

IN THE HIGH COURT OF SINDH KARACHI

Suit No. 1264 of 2007

[Muhammad Ayub Gabol v. Province of Sindh and another]

Dates of hearing : 20-03-2018 and 25-04-2018

Date of Decision : 09-07-2018

Plaintiff : Muhammad Ayub Gabol, through
Mr. Ahmeduddin Hanjra, Advocate.

Defendants 1 & 2 : Province of Sindh and another through
Mr. Pervaiz Ahmed Mastoi, Assistant
Advocate General Sindh.

ORDER

ADNAN IQBAL CHAUDHRY J. -

1. The plaintiff was granted a Mining Permit under the Sindh Mining Concession Rules, 2002 for mining an area of 395.53 acres near Goth Jaffer Jamadar, District Thatta. The Mining Permit expired on 29-12-2006 and the plaintiff's application for renewal of the Mining Permit had been turned down by the Directorate General, Mines and Mineral Development vide a Notification dated 19-03-2007 on the ground that the mining area was near the Railway track giving rise to safety concerns. An appeal by the plaintiff under the Sindh Mining Concession Rules, 2002 also failed. It is the plaintiff's case that the reason assigned in the said refusal Notification dated 19-03-2007 is *malafide* as the mining area is at a substantial distance from the Railway track and therefore he is entitled to challenge the same by this suit. The prayer clause of the suit reads: -

- A) *Declare that the Plaintiff is entitled to receive the contract of excavation of Silica Sand from Goth Jaffer Jamadar, District Thatta.*
- B) *Decree in the sum of Rs.15,000,000/- against the Defendants jointly and severally for the damages having been suffered by the Plaintiff.*

- C) *Issue permanent injunction restraining the Defendants, their servants, agents, representatives person/persons from awarding contract of Silica Sand to any other person in the area earlier awarded to the Plaintiff.*
- D) *Direct the Defendants to award work order of the contract of excavation of Silica Sand to the Plaintiff.*
- E) *To grant costs of the suit to the Plaintiff.*
- F) *Any other/further/additional relief/reliefs which this Hon'ble Court may deem fit and proper in the circumstances of the case; and*

2. Since the land that was being mined by the plaintiff was at Thatta, this Court had vide order dated 20-12-2010 put the plaintiff's counsel on notice to satisfy the Court on the territorial jurisdiction of this Court to entertain the suit. The said objection had again been raised by this Court on 18-11-2015 when it was ordered that the question of territorial jurisdiction shall be decided first.

3. Replying to the aforesaid objection of territorial jurisdiction, learned counsel for the plaintiff contended that the suit is not for any of the reliefs listed in Section 16 (a) to (f) CPC as the plaintiff does not claim any title to land situated outside Karachi (at Thatta), but has impugned the Notification dated 19-03-2007 that was issued by the Director General, Mines and Mineral Development (defendant No.2) from his office at Karachi, and thus the suit could have been instituted at Karachi. On the other hand, learned Assistant Advocate General Sindh contended that the relief prayed for in the suit relates to land beyond Karachi and therefore the plaint should be returned under Order VII Rule 10 CPC.

4. A perusal of the prayer clause of the suit shows that though the plaintiff does not pray for title to land situated at Thatta, he essentially seeks a declaration that is entitled to a mining lease/license in respect of land situated at Thatta. That, in my view, squarely puts the suit under Section 16(d) CPC i.e. "for the determination of any other right to or interest in immovable property". Therefore, but for Section 120 CPC which excludes the application of Section 16 CPC to a High Court in the exercise of its

original civil jurisdiction, this suit could not have been instituted at Karachi. The interplay between Sections 16 and 120 CPC has by now been thoroughly discussed and settled by this Court as highlighted *infra*.

5. In the case of *Muhammad Naveed Aslam v. Aisha Siddiqui* (PLD 2010 Kar 261) a learned Single Judge of this Court (now a learned Judge of the Honourable Supreme Court) explained the interplay between Sections 16 and 120 CPC as follows:

“11. The laws which conferred original civil jurisdiction on this High Court clearly show that civil suits and proceedings of certain pecuniary value, which otherwise could only be filed in the District Courts of Karachi, became entertainable on the Original Side of this High Court. These laws in effect fixed the pecuniary jurisdiction of the Civil Courts of Karachi and beyond such pecuniary limit the jurisdiction was conferred to the Original Side of this Court. Except for the territorial limits of Karachi, no other area of Sindh was ever brought under the ambit of the original civil jurisdiction. It is for this reason that the Civil Courts falling beyond the districts of Karachi continue to exercise original civil jurisdiction of unlimited jurisdiction whereas the Civil Courts in the districts of Karachi exercise jurisdiction only to the extent which is lesser in value than that conferred on the Original Side of this High Court. Thus, it is quite evident that conferment of original civil jurisdiction on this Court throughout its history was confined to the territorial limits of Karachi provided always that the cause was of a prescribed amount and value.

