenancy Act and if not then the consequences would follow as encapsulated in Florida Builders judgment. For the purposes of relief claimed in the plaint the plaintiffs actually have no cause of action in respect of the intended relief. Neither frame of the suit nor the law that they relied upon could foresee such relief being granted in consideration of Sindh Tenancy Act, 1950.

10. In order to understand the scope of Order VII Rule 11 CPC Florida Builder's case (Supra) provides a new dimension in relation to litigation which has no roots and shoots. The illustrative judgment, which is applicable to the instant case, described as under:-

12. After considering the ratio decidendi in the above cases, and bearing in mind the importance of Order VII, Rule 11, we think it may be helpful to formulate the guidelines for the interpretation thereof so as to facilitate the task of courts in construing the same.

Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide whether or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision.

Secondly, it is also equally clear, by necessary inference, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written

statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint.”

11. It is not always that scope of Section 42 of Specific Relief Act is seen dependent on a trial, such as above. The legal character that they (appellants) have brought forward through this suit in respect of land and their entitlement and the claimed relief would explicitly show that it is alien to the subject law i.e. Sindh Tenancy Act, 1950. Hence, if the scope of the suit and the relief claimed is beyond comprehension of law then this is nothing but a misuse of process of the Court and should be buried.

12. Although it is not appellants' case but similarly the Colonization and Disposal of Government Lands (Sindh) Act, 1912 does not permit issuance of such leases of 99 years, as restricted in terms of Section 10(2) and 10A of the ibid Act of 1912. The plaintiffs status could at best be of the licensee as they only have permission to cultivate on the yearly basis (as disclosed by them), commonly defined as Yearly Patta, which

too lost its continuity in the year 1994 when it was not extended/renewed².

13. Appellants thus have no right or legal status/character over the suit land in view of above facts and circumstances. There is no value in prolonging the subject suit as the plaintiffs/appellants neither have cause to continue the subject leases nor any inherent legal character attached to the subject of the suit and the consequences ought to have been followed as has been provided by the learned Single Judge while passing impugned judgment, which does not call for any interference. Consequently instant High Court Appeal is dismissed along with pending applications.

Dated:

JUDGE

JUDGE

² PLD 2002 Karachi 83 (Noorani Traders Karachi v. Pakistan Civil Aviation Authority) and PLD 1965 SC 83 (M.A. Naseer v. Chairman Pakistan Eastern Railways)