

IN THE HIGH COURT OF SINDH AT KARACHI

II - Appeal No.157 of 2018

[Matco Rice (Pvt.) Limited *versus* Syed Aley Sadquain Naqvi and others]

Date of hearing : 06.03.2024

Appellant : Matco Rice (Pvt.) Limited, through Mr. Danish Nayyer, Advocate.

Respondent No.1 : Syed Aley Sadquain Naqvi, through Mr. Sami Ahsan, Advocate.

Respondents No.2,4,6&7 : Province of Sindh and 3 others, through Mr. Ziauddin Ahmed Junejo, Additional Advocate General Sindh.

Respondents No.3 and 5 : *Nemo.*
[SITE]

ORDER

Muhammad Faisal Kamal Alam, J.: Through this Second Appeal, the Appellant has challenged the Order dated 12.09.2018 of the learned First Appellate Court, setting aside the Order dated 29.08.2017, passed by the learned Trial Court, which has rejected the Complaint of Respondent No.1 [Plaintiff] on the Application filed by the Appellant under Order VII Rule 11 of CPC.

2. Mr. Danish Nayyer, Advocate, appearing for the Appellant, referred to the record that earlier Complaint of Suit No.95 of 2009, filed by one Ali Baqar Naqvi with regard to the **Suit Plot** No.C-10, situated in Na-Class No.89, Poultry Estate No. Nil, Deh Taiser Gadap Town, Karachi, was rejected [*at page-73 of the Lis File*], which was maintained in Civil Appeal No.85 of 2009 [*at page-81 of the Record*], and Civil Revision No.158 of 2011 [filed in this Court] was withdrawn, whereafter, second round of litigation was initiated by the present Respondent No.1 in respect of the same subject

plot, which met the same fate and the Plaintiff of the Suit No.671 of 2011 was rejected [at page-97 of the Record], which was maintained in Civil Appeal No.52 of 2012 [at page-109 of the Record] with the following observation_

“ Considering the averments of the plaint as well as the documents annexed with the plaint, it appears that the lease hold rights of the plaintiff were extended by the District Officer (Revenue CDGK) for about one month, and its further extension in this regard, is still pending adjudication. As such, it appears that at this stage Plaintiff/Appellant has a premature cause of action to file the present suit, as his Lease has not yet been extended by the District Officer (Revenue) CDGK, and the matter is sub judice before him. Let an appropriate Order be passed by the District Officer (Revenue) CDGK and the Appellant, if not satisfied with that Order, would have opportunity to challenge the same before the appropriate legal forum if so desire. With the above observations, I am of the view that the appeal in hand does not merit consideration. Point No.1 is therefore answered, accordingly.”

Learned Counsel has referred to Civil Revision Application No.158 of 2011 [in first record of litigation], preferred by above Ali Baqar Naqvi before this Court, which he withdrew on the Statement that since 03 Acres of land, out of 10 Acres, have been encroached, therefore, Civil Revision will not serve the purpose and he sought permission from the Court to withdraw the same and to file a fresh Suit, which was not objected to by the Counsel for the Respondent No.4, that is, present Appellant. Contended that the third and the latest round of litigation in the shape of Suit No.2141 of 2015, instituted by present Respondent No.1, is barred by law as it pertains to same subject property with in effect same relief, which is completely overlooked by the learned Appellate Court; that even otherwise, Respondent No.1 did not hold any valid title in his name and only relied upon a ‘IJAZATNAMA’ [at page-253], which was given for thirty years

and subsequently, it was extended for one month vide Order dated 17.06.2011 passed by the Official Respondents. Earlier, the land claimed by the Respondents' side was resumed by the Official Respondents vide Correspondence dated 12.03.1996, which was challenged in the earlier Suit [Suit No.95 of 2009, *supra*], but the Complaint was rejected [*ibid*]. From the record, Counsel has shown the Lease in favour of the Appellant executed by the latter and Respondents' side [at page-291] for the term of 99 years, for establishment and operating a Rice Processing Mill, besides, Possession Order in favour of the Appellant.

3. On the other hand, Mr. Sami Ahsan, Advocate for private Respondent No.1, has rebutted the arguments of Appellant's Counsel, on the basis of his Objection to the Appeal and the documents appended therewith. He emphasizes that Respondent No.1 was given the 10 Acres of land in Na-Class No.84 for 30 years for Poultry Farm purposes, vide Order dated 21.06.1982 passed by the Respondent-Deputy Commissioner [Annexure R/2 with the Objections]; since Lease term expired, the Respondent No.1 applied for extension of Lease and an 'IJAZATNAMA' is executed between Revenue Department and Respondent No.1 in respect of the same land accompanied by the Location Map [Annexures R/3 and R/4 of the Objections]; shown the Extract of Deh Form-VII, that a State Land has been transferred to Respondent No.1 for thirty years. Contends that for deciding Application of the nature [under Order VII Rule 11 of CPC] only three ingredients have to be looked into, specified in the said provision itself, *inter alia*, about cause of action and whether the Suit is barred by some law, but none of these disqualifications are present in the Complaint of the Suit, and the same could not have been rejected and is correctly decided by the Appellate Court in the impugned Judgment. Has referred to the Prayer Clauses of the latest Suit [Suit No.2141 of 2015] and states that since

damages And *Mesne* Profits are claimed, which can only be awarded through triable issues, hence, the Complaint could not have been rejected; averred in the Objections so also argued that the Lease in favour of the Appellant is illegal because the Respondent-SITE is not lawful transferee of a large area of land including part of the Suit Plot.

