

IN THE HIGH COURT OF SINDH AT KARACHI

**IInd Appeal No.81 of 2012**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Appellant : Mehran Welfare Association,  
Through Mr. Ahmeduddin Hanjrah,  
advocate.

**Versus**

Respondent No.1 : Province of Sindh,

Respondent No.2 : Additional Deputy Commissioner II,  
Thatta

Respondent No.3 : Assistant Commissioner Revenue,  
Mirpur Sakro at Gharo, District Thatta.

Respondent No.4 : The Mukhtiarkar, Revenue,  
Mirpur Sakro, District Thatta.

Respondent No.5 : Siemens Telenor Company

Respondent No.6 : Muhammad Ismail  
Through Mr. Manzoor Hussain Khoso,  
advocate.

Respondent No.7 : Gulsher.

Date of hearing : **24.05.2019**

Date of Decision : **24.05.2019**

**JUDGEMENT**

**NAZAR AKBAR, J.** The appellant through this IInd Appeal has challenged the judgment dated **24.02.2011** passed by Senior Civil Judge, Thatta in F.C Suit **No.86/2008**, whereby the plaint of suit filed by the Appellant was rejected under Order VII Rule 11 CPC and the said order of rejection of plaint was upheld by IInd Additional Sessions Judge, Thatta in Civil Appeal No.26/2011 by judgment dated **14.02.2012** whereby the appeal was also dismissed.

2. Briefly stated the facts of the case are that the Appellant is an Association registered with the Social Welfare Agencies (Registration & Control) Ordinance 1961 and its aims and objects are to work for the welfare of village people, solve their problems and also to provide aid to the ailing, poor and perturbed villagers. It is averred that Ali Muhammad Katiar is sanctioned village under the provision of the Sindh Goth Abad (Housing Scheme) Act, 1987, out of an area of 06-0 acres in survey Nos. 395, 418 of deh Gujjo, Taluka Mirpur Sakro, District Thatta by the then defunct Deputy Commissioner Thatta vide No.GAS/833 dated **14.06.1989**. Subsequently the then Deputy Commissioner Thatta issued a corrigendum to read block No.394/2, 3 admeasuring 9-22 acres instead of block No.395 and 418 admeasuring 6-0 acres vide No.SGA/-461 dated **18.10.1994**. It is averred that District Officer (Revenue & Estate) Thatta had also conveyed the information of above village to the Project Director Sindh Gothabad Scheme, Board of Revenue Hyderabad Sindh vide his letter dated **06.11.2005**. Therefore, various persons have been allotted plots in the said village and such sanads have also been issued. It is further averred that a dispute between the appellant and the respondent No.6 arose when he managed a false, forged and malafide sanad of plot No.66 which plot in fact was allotted to one Gulsher Katiar. But he after getting and making photocopy of such sannad, removed name of said Gulsher Katiar and wrote his own name at that place in photocopy of sannad. It is averred that respondent No.5 is a private company having the mobile phone business, who installed a mobile phone tower at some open space of the village. The Mukhtiarkar (Estate) Thatta has issued the Rubkari intimating therein that the plot No.66 was allotted to one Gulsher Katiar and not to Respondent No.6 therefore, the appellant had filed

a civil suit No.2/2002 against respondent No.5 and respondent No.6 in the Court of learned Civil Judge, Mirpur Sakro at Gharo. It was dismissed as plaint was rejected on **29.4.2008** but subsequently a lease agreement was executed in between the appellant association and respondent No.5, whereby the appellant had agreed to lease the plot in village Ali Muhammad Katiar and respondent No.5 had agreed to take such plot approximately 2421 sq.ft on lease to install ABS mobile phone tower. It is averred that lease was yearly at the rate of Rs.9600/- and it was to expire on **26.08.2020** and such payment of yearly lease money was to be paid by respondent No.5 with an increment of 7% and such terms and condition were also written in such lease agreement and respondent No.5 did make payment of first year lease at the rate of Rs.96,000/- to the appellant but failed to make the payment of lease for the current year 2008 to the appellant. Therefore, the appellant served a notice to the respondent No.5 in response of such legal notice they informed that the title of property is disputed and the appellant is not owner of disputed plot, therefore, respondent No.5 had terminated the lease forthwith and requested the appellant to return alleged amount of Rs.96,000/- which was paid as rental amount. It is averred that office bearers and members of Mehran Welfare Association convened a general body meeting of association on **22.5.2008**, wherein, discussed the situation and authorized the President of the Association namely Morr Khan to pursue the matter against M/s. Siemen Telenor Company and others in the competent court of law on behalf of the Association. It is averred that during the pendency of this suit, respondent No.6 filed an application **U/O.1 Rule 10 CPC** to be added as the respondent and also alleged that he has entered with a lease deed in respect of the said plot with respondent No.5 on **27.08.2005** in respect of

installation of mobile phone tower on certain terms and conditions. It is averred by the appellant that respondent No.6 was not competent, qualified or authorized to enter in to any alleged lease deed with respondent No.5, as he was neither owner, nor had any legal authority to execute such alleged lease deed under the provisions of Contract Act, but he malafidely by introducing himself to be owner of plot No.66 by forging a deh Form-II of same plot made contract with respondent No.5 in deceitful manners, illegally, unlawfully and malafidely. It is averred that the appellant approached respondent No.5 requesting him either to continue the lease with them or to remove all structures, fixtures, tower and erections installed in the plot in question, but respondent No.5 did not listen and issued serious threats to the office bearers of the appellant illegally, unlawfully and malafidely.

