

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.771 of 2005

*[Masjid-e-Abdeen Trust vs. Dubai Shopping Mall
Association and others]*

None present for the parties.

Date of hearing : 17.04.2019

Date of Judgment : 23.05.2019

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Plaintiff has filed this suit for Declaration, Possession, Direction and Mandatory Injunction, with the following prayer clause_

*“The Plaintiff prays for Judgment and Decree against the Defendants
as under: -*

- a) *To declare that the Plaintiff’s possession / administration / management over the Mosque, viz. MASJID-E-ABDEEN situated on the top Floor of Dubai Shopping Mall, Plot No.F-205, Block-2, Tariq Road, P.E.C.H.S., Karachi was lawful legal and Defendants’ interference was illegal, without lawful authority and amount to harassment to the Plaintiff.*
- b) *To deliver / hand over physical possession of the Masjid-e-Abdeen situated on the top floor of Dubai Shopping Mall, Plot F-205, Block-2, P.E.C.H.S., Karachi, and as well as control over the Administration, management, supervision to the Plaintiff Trust as it was in physical possession of the Plaintiff Trust since 1993 till locked by the Defendants No.1, 2 3 & 4 on 28.09.2004. And, thereafter, locked by police and sealed by Hon’ble J.M: IX East, Karachi vide order dated 25th April, 2005 regarding sealing of said Mosque.*

- c) *To direct the Defendants No.5 and 6 to provide the protection to the Plaintiff Trust for the purpose to help the Plaintiff Trust to run the affairs and administration and supervision of Masjid-e-Abdeen Trust as it was going on since 1993 till same locked by the Defendants.*
- d) *To grant mandatory injunction against the Defendants from causing interference and disturbance in the smooth running lawful and peaceful affairs of Masjid-e-Abdeen Trust through Gunda elements of the Defendants, their workers, representatives, or any other person or persons acting on their behalf.*
- e) *To appoint the Nazir of this Hon'ble Court as provisional Administrative / Receiver to manage the affairs of Mosque, viz. Masjid-e-Abdeen Trust situated on the top floor of Dubai Shopping Mall, Plot No.F-205, Block-2, PECHS KARACHI after desecrating the same till the disposal of this suit.*
- f) *To grant any other, further and better relief which this Hon'ble Court deem fit and proper in the circumstances of this case.*
- g) *Cost of the suit."*

2. The claim of the Plaintiff-Masjid-e-Abdeen Trust is that it is a statutory Registered Trust known as 'MASJID-E-ABDEEN TRUST' situated on Top Floor of 'Dubai Shopping Mall', Plot No.F-205, Block No.2, Tariq Road, P.E.C.H.S. Karachi, (*the 'subject property'*). It is stated that the Defendants have locked the said Mosque illegally by misusing the *status quo* order passed in Civil Suit No.1059 of 2004 filed by private Defendants; further averred that the Defendants have no concern with the said Mosque (Masjid-e-Abdeen Trust), which was built prior to the creation of so-called Association of Dubai Shopping Mall and that the said Mosque was in possession and under the administration of Plaintiff Trust, but in the intervening period was illegally locked and sealed as such the Plaintiff is legally and lawfully entitled for physical possession and the administration of the said Mosque in its favour.

3. Upon service of summons, all the Defendants have contested the claim of Plaintiff by filing their respective Written Statements.

4. The private Defendants No.1 to 4 in their joint Written Statement have categorically stated that the Plaintiff has no right, title and interest to form a Trust on the private property of individuals known as 'Dubai Shopping Mall' as there is no registered office of any alleged Trust; besides, they have also filed Suits No.337 of 2005 and 338 of 2005 for Damages and Permanent Injunction, which are *sub judice* in this Hon'ble Court in respect of the same subject matter. Private Defendants have disputed that any Mosque exists at the top floor of the subject Building, viz. Dubai Shopping Mall.

5. The Defendant No.5 (SHO) in his Written Statement contended that Police is discharging its functions in accordance with law. On 28.2.2005, both Plaintiff and private Defendants No.1 to 4 beaten up each other, damaged the property and created serious law and order situation, hence, on 05.03.2005, FIR No.125 of 2005 under Sections 147/149/117/427 PPC was registered on the report of ASI Tariq Ghafoor of Police Station Ferozeabad, Karachi.

6. On 15.03.2010, following Issues were settled by the Court_

“1. Whether the plaintiff was in lawful possession of administration/management over the Mosque viz. Masjid-e-Abideen situated on the top floor of Dubai Shopping Mall, Plot No.F-2005, Block-2, Tariq Road, PECHS, Karachi?”

2. Whether the Mosque in question was illegally locked by the Defendants No.1, 2, 3 and 4 on 18.09.2004?”

3. Whether the Masjid-e-Abideen Trust is entitled to take over possession of administration/management of the Mosque in question through its trustees according to the Byelaws of Trust Deed?”

4. Whether the Plaintiff has any right, title and / or ownership over the Mosque in question?”

5. What should the Decree be?”

7. Today, no one is present on behalf of Plaintiff. Same was the position on the last date when a detailed order was passed and the matter was adjourned with a note of caution that if on the next date of hearing no one appears to lead the evidence then appropriate orders will be passed.

8. As per the Bailiff's report dated 06.02.2019, the Mosque under the Plaintiff's Trust is not more existing and another Mosque by the name of '*Usman-e-Ghani*' is there and all the parties to the proceeding have been shifted from the premises many years back.

It is the obligation of a party who invokes the jurisdiction of a Court to pursue the matter diligently, despite engaging the service of an Advocate. Even if the Plaintiff was shifted to some other place, the latter should have filed its fresh address, as it is a requirement under the Civil Procedure Code in terms of Rule 24 of Order VII; whereas, Order VII, Rule 21 of CPC, relating to filing of address of Plaintiff for service, is mandatory as it entails the penalty of dismissal of Suit, if the correct address is not filed.

9. The Plaintiff has neither pursued the matter diligently nor has come forward to lead the evidence. It appears that the Plaintiff has lost interest in the matter. Unnecessarily a case for want of evidence should not be kept pending if the conduct of the parties does not seem to be *bona fide*, as is the present case, in view of the above discussion.

Secondly, as mentioned in the pleadings of Plaintiff and Defendants both, that other cases are also *sub judice*, particularly the two suits filed by Defendants against Plaintiff (being Suits No.337 and 338 of 2005), in this Court.

10. It is an established Rule that pleadings themselves cannot be considered as evidence unless the Plaintiff or Defendant, as the case may be, enters the witness Box and lead the evidence in support of his / her claim or defence. In

the present case, despite providing ample opportunities, the Plaintiff has not come forward to testify and discharge the burden of proof about its claim. The reported decision of Hon'ble Supreme Court handed down in the case of Rana Tanveer Khan v. Naseer Khan-2015 SCMR page-1401, is relevant. Since Plaintiff has failed to prove the allegations against the Defendants, thus the former (Plaintiff) is not entitled to any relief.

11. Consequently, this suit is dismissed, with no order as to costs.

JUDGE

Dated 23.05.2019

M.Javid.PA