IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. 333 of 2024

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

[Shamim Ahmed Siddiqui V. Karachi Metropolitan Corporation & others]

Date of hearing	:	11.02.2025
Date of decision	:	20.02.2025
Appellant	:	Through M/s Shahzeb Akhtar Khan and Kawhaja Bilal, Advocates
Respondent No.1	:	Muhammad Mohsin Khan, Advocate
Respondent Nos.3 to 5	:	Mr. Muhammad Hisham Mahar, Assistant Advocate General, Sindh

JUDGMENT

Muhammad Osman Ali Hadi, J: The instant Appeal arises from Order dated 03.09.2024 passed in Suit No.1371 of 2017 (hereinafter as the "**Impugned Order"**) before the learned Single Judge in the Honourable High Court of Sindh at Karachi, whereby the Appellants' Applications (CMA No.1922 of 2018 along with CMA No.8705 of 2017) were dismissed, against which the instant Appeal has been preferred.

2. That the history of litigation between the Parties has a chequered past, the succinct facts of which we hereby summarize as under:

3. A Property bearing Naclass No.118 and 239, measuring (approx.) 3740 square yards, situated in Deh Okewari, Gulshan-e-Iqbal Town, Karachi ("**the Property**"), was initially leased out to one Mr. Muhammad Younis (Respondent No. 2) by the Government of Sindh, through Mukhtiarkar (Revenue) Gulshan-e-Iqbal Town, Karachi, (Respondent No. 4) vide Registered Lease Deed Dated 20.08 1996 for a period of 99 years. After fulfillment of all legal formalities, proprietary rights of the Property were legally transferred to Respondent No. 2.

4. Subsequently, the said Plot was cancelled by the Province of Sindh (Respondent No.3), and additional amount of monies were demanded from allottees of certain plots, which included the Property. Thereafter

Mr. Muhammad Younis deposited the differential amount and a fresh lease (dated 21.10.2005) was issued in his favour. The Appellant purchased the said Plot from Respondent No.2 through Sale Deed Dated 25.01.2007, but did not take possession immediate at such time.

5. When the Appellant went to take physical possession of the Property, he was informed that approximately 22 Plots vide Notification No.02-386-02/SO-1 dated 03-12-2007 (**"the Notification"**) (which included the Property), had been cancelled by the Government of Sindh. The Appellant then filed a petition before the Provincial Ombudsman against the said cancellation, however the matter remained stagnant and no adjudication or hearing was given.

6. The Appellant then approached the Civil Court in Civil Suit No.1006 of 2012 (**"the 1st Suit"**) before VIth Senior Civil Judge at Karachi seeking, *inter alia*, Declaration, Possession and Permanent Injunction against the Respondents, to implement his legal rights in securing possession and ownership of the Property. The Respondents (Defendants in the 1st Suit) appeared in the matter and filed responses, mainly contesting the maintainability of the Appellants' Suit based on various technicalities (as can be seen from excerpts of the proceedings). The Respondents also contended that the Property had stood cancelled vide the Notification dated 03.12.2007. Issues were framed and evidence was recorded, after which the Trial Court heard final arguments and passed Judgment / Decree dated 31.05.2014, declaring the Plaintiff to be lawful owner and entitled to possession of the Property.

7. The Respondents then filed Civil Appeal No.123 of 2014 before the VII District & Sessions Judge Karachi East, in which they never appeared to seriously pursue the matter, and despite repeated notices, their appeal was dismissed vide Order dated 15.08.2015 (page 253 of the file).

8. The Respondent No.1 then filed an application under section 12 (2) Code of Civil Procedure, 1908, which was also dismissed vide Order dated 09.01.2016. Meanwhile, post attaining of Judgment & Decree, the Appellant filed an Execution Application No.11 of 2015 before VIth Senior Civil Judge Karachi, in which proceedings Respondent No.1 filed an application seeking stay of the execution proceedings on the basis they (i.e. Respondent No.1) had filed another appeal being Civil Appeal No. 22 of 2016 which was pending.

Initially, vide interim order dated 02.02.2016, the Honourable Executing Court suspended the execution proceedings due to pendency of the appeal.

9. Eventually, the record before us reflects that vide Order dated 27.02.2016, the said subsequent appeal (i.e. No. 22 of 2016) was also dismissed for non-prosecution.