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13. A bare reading of Section 120 of Civil Procedure Code show that firstly it makes sections 16 17 and 20 of Civil Procedure Code inapplicable for the High Court in exercise of its original civil jurisdiction. The need to make sections 16, 17 and 20 of CPC inapplicable to a High Court arose because the jurisdiction of Civil Courts under sections 16, 17 and 20 CPC and the original civil jurisdiction of the High Courts under the then Letters Patent determine separate places where a civil suit and proceedings could be filed. Section 120 of C.P.C. was enacted to settle the conflict of sections 16, 17 and 20 of C.P.C. with the laws that conferred original civil jurisdiction on the High Courts and to obviate any confusion as regards place of suing. This can be understood through an example. Ordinarily a suit relating to a dispute of immovable property situated in Saddar, Karachi is to be brought in the Civil Court, which under the provisions of sections 16 and 17 of Civil Procedure Code has jurisdiction to try such suit. As the area of Saddar in Karachi falls within the limits of Police Station, Saddar

which is in District East, Karachi, therefore the Civil Court which can try suits of area falling in Police Station Saddar becomes the place where such a suit is to be filed when sections 16 and 17 of the Civil Procedure Code are applied. However, if the same suit is of a value, which is more than three million rupees then by virtue of section 7 of Sindh Civil Courts Ordinance, 1962 the place of suing shifts to the Original Side of this High Court. In order to overcome this overlapping of jurisdictions, provisions of sections 16 and 17 of C.P.C. were made inapplicable under section 120 of C.P.C. so that these provisions may not come in the way of filing a civil suit or proceedings on the Original Side of this Court. Therefore, while entertaining a suit relating to immovable property emanating from the area of Saddar in Karachi having a value of more than three million rupees, the place of suing as determined under sections 16 and 17 of the C.P.C. becomes immaterial and is not to be considered as under section 7 of the Sindh Civil Court Ordinance 1962, the Original Side of this High Court becomes the place of suing. Section 120 of C.P.C. can be interpreted only in this manner and not in a manner that any suit of more than three million rupees in value, coming from any part of the territorial jurisdiction of this Court viz. the entire Province of Sindh can be entertained on the Original Side of this Court. If the interpretation as given to section 120 of C.P.C. by the learned counsel for the plaintiff is accepted then every suit of a value above three million rupees relating to any part of Sindh has to be entertained on the Original Side of this Court. Such an interpretation would defeat the very purpose that created original civil jurisdiction in this High Court for the Districts of Karachi. While interpreting section 120 of C.P.C., the meaning of the words "in the exercise of its original civil jurisdiction appearing in that section should not be lost sight of which clearly mean that place of suing is not to be determined by sections 16, 17 and 20 but by the provision which confer original civil jurisdiction on this High Court. Now original civil jurisdiction is conferred on this Court under section 7 of the Civil Courts Ordinance, 1962 which is limited only for the territorial limits of Karachi. No other territory of this High Court comes within the ambit of the original civil jurisdiction prescribed under section 7 of the 1962 Ordinance. Therefore, if a suit does not fall within the ambit of original civil jurisdiction of this High Court then certainly the place of suing for such a suit is to be determined under sections 16 to 20 of Civil Procedure Code. What is actually meant by inapplicability of sections 16, 17 and 20 of C.P.C. to High Court under section 120 of C.P.C. is that High Court shall not apply these provisions to a suit if it comes under the ambit of section 7 of 1962 Ordinance i.e. sections 16, 17 and 20 of Civil Procedure Code shall not apply if a suit pertains to any part of the four Districts of Karachi and is valued at more than three million rupees. On the other hand, if a suit is filed in this Court which does not fall within the original civil jurisdiction of this Court i.e. it does not pertain to a dispute relating to any of the four Districts of Karachi or in not of a prescribed value

then certainly the provisions of sections 16, 17 and 20 shall be attracted and the plaint shall be returned for its presentation to a Court of appropriate jurisdiction. Section 120 of Civil Procedure Code therefore only renders ineffective provisions of sections 16, 17 and 20 of C.P.C. to suits that can be entertained by this High Court in exercise of its original civil jurisdiction which is confined to civil suits and proceedings pertaining to the Districts of Karachi only and not for any other area falling within the jurisdiction of this High Court.”