3. After notice Respondent No.5 filed his written statement stating therein that no cause of action has accrued to the appellant against the respondent, as the suit filed was a case of misconceived remedy under the law and the same is liable to be dismissed on this score alone. The legal character of the appellant is not established. Moreover, appellant has no locus standi and matter has already been adjudicated by competent court having jurisdiction to decide all the issues between them about the same subject matter. The alleged owner of the plot Gulsher has not been made a party to the suit nor the appellant has got any power of attorney on behalf of the said Gulsher or any legal character to file the suit.

4. The suit was filed against the Government functionaries and Respondent No.5 only. However, later on Respondents No.6 and 7 entered the proceedings when their application under **Order I Rule**

**10** of the **CPC** was allowed. Respondent No.6 also filed written statement alleging therein that village was not established on alleged survey Nos.295, 418 of deh Gujjo, Taluka Mirpur Sakro, District Thatta, but this village was sanctioned on block survey Nos.394/3 under the provisions of Sindh Gothabad (Housing Scheme) Act, 1997 and that this village is an old one and the inhabitants of this village including the respondents are residing in this village since their forefathers. It is stated that defunct Deputy Commissioner Thatta ascertained and realized that survey Nos.395 and 418 were wrongly written in the order dated **14.08.1989**, therefore, by order dated **18.10.1994** a corrigendum was issued directing to read block No.394/2,3 admeasuring 9-22 acres instead of block No.395 and 418 admeasuring 6-0 acres. It is stated that likewise other villagers, the respondent was also allotted plot No.66 situated in village Ali Muhammad Katiar in deh Gujjo, and necessary sanad was also issued in favour of the respondent. It is further stated that respondent No.6 is owner of land bearing block survey No.394/3, 4 admeasuring 8-0 acres in deh Gujjo, Taluka Mirpur Sakro on which village Muhammad Ismail Katiar is established and sanctioned by the then defunct Revenue Officer, Kotri Barrage at Hyderabad and such order was issued and implemented by the Deputy District Officer (Revenue) Mirpur Sakro at Gharo vide letter dated **18.11.2005** and the concerned Tapedar had also submitted such report in this regard.

5. Respondent No.7 also filed written statement stating therein that Plot No.66 admeasuring 1500 sq.feet was allotted to respondent No.7 and it was clarified by the Mukhtiarkar (Estate), Thatta. It is stated that appellant, respondent No.5 and 6 in collusion with each other committed forgery in the documents and gambling with respondent No.7 as he was an uneducated person and without his

consent the respondents prepared forged documents in order to usurp plot No.66. Thereafter, respondent No.7 also filed an application under Order **VII Rule 11 CPC** which was allowed and the plaint of the suit was rejected.

6. I have heard the arguments of respective counsel and perused the record.

7. Learned counsel for the appellant was unable to satisfy the Court that how this second appeal is maintainable against the concurrent findings of rejection of plaint under Order VII Rule 11 of the CPC by the trial Court as well as the first appellate Court. It is an admitted position from the record that the appellant is a welfare association and it is nowhere mentioned by the appellant in the plaint that they own the subject property which is a piece of land bearing plot No.66, measuring 2421 sq. ft. on which Respondent No.5 M/S Siemens Telenor Company has installed their Telenor tower. Even in the plaint it has not been alleged that the plaintiff/appellant is allottee/owner of the said plot and as such they have no cause of action in respect of utilization of the said plot by any of the Respondents under any circumstances. Both the Courts below have precisely dismissed the suit only for want of cause of action as well as locus-standi of the plaintiff/appellant to seek specific performance of contract of lease (Rent) which they have allegedly entered into in respect of the suit property with Respondent No.5. The perusal of prayer clause of suit No.86/2008 shows that the plaintiffs/appellant have not sought any declaration in their favour with respect to the title of the suit property about which they claimed to have entered into an agreement of lease with Respondent No.5. In the absence of title documents in favour of the appellant in respect of the subject

property, the appellant had no authority to enter into lease agreement with Respondent No.5. The other aspect on which the learned trial Court has allowed application under **Order VII Rule 11** of the **CPC** was that the appellant was seeking specific performance of lease agreement and they claimed that Respondent No.5 continued to pay rent to them. The civil Court had no jurisdiction to decide the dispute in respect of payment of rent between the parties. The agreement of rent is supposed to be enforced through the Rent Controller.

8. In view of the above, neither there was a cause of action nor the civil Court had jurisdiction. It was a hopeless case and, therefore, instant second appeal was dismissed by short order dated **24.05.2019** and these are the reasons for the same.

JUDGE

Karachi, Dated: 03.08.2019

SM  
Ayaz Gul