10. That the Property was handed over to the Appellant (through writ of possession) on 05.04.2017, after which the Executing Court then disposed of the execution proceedings vide order dated 07.04.2017. Another application (under Order 21 Rule 100 read with section 151 C.P.C., 1908) which had also been filed by Respondent No. 1, was also dismissed vide the same order dated 07.04.2017, wherein it was observed the current Respondents (defendants / judgement debtors in the execution proceedings) had not been able to establish any valid grounds for substantiating their application, and had repeatedly remained lethargic throughout the proceedings. The Respondents' application stood dismissed, and contrastingly the Appellants' execution application stood finally disposed of.

11. That despite having Judgment / Decree in their favour, the Appellants contended they were still being (unlawfully) obstructed by Respondent No.1 from possession/usage of the said Property, for which they then filed a Constitution Petition No. D-2499 of 2017 (**"C.P."**) before the High Court of Sindh at Karachi to enforce their fundamental rights in gaining physical rights to their Property. This C.P. was eventually tagged with certain matters pending before the Honourable Supreme Court, where we are informed the matter remains and will seek its own fate. That it is pertinent to mention the aforesaid C.P. is not relevant to the instant matter at hand, but we related the same for purposes of providing a clear narrative of the Appellant's longstanding journey towards his claim of the Property.

12. That on around 23.05.2017, Respondent No.1 filed a Civil Suit No.1371 of 2017 before the Honourable High Court of Sindh at Karachi (**"the said Suit"**) seeking, *inter alia*, Declaration, Cancellation and Permanent Injunction of the Property. A perusal of the Plaint (pg. 39 of the file) *prima facie* shows that the Respondent No.1 has in essence filed a Suit seeking similar / identical relief to previous 1st Suit, i.e. Civil Suit No.1006 of 2012, which had already been decided, and in which Judgment / Decree dated 31.05.2014 was passed.

The Appellant vide such Judgement / Decree was held to be the lawful owner of the Property and possession was granted to him.

13. That the Appellant (being Defendant No. 1 in the said Suit) filed several applications in the said Suit, but CMA No. 1922 of 2018 under the provisions of Order VII Rule 11 Code of Civil Procedure, 1908 (**"the CMA"**), seeking rejection of Plaint on the ground that the matter was *res judicata* and barred under law, remains the one most relevant for purposes of the instant Appeal, and that is the application to which we will be referring.

14. Respondent No.1 (Plaintiff in the said Suit) filed their counter affidavit to CMA No. 1922 of 2018 in which they stated that the said Property was reserved for amenity use and cited various provisions of the Karachi Building and Town Planning Regulations 2002 (**"KBTR"**), as well as premising their defense on the judgment of the Supreme Court being the case of Abdul Karim Vs. Nisar Salim Baig reported as 2020 SCMR 111, which primarily held that the Master Plan of the City of the Karachi should be restored to its original status and the plots meant for amenities etc. should be utilized for the same. The Respondent also relied upon PLD 2004 SC 269 and 2020 SCMR 111 in support of their contentions.

15. That after hearing the CMA, the learned Single Judge passed Order dated 03.09.2024 **("the Impugned Order")** in which he dismissed the Appellant's application under Order VII Rule 11 CPC, 1908, primarily based on Respondent No.1's submissions that the Property being claimed by the Appellant was different to the survey number property being claimed by the Respondent No.1. The Impugned Order stated that a full trial would be necessary, and accordingly dismissed the said application, through which the instant Appeal arose.

16. Counsel for the Appellant mainly contends that the matter regarding the Suit property was already decided through Judgment / Decree dated 31.05.2014, and the matter received a full trial after which proper Judgment and Decree were passed, and execution of the Decree was allowed. He contends that the Respondents filed several applications and two appeals against the Judgment / Decree, all of which were dismissed by the Court. Counsel for the Appellant further contends that the Respondent No.1 has repeatedly tried to create blockage in implementation of the Judgment / Decree passed by the Trial Court, and has created great hurdles in preventing the Appellant from taking

possession/usage of the Property, despite the same legally belonging to the Appellant.

17. Counsel for Respondent No.1 controverted the same, and filed a Statement averring they have no objection to the Appellant claiming his Property, but they submit that the said land being claimed by the Appellant does not fall within the current area where the Appellant is claiming the Property is located, but (according to the Respondent No. 1) the Appellant's land may be located elsewhere. Respondent No.1 claims the land is part of Survey No.190 and within the boundaries of land allotted for a Safari Park, and belongs to Respondent No. 1. The Counsel further contends they have no issue with the Appellant taking possession of his own Property, as long it does not fall within the land earmarked for Safari Park, which according to the Respondent No.1 falls under Survey Nos.187 to 190, designated as amenity land meant exclusively for Park and Zoological purposes. The Respondent No. 1 alleges the said land which the Appellant is claiming is owned and managed by Respondent No. 1. The learned Counsel for the Respondent No.1 averred they are only performing mandatory functions stipulated by Law under section 72, Schedule II, Part 1, Entry No.6 of the Sindh Local Government Act (SLGA) 2013.