4. Arguments heard, Record perused.

For deciding the present controversy only earlier Orders, Complaint and undisputed record can be looked into.

5. The earlier Orders available on record with regard to different Suits filed by Respondent No.1, are considered. First Order of rejection of Complaint dated 04.08.2009 [*at page-73 of the Lis record*], has rejected the Complaint of Suit No.95 of 2009 [*filed by Ali Baqar Naqvi*] on the ground that in terms of Section 79, Provincial Government was not impleaded, but only the Mukhtiarkar; in Civil Appeal [85 of 2009, *Judgment is at page-81 of the Court file*] the rejection Order was maintained and by further determining that leasehold rights of thirty years in favour of Respondent No.1, in respect of the subject land, cannot be equated with the ownership right and since only injunctive relief is prayed for and not Declaration, which is not permissible, *inter alia*, when Respondent No.1 has claimed to have made heavy investment in the Suit Plot, thus, Complaint was correctly rejected.

6. The second rejection of Complaint Order passed in Suit No.671 of 2011 is available at *page-97* of the Court File. This Suit is preferred by Syed Aaly Saqlain Naqvi, the present Respondent No.1, claiming to be the lawful Attorney of his predecessor in interest, the above named Ali Baqar Naqvi.

7. Relevant facts mentioned in this Order are that the land in question was transferred from erstwhile allottee Ali Baqar Naqvi to Syed Aaly Sayadain Naqvi, the Father of present Respondent No.1, for a remaining period of one month [before the expiry of thirty years' term of Lease]; that

Respondents and present Appellate were trying to dispossess the Respondent No.1. The stance of Appellant and other Respondents was, that the land in question was resumed by the Order of Deputy Commissioner dated 12.03.1996; three acres of the land from the above ten acres was given to Respondent SITE which further leased out the same through present Appellant.

8. It is decided on the basis of record, that thirty years Lease period has expired and record available shows that the land in question was resumed by the Provincial Government as part of the Scheme and allotted to SITE Karachi [*present Respondent No.3*], consequently, Plaint was rejected, which was appealed against by the Respondent No.1 by filing Civil Appeal No.52 of 2012, which was decided vide Judgment dated 30.04.2015. While maintaining the Order [*of rejection of Plaint*], learned Appellate Court on the basis of undisputed record available, has ruled that period of thirty years Lease expired and extension of one month was given to Respondent No.1, by Official Respondents and the Application of Respondent No.1 is pending since 20.06.2011, hence, the Respondent No.1 has a premature cause of action as the Lease was never extended by the Revenue Officials. While dismissing the Appeal, it was observed that the Revenue Authority should pass Order on the Application of Respondent No.1, who would have the opportunity to challenge the same if it is adverse in nature. This Appellate Judgment attained finality as it was not further challenged.

9. Third Suit No.2141 of 2015 is filed by Respondent No.1 [*the subject matter of the present Second Appeal*], in respect of the same land in question, in which additional relief of Damages and *Mesne profit* are also sought.

10. That even in the last litigation [second Suit, *ibid*] the issue of interference in possession and demolition action was questioned, but no monetary compensation was sought [prayed]; it means, that this relief of

monetary compensation was available to the Respondent No.1, but he omitted to seek it and thus cannot ask for the same in the current [Third] Suit [*supra*], as is barred under Order II, Rule 2 of CPC.

Secondly, although it is correct that if in a Plaint a monetary compensation is prayed, then the Plaint usually should not be rejected because to determine the veracity of claim a triable issue is to be framed and evidence is led; but there is an exception to this rule; which is the present set of facts, as discussed above [availability of relief at the relevant time, but not sought]; *thirdly*, the last Appellate Decision attained finality and the plaint of the present Suit No. 2141 of 2015 is adversely affected by the rule of res judicata. It is also a matter of undisputed record that the thirty years Lease period had expired around fourteen years back and the Application for extension of Lease is pending since then, **29.06.2011** [*Per Paragraph-5 of present Plaint*], before the Official Respondent. Till the conclusion of the arguments of the present Appeal, no new development has taken place with regard to the extension of Lease, which can convince, that a fresh cause of action has arisen in favour of present Respondent No.1, justifying the filing of the above Third Suit. *Fourthly*, the Respondent No.1 withdrew the above Civil Revision pending in this Court by admitting that since 03 Acres of the land from the Suit Plot has been encroached, therefore, he will start the fresh proceeding and the permission was accorded, but ‘**in accordance with law**’. It means that this Court although granted the permission to file a fresh Suit, but the maintainability of that new *Lis* would and could be questioned and considered, within the parameters law, **including**, the Civil Procedure Code [CPC], because the present Respondent No.1 was not accorded the unconditional permission to file a fresh Suit.

Fifthly, and additionally, the other undisputed aspect is, that the portion of the subject land was resumed by the Revenue Officials in favour of Respondents' side and nothing contrary is brought on the Record through undisputed documentary evidence.

11. The above material aspects and legal principle were overlooked by the Appellate Court while giving the impugned Judgment, which cannot be sustained. Consequently, it is set aside and Plaint of the above third Suit of Respondent No.1 is rejected.

JUDGE

Karachi.

Dated: 04.08.2025.

Riaz / P.S.