6. The case of *Muhammad Naveed Aslam v. Aisha Siddiqui* discussed above, was upheld by a learned Division Bench of this Court in the following terms in the case with the same title i.e. *Muhammad Naveed Aslam v. Aisha Siddiqui* (2011 CLC 1176):

“31. According to our understanding of law, the provisions of Order VII Rule 10 are mandatory in nature and adjudication by a court without jurisdiction is *coram non judice* and when any court lacks pecuniary or territorial jurisdiction, the proper course is to return the plaint for presentation to the proper court and such court cannot pass any judicial order except that of returning the plaint. The powers conferred under Rule 10 can only be exercised where the suit is pending before the Court and it may be exercised at any stage of the suit even in appeal and or revision. The bare look of the plaint in this case undisputedly shows that the plaintiff instituted the suit for the determination of the right to or interest in the immovable property and for compensation for wrong to immovable property and the recovery of movable property. The relief claimed in the suit and its nature falls within the purview of section 16 of C.P.C. which provides that such kind of suits shall be instituted in the court within the limits of whose jurisdiction the property is situated. Though section 120, C.P.C. provides that sections 16, 17 and 20 shall not apply to High Court in exercise of its original civil jurisdiction but it does not mean that by virtue of this section the jurisdiction of original side of this court extended to all territories of Province of Sindh no matter the property in question is situated at Karachi or not. The jurisdiction of this Court at original side is only limited and confined to the districts of Karachi and if the arguments of the learned counsel for the appellants are accepted to be true, it will tantamount to the extension of original side jurisdiction of this Court to the entire Province of Sindh subject to its pecuniary limits of jurisdiction. Merely for the reason that respondent No.13 on the application of respondent No.1 instead of hearing the case at Hyderabad, heard the Case No.SROA.122 of 2000 at Karachi and passed the order dated 14-2-2008 at Karachi does not confer the territorial jurisdiction to this court on original side.

32. The non-applicability of sections 16, 17 and 20 read with Order XLIX, Rule 3 is only applicable and limited to the original side jurisdiction for the district of Karachi and when it is found that the property is situated outside the territorial jurisdiction of Karachi then sections 16 and 17 will automatically come into operation. The initial guiding principles for institution of various suits is provided under sections 16 to 19, C.P.C. whereafter section 20 has been provided for other suits to be instituted where the defendant resides or cause of action arises. In the present matter section 16 is applicable therefore, the suit should have instituted in Thana Bola Khan where the property is situated and since the claim of damages is not an independent relief but arising from the alleged wrong done committed by the defendants in the suit, therefore, this relief can also be easily claimed in the same suit at Thana Bola Khan along with other reliefs including the declaration as to the ownership, permanent and mandatory injunction.”

7. The above Division Bench judgment in the case of *Muhammad Naveed Aslam v. Aisha Siddiqui* (2011 CLC 1176) is binding on this Court. It has consistently been followed by other learned Single Judges of this Court in the cases of *Muhammad Bachal v. Province of Sindh* (2011 CLC 1450); *Land Mark Associates v. Sindh Industrial Trading Estate* (unreported order dated 09-01-2018 passed in Suit No.247/2008); *Deluxe Interiors v. The Sindh Industrial Trading Estates* (SBLR 2018 Sindh 1310); and *FGBC Ltd. v. Director General Mines and Minerals Development and Fateh Textile Mills v. Government of Sindh* (unreported order dated 21-06-2018 in Suit No.333/2012 and Suit No.675/2014)

8. Regards the power of this Court to return a plaint under Order VII Rule 10 CPC, that too has been the subject of debate inasmuch as Order XLIX Rule 3 CPC states that Rule 10 of Order VII CPC shall not apply to any High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. But the contention that Order XLIX Rule 3 CPC excludes the power of this Court (the High Court of Sindh at Karachi when dealing with civil suits on the Original Side) to return a plaint under Order VII Rule 10 CPC or otherwise, was discussed and rejected in the case of *Mirza Abdur Rahim Baig v. Abdul Haq Lashari* (PLD 1994 Kar 388) in the following terms:

“It would thus seem that in relation to Order 49, Rule 3, C.P.C. the legislative intendment was to exclude the operation of the various provisions mentioned therein, including Order 7, Rule 10, only from the exercise of "Ordinary or extraordinary original civil jurisdiction of a High Court" and not, generally, from the broader ambit of its original civil jurisdiction as such which in contradistinction, as stated, was the subject of section 120 of the Code. Needless to recount that the original civil jurisdiction of this Court, exercisable at the main seat in Karachi, is not "ordinary original civil jurisdiction", as covered by Order 49, Rule 3, C.P.C. but a special or statutory civil jurisdiction of an original nature. In consequence, it can be plausible found that, for the purpose in hand, a plaint filed on the original side at Karachi in this Court can, if the required conditions are satisfied, be returned for presentation to the proper Court under Order 7 Rule 10 C.P.C. because that provision in relation to the peculiar original civil jurisdiction exercisable by the Court at Karachi does not stand excluded per Order 49 Rule 3 C.P.C. Yet, when a suit has been removed to be tried and determined by this Court in the exercise of its extraordinary original civil jurisdiction, which also vest as in it, the plaint therein cannot be sought to be returned under Order 7 Rule 10 C.P.C. because Order 49 Rule 3 C.P.C. has shut out the last-mentioned provision from recourse in this Court for the purpose of the Court's referred extraordinary civil jurisdiction of original character. Assuming, however, that Order 7 Rule 10 C.P.C. did not apply also to the statutory original civil jurisdiction of this Court then too, at the discretion of the Court, alternatively the suit can be ordered to be sent to the appropriate Court if the exigencies of the situation so demand. The principle has been recognized in *Azam Ali v. Akhtar*, 33 IC 808, *Harnam Das v. Salamat Ali*, AIR 1952 Pepsu 105, *National Bank of Pakistan v. Humayoon Sultan Mufti*, 1984 CLC 1401 and *Shafiq Hanif (Pvt.) Ltd. v. Bank of Credit*, PLD 1993 Kar.107.”

9. The finding in the case of *Mirza Abdur Rahim Baig (supra)* on the power of this Court to return a plaint had been approved by learned Division Benches of this Court in the cases of *Murlidhar P. Gangwani (Engineer) v. Engineer Aftab Islam Agha* (2005 MLD 1506) and *Muhammad Naveed Aslam v. Aisha Siddiqui* (2011 CLC 1176) (*supra*). In the case of *Murlidhar P. Gangwani* it was held that:

“The other submission of the learned counsel with reference to Rule 3 of Order XLIX, C.P.C. which excludes the applicability of certain provisions of C.P.C., including Order VII Rules 10 and 11 (b) and (c) C.P.C., to the ordinary or extraordinary original civil jurisdiction of the High Court, is also equally without force, as non applicability of such provisions of C.P.C. do not deny or curtail the power of High Court either to reject or return the plaint in

appropriate cases. If any case is needed to fortify this view, reference can be made to the case of *Mirza Abdur Rahim Baig* (supra).”

To quote from the case of *Muhammad Bachal v. Province of Sindh* (2011 CLC 1450), “The provisions of Order VII Rule 10 CPC are mandatory. An adjudication by a Court without jurisdiction is a determination *coram non iudice* and not binding. When the Court lacks pecuniary or territorial jurisdiction, in such cases, the plaint must be returned for presentation to the proper court and court cannot pass any judicial order except that of returning the plaint.”

10. The view propounded in the above discussed precedents in a nutshell is that (a) Order XLIX Rule 3 CPC does not take away the power of this Court (the High Court of Sindh at Karachi when dealing with civil suits on its Original Side) to return a plaint under Order VII Rule 10 CPC if this Court finds that it does not have territorial jurisdiction; and (b) only if a suit in respect of immovable property is capable of being instituted within the territorial jurisdiction of the civil courts at Karachi pursuant to section 16 CPC, would section 120 CPC be triggered as regards the High Court of Sindh at Karachi when dealing with civil suits falling within its pecuniary jurisdiction. Thus, and to quote the Honourable Supreme Court of Pakistan from the case of *Muhammad Ramzan (deceased) v. Nasreen Firdous* (PLD 2016 SC 174), “Section 16 (CPC) is not only a threshold section for the conferment of jurisdiction to Pakistani Courts but it is the portal through which the plaintiff has to enter for the purposes of entering into the city of jurisdiction of different Courts in Pakistan”.

11. In view of the foregoing, I conclude that this suit is not maintainable within the territorial jurisdiction of this Court and it ought to have been instituted before the civil court at Thatta having jurisdiction. Therefore, the plaint is returned under Order VII Rule 10 CPC.