18. We have carefully perused the record and have heard Counsel for the Parties. Our findings are as follow:-

19. The matter between the Appellant and ownership of the Property has stemmed since the year 2006, which was the time from which the Appellant entered into sale transaction with the previous owner, namely Mr. Muhammad Younis (Respondent No. 2). Perusal of the documents and history of the convoluted legal proceedings have shown the Appellant has been knocking on legal doors for over the past 15 years in an attempt to lawfully possess / utilize the Property.

20. The Appellant had first approached the relevant Revenue officials and Provincial Ombudsman, after which, due to not receiving any respite in the matter he then proceeded to exert his legal rights and filed a Civil Suit (No.1006 of 2012) before the Civil Court against the revenue / related authorities, in an attempt to secure his Property.

21. Eventually, a Judgment / Decree dated 31.05.2014 was passed in his favour, after proper due process and deliberation of the matter. The Trial Court had recorded evidence and fulfilled all legal requirements, and after hearing all parties, passed a speaking Judgment / Decree in favour of the Appellant.

22. That the Respondent No.1 filed two appeals against the said Judgment / Decree, both of which were dismissed. He also filed two separate applications to try and halt execution of the Judgement / Decree, both of which were also dismissed by the Courts. Execution proceedings were finally disposed of and possession of the suit Property was handed to the Appellant. Despite the same, it still appears that the Respondents remain determined to cause obstruction against the Appellant from taking possession of the Property, which had been conferred on him through protection of law, i.e. vide Judgement / Decree of the Court. The Respondents' actions have remained so hostile, the Appellant was constrained to file a Constitution Petition against them for enforcement of his already established fundamental rights.

23. After all these legal proceedings, the Respondents have filed Suit No.1371 of 2017 before High Court of Sindh at Karachi in its Original Civil Jurisdiction, in essence seeking the same relief which was already adjudicated in previous 1st Civil Suit No.1006 of 2012, which has (undisputedly) attained finality.

24. That in Suit No.1371 of 2017, the Appellant (Defendant in the said Suit) filed CMA No.1922 of 2018 under order VII Rule 11 Code of Civil Procedure, 1908, contending the said Suit was barred by the principles of *res judicata*, and referred to section 11 C.PC., 1908. The matter was heard and the relevant part of the Impugned Order reads:

> "In view of above facts, Application [under Order VII Rule 11 of CPC] of Defendant No.1 is misconceived in nature, because no cause of action has arisen in favour of the Plaintiff-KMC for filing present Suit because the latter claiming that portion of 3740 Square Yards, has been encroached by the Defendant under the garb of the Sale Dee. Consequently, this application C.M.A. No.1922 of 2018, stands dismissed."

25. Against the Impugned Order the Appellants have filed the instant appeal in which they reiterated their contentions that Suit is barred under law and the plaint is liable to be rejected accordingly.

26. We have carefully considered all aspects of the matter, and have studied to relevant Provisions of Law, in which we find that the Suit No.1371 of 2017

falls under the remit of the principles enunciated Order VII Rule 11 CPC, 1908, for the following reasons.

27. Order VII Rule 11 CPC, 1908, reads as follows:

> "**11.** Rejection of plaint. The plaint shall be rejected in the following cases:
>
> (a) where it does not disclose a cause of action;
> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
>
> (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails do so;
>
> (d) where the suit appears from the statement in the plaint to be barred by any law.

28. This must be read in conjunction with Section 11 CPC, 1908, which reads:

> "**11.** Res judicata. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

It is our opinion the principles of Order VII Rule 11 CPC 1908 would be attracted as under Section 11 Code of Civil Procedure, 1908, as well as per settled law, the matter regarding the Property was already exhaustively litigated and deliberated upon by a Civil Court, after which Judgement / Decree was passed. That the Respondents participated throughout the proceedings, and never objected to jurisdiction or any other defect in the proceedings. In fact and to the contrary, the Respondents had filed two failed appeals, an application under section 12(2) CPC, 1908 (which was dismissed), and an application to thwart execution of Judgement / Decree (which was also dismissed); which illustrates the Respondents had clearly accepted jurisdiction of the Court's below by repeatedly appearing and contesting the matter, and there can be no cavil that the Judgement / Decree passed on 31.05.2014 regarding the Property had attained finality. Respondent No.1 by filing the said Suit No. 1371 of 2017 has in essence simply attempted to open an already decided matter, and hence under the principle of *res judicata* read with section 11 C.P.C., 1908, in our opinion, the said Suit would be barred under law.

