

IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No.499 of 2024
[Mustafa Adam v. Junaid Ahmed Adam and others]

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

- 1.For orders on office objection a/w reply at A
- 2.For hg of main case
- 3.For hg of CMA No.3086/24

21.04.2025.

M/s. Omer Soomro, Maria Shoaib Khan,
Shah Muhammad Mazari and Abdul Haseeb Qazi,
advocates for Appellant.

M/s. Malik Naeem Iqbal, Talha Abbasi and
Waseem Iqbal, advocates for respondent No. 1.

M/s. Rehman Aziz Malik and Aijaz Ali Tunio, advocates
for respondent Nos. 2, 4 & 10.

O R D E R

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MUHAMMAD IQBAL KALHORO J: Appellant filed a suit, among others, for declaration, cancellation, in respect of various properties declared Waqf Alal-Aulad by his grandfather. In the suit, the appellant filed an application under Order 39 Rules 1 and 2 CPC. Conversely respondents/defendants filed an application under Order 7 Rule 11 CPC stating that in respect of one of the properties viz. 50/3, 50/2/1, 50/2/3 and 50/2/5 (amalgamated and renumbered as 50/3/1 and 50/3/2) total admeasuring 11,117 sq.yds, situated in Garden East Quarters, Karachi, the suit had already been filed by father of appellant/plaintiff (Suit No.435/2019), in which, injunction application was dismissed by learned single Judge and appeal by a Division Bench was also unsuccessful and the issue is pending before the Supreme Court.

2. Learned single Judge proceeded to dismiss both the applications vide impugned order. Against which, appellant/plaintiff has filed this appeal. During pendency of the appeal, the original jurisdiction of this Court has been withdrawn and the cases have been transferred to respective Senior Civil Judges at Karachi having territorial jurisdiction.

3. We have heard the parties and have proposed a suggestion that since the very suit has been transferred to the Senior Civil Judge, appellant may file a fresh application for a fresh consideration. To this proposal, no opposition has come from either side. Nonetheless, the concern shown by counsel for the respondents is that since for one property mentioned above, the injunction application has already been dismissed, at least that property be excluded from a fresh consideration by the Senior Civil Judge, as the issue about which is pending before the Supreme Court.

4. On the other hand, learned counsel for appellant/plaintiff has submitted that a certain period may be given for filing a fresh application before the learned Senior Civil Judge and till that status quo may be ordered. He further undertakes that he would not take time during the hearing and would try to establish that even over the property which is being sought to be excluded, the injunction application as well as the suit are maintainable.

5. This appeal has been filed by appellant/plaintiff exclusively against dismissal of his injunction application. The respondents have not filed any appeal against dismissal of application under Order 7 Rule 11 CPC. At this juncture, we cannot form a final opinion in respect of the highlighted property and say that it should be excluded from a consideration in terms of Order 39 Rules 1 and 2 CPC, particularly when application under Order 7 Rule 11 CPC moved on such ground has already

been dismissed, and no appeal has been preferred. However, after hearing the parties and giving a considerable thought to the proposal, what we can do is, with consent, to direct the Office to send file of the suit to the concerned Senior Civil Judge within a period of ten (10) days. Both the parties would be at liberty to file their applications i.e. under Order 39 Rules 1 and 2 CPC and under Order 7 Rule 11 CPC (to the extent of one property as described above in Para. No. 1) before him as soon as the file reaches there. Learned Senior Civil Judge, to whom the case is transferred, shall proceed to decide a fresh both the applications within a period of twenty (20) days thereafter without fail and shall report compliance to this Court through MIT-II. For thirty (30) days from today, the status quo will be maintained by the parties. However, after thirty (30) days, in case the applications are not decided, the protection granted by this Court will stand withdrawn.

The appeal is accordingly disposed of in above terms along with pending application.

JUDGE

JUDGE

HANIF