

IN THE HIGH COURT OF SINDH, KARACHI

High Court Appeal No.70 of 2010

High Court Appeal No.71 of 2010

Date Order with Signature(s) of Judge(s)

Present

Mr. Justice Munib Akhtar

Mr. Justice Abdul Maalik Gaddi

HCA No.70/2010

1. For orders on CMA No.594/2010
2. For orders on CMA No.595/2010
3. For regular hearing

HCA No.71/2010

1. For orders on CMA No.597/2010
2. For orders on CMA No.599/2010
3. For regular hearing

Mr. Muhammad Ilyas Warraich Advocate, for Mirza Abdul Sattar Baig, the Appellant in both the appeals.

Mr. Arshad Iqbal Advocate, for Pakistan Railway Employees Cooperative Housing Society, Respondent No.2.

Niaz Ahmed for Pakistan Railways (Respondent No.1)

Durrani on behalf of Respondent No.4 Muhammad Swaleh

Waseem Jan on behalf of Respondent No.5 Mrs. Shama Saeed

Karamat Ali Baig, Respondent No.6 in person

Date of hearing: 29.03.2016

J U D G M E N T

Abdul Maalik Gaddi, J. – This common judgment shall dispose of High Court Appeals No.70/2010 and 71/2010, filed by the appellant against the Common Judgment and Decree dated 25.02.2010 passed by a learned Single Judge of this Court in Civil

Suit No.889/1998 and Civil Suit No.1511/1999, filed by the appellant and respondent No.2 against each other.

2. Civil Suit No.889/1998 was filed by appellant (Mirza Abdul Sattar Baig) for Declaration, Permanent and Mandatory Injunction against the respondent No.2 (Pakistan Railway Employees Cooperative Housing Society Limited) and others, praying inter-alia that the appellant is a sole and absolute owner of piece of land admeasuring 2.14 acres in Naiclass Nos.236, 184 and 44, Deh Okewari Tapo Drig Road, Taluka and District Karachi-East and the same was allotted and transferred to appellant on 16.07.1997 but the respondent No.2 in collusion with other respondents, started harassing the appellant and tried to dispossess the appellant from the suit land. Therefore, the appellant filed the above suit praying therein to declare him as owner of the land in his possession and restraining the respondents not to interfere in the suit land in his possession.

3. Civil Suit No.1511/1999 was filed by respondent No.2 (Pakistan Railway Employees Cooperative Housing Society Limited) for Declaration, Cancellation, Possession and Permanent Injunction against the appellant (Mirza Abdul Sattar Baig) and others, praying inter-alia that about 100.38 acres of surplus land was allotted for rehabilitation of Railway Employees. This was done with the sanction of the President of Pakistan vide Agreement dated 23.05.1974. Thereafter, the layout plan was duly approved from master plan and various plots were allotted by the respondent No.2 to its members. It was alleged that the appellant being land grabbers forcibly encroached upon the land of the society, whereby various allottees were also affected. Therefore, through this suit the respondent No.2 has sought possession with plea that the land in possession of the appellant is part and parcel of the land of the respondent No.2.

4. Parties have filed their respective written statements denying the case and claim of each other.

5. In both the suits, since the parties and the subject matter were the same, hence, on 08.09.2003, the learned Single Judge of this Court framed the following consolidated issues.

1. Whether the suit is not maintainable according to law?
2. Whether the suit land is part and parcel of plaintiff's land allotted for the purpose of Pakistan Railway Employees Cooperative Housing Society known as Gulshan-e-Jamal having been granted by the President of Pakistan in the year 1974?
3. Whether the Board of Revenue Sindh could grant the land in suit to the defendant No.1 in the year 1996 which already stood allotted to defendant No.1 by the President of Pakistan?
4. Whether the defendant No.1 is in possession of the land in suit?
5. What should the decree be?

6. As per report of the Commissioner dated 25.11.2006 for recording of evidence of the parties available at page 365 of Civil Suit No.889/1998, it appears that Pervaiz Raees Siddiqui, attorney of Mirza Abdul Sattar Baig was examined, who produced documents as Exs. P-5/1 to P-5/9. Chaudhry Fazal Karim DW-1 was examined and produced Exs. D/2 to D/19, Rehmat Ali DW-2 was examined and produced Exs. D-21 to D-22, Niaz Ahmed DW-3 was examined and produced Exs. D-24 to D-28 and 33.

7. Parties led their respective evidence and learned Single Judge after perusing the record passed the Impugned Common Judgment and Decree, whereby Civil Suit No.1511/1999 filed by respondent No.2 was decreed as prayed and Civil Suit No.889/1998 filed by appellant was dismissed.