29. To bolster our above-stated view, we refer to the following principles enunciated by the Apex Court in:

Muhammad Raqeeb V. Govt. of KPK & Ors. **[2023 SCMR 992]**

> "**12**. In the earlier round of litigation this Court has already held that all the employees were performing duties on contract basis as project employees, thus the continuity of their services with the Board will by itself furnish no ground for grant of relief of regularization of their services and the Review Petition was also dismissed. The doctrine of finality is primarily focused on a long-lasting and time honored philosophy enshrined in the legal maxim *"Interest reipublicae ut sit finis litium"* which recapitulates that "in the interest of the society as a whole, the litigation must come to an end" or "it is in the interest of the State that there should be an end to litigation". Finality of judgments culminates the judicial process, proscribing and barring successive appeals or challenging or questioning the judicial decision keeping in view the rigors of the renowned doctrine of *res judicata* explicated under section 11 of the Code of Civil Procedure, 1908. The Latin maxim *"Re judicata pro veritate occipitur"* expounds that a judicial decision must be accepted as correct. This doctrine lays down the principle that the controversy flanked by the parties should come to an end and the judgment of the Court should attain finality with sacrosanctity and imperativeness which is necessary to avoid opening the floodgates of litigation. Once a judgment attains finality between the parties it cannot be reopened unless some fraud, mistake or lack of jurisdiction is pleaded and established. The foremost rationale of this doctrine is to uphold the administration of justice and to prevent abuse of process with regard to the litigation turn out to be final and it also nips in the bud the multiplicity of proceedings on the same cause of action. In the case in hand, for all practical purposes, the controversy attained finality and even under the doctrine of past and closed transaction, the controversy cannot be reopened by this Court in the second round of litigation which on the face of it is an abuse of process of the Court."

Secretary Local Govt. Election Rural Development, KPK & Ors V. Muhammad Tariq Khan & Ors. **[2021 SCMR 1433]**

> "10. ….There is an old latin maxim 'res judicata pro veritate accipitur'. According to this maxim, a suit/dispute in which the matter directly or substantially in the issue has been directly/ substantially in issue in a former suit/proceeding between the same parties or between parties under whom they or any of them claim has been decided by a competent court shall not be tried again in the same matter in any other courts. In simple words, a decision once rendered by a competent court on a matter in issue between the parties after a full inquiry should not be permitted to be agitated again by the same court or some other court between the same parties in the same matter. The rule of estoppel by res judicata is a rule of evidence, which prevents any party to a suit/proceeding which has been adjudicated upon by the

> competent court from disputing or questioning the decision on merit in subsequent litigation. It is based on the concept of public policy and private justice which apply to all the judicial proceedings. According to this, public policy involves that the general interest of the litigation must come to an end or that the litigation must have its finality. Similarly, private justice requires that an individual should be protected from vexatious multiplication of suits and prosecutions at the instance of an opponent whose superior power and resources may enable him to abuse the process of court. A decision by a competent court, which is final, should be binding and the same questions are sought to be controverted in the subsequent litigation for which this maxim applies."

The above cited extracts declared by the Hon'ble Supreme Court undoubtedly substantiate that the doctrine of *res judicata*, which would be applicable when the matter has already been decided, is to be strictly applied. Parties are at such point estopped from continuing endless multiple litigation, and that re-agitation of the same issue repeatedly would result in abuse of process.

30. Furthermore, a perusal of section 47 of the Code of Civil Procedure, 1908, which reads:

> "**47.** Questions to be determined by the Court executing decree. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit."

Shows this statutory provision also prevents a new suit being filed when the matter has been finally decided and is placed for execution of a decree. As the Respondents had already approached the Executing Court who turned down their assertions (against which no appeal has been preferred as per record), the matter stood as finally concluded. The Executing Court has complete power to refuse to execute a decree (*reliance can be placed upon **2014 SCMR 322***), which it did not do in the instant matter after hearing the Respondents, thereby holding the Judgement / Decree to have been validly passed. The purpose for these statutory provisions (*supra*) is to ensure litigation proceedings conclude swiftly and do not continue endlessly, as delayed justice would surely even cause undue loss to the victor.

31. Once a judgement / decree has been finalized, certain rights accrue to the decree holder (in this case the Appellant). It would, in our opinion, be unjust to ignore settled laws, and condone the behaviour of the Respondents who appear to be (mis)using the legal process to block the Appellant from enjoying his Property. In addition to the statutory provisions and case law cited, the

Appellant's fundamental rights have been violated by these actions of the Respondents, for which we call attention to the Constitution of Pakistan, 1973, (relevant articles 4, 23, 24 & 25). Additionally, the legal maxim *"nemo debet bis vexari pro uno et eadem causa"* meaning 'no one ought to be vexed twice for the same cause' would also be applicable to the matter at hand, in that the Appellant cannot repeatedly be brought to the courts for re-litigating the same matter on the same cause of action (*reference can be made to **1987 SCMR 527***).

32. It is further highlighted that when the Respondents were faced with the issue of the matter being *res judicata*, they appear to have changed their stance and furnished a Statement before us, submitting they now do not hold any objection to the Appellant having the land given to them by the Trial Court, but the Respondents have now alleged that such land is different to the land claimed by the Appellant, which seems to be a ploy by the Respondents to try and circumvent Judgment / Decree of the learned Trial Court passed on 31.05.2014 in favour of the Appellant. It is pertinent to mention previously the Respondent No. 1 had premised their argument on different reasoning, i.e. misuse of plot under the KBTR. This change of stance cannot be permitted at this advanced stage (*for which reference can be made to a 5 Member Bench of the Hon'ble Supreme Court cited as **PLD 1965 SC 254***). If such argument was sustained, then a decree obtained after conducting a proper trial could simply be voided by a judgement debtor, who would merely have to claim the decretal property was under a separate number and location, and could keep the matter pending indefinitely. These were issues which should have been raised by the Respondents during the initial trial before the Civil Court, or at the time the Appellant filed execution proceedings, or through appeal against the Judgement / Decree dated 31.05.2014. By permitting the Respondents to raise these issues at this late stage, would be completely unjust on the Appellant who has long acquired vested rights in the Property. Another impact of allowing such submission put forth by the Respondent No. 1 would also result in the Judgement / Decree of the Trial Court, being merely a paper decree and of no force, which we find to be impermissible.

33. The Appellant has been running from pillar to post for the past 17 years and has followed due process by approaching the relevant Courts of law just to secure his own Property. The Respondents have remained unable to controvert or set aside the findings held in favour of the Appellant. It would be entirely contradictory to the letter and spirit of the law for the Respondents at this stage

to have a *trial de novo*, in a second attempt to try and gain some undue benefit. Moreover, if the said Suit (No. 1371/2017) was to succeed, it would have the effect of passing a declaration against Judgement / Decree dated 31.05.2014 passed by the learned Civil Court in the 1st Suit, which would in itself be void, as the Original Jurisdiction of the High Court is not an appellate jurisdiction, and therefore cannot sit in appeal (by whichever nomenclature) against the Judgement / Decree dated 31.05.2014. On this ground as well, we find the said Suit to be barred.

34. We find that for reasons above-stated, the Suit No. 1371 of 2017 appears barred under law, and is squarely trapped within the confines of Order VII Rule 11 Code of Civil Procedure, 1908. If such abuse of process is condoned, in addition to justice being denied, there will be no end to litigation, and litigation will be used as a weapon to thwart of justice.

35. We would also make a final observation that Pakistan, along with the rest of the world, is taking measures to ensure expeditious, impartial and low-cost justice, by implementing measures such as Alternative Dispute Resolution Act 2017; section 89-A Code of Civil Procedure, 1908, Mediation policies etc. and the courts are trying to curtail frivolous litigation, which is not only costly for citizens, but heavily time consuming and an onus on the exchequer. Such undue litigation and/or misuse of the legal system should be strongly condemned and curtailed at the earliest.

36. In light of the foregoing, we find that Suit No.1371/2017 is barred under law and settled precedents, and is hit by principles of *res judicata* (*discussed supra*). Accordingly, we hereby allow the instant Appeal and set-aside the Impugned Order dated 03.09.2024, and Suit No.1371/2017 stands dismissed accordingly.

That accordingly this Appeal stands allowed.

JUDGE

JUDGE