8. Aggrieved by the aforesaid Impugned Common Judgment and Decree, the abovementioned appeals were filed.

9. It is contended by the learned counsel for the appellant that in Civil Suit No.889/1998 and Civil Suit No.1511/1999, filed by the parties against each other as many as five consolidated issues

were framed. However, the learned Single Judge did not consider to advert and decide the issues, framed and proceeded to decree the Civil Suit No.1511/1999 and dismissed the Civil Suit No.889/1998, which course is not permissible under the law. According to learned counsel such course has been adopted without hearing the appellant and without recording any findings on the issues framed by the Court. During the course of argument, he has invited the attention of this Court to the operative part of the Judgment passed by the learned Single Judge and contended that the learned Single Judge did not decide the controversy between the parties in accordance with law as the learned Single Judge failed to observe the mandatory requirement of Order XX Rule 5, CPC, therefore, he vehemently contended that the Impugned Judgment and Decree are not sustainable in law. Therefore, the same may be set-aside and case be remanded to learned Single Judge on Original Side for deciding the same, issue wise as required under Order XX Rule 5, CPC.

10. On the other hand, learned counsel for respondent No.2 (Pakistan Railway Employees Cooperative Society Limited) has supported the Impugned Judgment and Decree and contended that the Impugned Judgment and Decree has been passed on the basis of evidence and documents on record. He further contended that the appellant has no legal title over the suit premises and is in possession illegally and this fact has been proved through documents on record. Therefore, according to him the findings on issues with reasons were not necessary.

11. Respondents No.5 and 6 are present in person and they have also been heard. They have adopted the argument of counsel for respondent No.2.

12. We have heard the learned counsel for the parties and perused the record.

13. As observed above, the consolidated issues were framed in the aforesaid two suits and parties led their respective evidence and the learned Single Judge passed the Impugned Common

Judgment and Decree. The operative part of the Impugned Common Judgment is reproduced as under:-

“No evidence has been brought on record to show the entitlement of defendant No.1 over the suit property. The authenticity of the documents produced by plaintiff remains unshaken. Hence, in view of such evidence on record, Suit No.1511/1999 is decreed as prayed.

In view of decree passed in Suit No.1511 of 1999, Suit No.889 of 1998 stands dismissed.”

14. From the perusal of the Impugned Judgment, it appears that the learned Single Judge has not at all given his findings on the issues framed in the suits and failed to scan, analyze, evaluate and record his reasons on evidence adduced by the parties as required under Order XX, Rule 5, CPC.

15. We have also gone through the provisions of Order XX, Rule 1 CPC, which was amended in the year 1994, according to this provision the opportunity of addressing arguments has become a legal requirement and vested right for the parties and it is obligatory and essential for the Court to fix a date, not exceeding fifteen days, for hearing of arguments of parties, on conclusion of evidence but in the present case record of both the suits does not indicate that before pronouncement of judgment, the arguments of the parties or their counsel were heard. Hence, the provisions of Order XX, Rule 1 CPC have been violated in this case. Not, only this in the present case, the principle of natural justice i.e. “audi alteram partem” (No person shall be condemned un-heard) has also been violated. Reliance is placed on **1994 SCMR 2232 (Re-Mrs. Aneesa Rehman Vs P.I.A.C and another)**, in which it is held that the violation of principle of natural justice is equated with the violation of provision of law.

16. Under Order XX, Rule 5 CPC, the suit in which issues have been framed, the Court is bound to give findings on each issue separately unless the finding upon any or more of the issue is sufficient for the decision of the suit, but here in this case, it appears that the learned Single Judge has not given his findings on issues framed at all. Reliance is placed on case law reported in

1982 SCMR 816 (Re: Ali Muhammad v/s Muhammad Hayat & others). On this point, we are also supported with case law reported in **2013 CLC 291 (Re: Mst. Ishrat Jehan & another versus Syed Anis-ur-Rehman & another)**. In this case, the learned Division Bench of this Court inter-alia on other ground has remanded the case to the trial Court for de-novo proceedings in accordance with law.

17. During the course of arguments, we had specifically asked the question from the learned counsel for respondent No.2 that how the Impugned Judgment is tenable at law when the same does not fulfill the requirement of Order XX, Rule 5 CPC, no answer available with him. We again asked the question, whether he had any case law in support of Impugned Judgment, he again did not reply.

18. Since the rights of the parties are involved in this case and the Impugned Judgment and Decree have been passed in violation of mandatory provisions of Order XX, Rule 1 & 5 CPC, therefore, the same are not sustainable under law.

19. For what has been discussed above, it is crystal clear that the Judgment and Decree of the learned Single Judge are not sustainable in law and the same cannot be called adjudication upon the rights of the parties in the manners provided by law. Therefore, the remand of the cases has become inevitable. Under the circumstances, the Impugned Judgment & Decree are set-aside and both the appeals are hereby accepted and the cases are remanded to the Original Side of this Court with directions to the learned Single Judge before whom suits are placed is requested, if at all possible but subject to convenience of the learned Single Judge, to deal with these matters as expeditiously as possible. Before us, the High Court Appeals have been marked as red cover matters. Office is directed that, if the two suits are not already so marked, the suits should be marked as red cover matters and must be fixed accordingly. As both the appeals are allowed, therefore, the listed applications are disposed of accordingly, as the

same neither referred nor objected by the respondents at the time of arguments.

20. The above are the reasons for the short order announced by us on 29.03.2016, whereby Impugned Common Judgment and Decree were set-aside and both the High Court Appeals were allowed and the cases were remanded to the learned Single Judge of this Court for deciding the same on merits.

JUDGE

JUDGE

Dated: 06.4.2016