

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.04 of 2020

Date	Order with Signature of Judge
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Before: Mr. Justice Nazar Akbar

Appellant : Abdul Hafeez Ansari,
through M/s. Nasir Rizwan Khan, Advocate.

Versus

Respondents : Abdul Rasheed & others (Nemo)

Date of hearing : **02.03.2020**

Decided on : **02.03.2020**

J U D G M E N T

NAZAR AKBAR, J-- The Appellant through this IInd Appeal has challenged the Judgment dated **03.10.2019** passed by the Xth Additional District & Sessions Judge, East Karachi, whereby Civil Appeal **No.195/2017** filed by the Appellant was dismissed and judgment dated **27.07.2017** passed by the VIIth Senior Civil Judge Karachi East dismissing appellant's Civil Suit **No.1040/2012** was maintained and suit was dismissed.

2. Briefly the facts of the case are that the appellant/plaintiff filed suit for permanent injunction against respondents stating therein that the Appellant/plaintiff is trustee of Muhammadi Jamia Masjid situated at Area 2-C, Landhi No.3½ Karachi by virtue of amended Trust Deed dated **19.08.2011** and the respondents/defendants having no concern with the affairs of masjid were creating hurdles in the smooth administration and affairs of Masjid/Mosque and in execution of their evil plans have also initiated different legal

proceedings at different forum, in as much the respondents/defendants had filed a Trust Suit U/s.92 CPC before the third Additional District Judge East which was contested by the appellant/plaintiff and later such suit was withdrawn by the respondents/defendants and then circulated pamphlets wherein contending themselves to be new administration of the Masjid/Mosque. They have again started creating hurdles and hindrances' by carrying out their own activities and it is apprehended that respondents/defendants would dispossess the plaintiff/appellant as defendants/respondents claims themselves trustee on the basis of forged documents.

3. On service of summons, Respondents filed joint written statement wherein they stated that defendants' have been appointed new trustees under the law and such trust has duly been registered prior to filing of suit and as such amended deed relied by the plaintiffs is no more in existence and plaintiffs do not hold the position as contended by them and without declaration suit for permanent injunction is not maintainable and lastly prayed for the dismissal of the suit.

4. The trial Court from pleadings of the parties has framed the following issues:-

1. *Whether the suit of the Plaintiff is not maintainable?*
2. *Whether the Defendants are illegal and unlawfully interfering for running the functions and administration of Muhammadi Jamia Masjid without adopting due course of law?*
3. *Whether the plaintiff is entitled for the relief claimed?*

4. *What should the decree be?*

5. In order to prove his case, the appellant/ plaintiff has examined himself as Ex:P and produced documents as Ex:P-01/1 to Ex:P-01/05. He was cross examined by the learned counsel for Respondent No.1 to 3/Defendant No.1 to 3 and thereafter side of the plaintiff was closed. In rebuttal, Defendant No.1 to 3/Respondent No.1 to 3 filed affidavit in evidence but thereafter failed to appear for requisite examination in chief/cross examination as such upon consistent failure, the side of the defendants stood closed by order dated 04.07.2017.

6. The trial Court, after hearing learned counsel for the appellant/plaintiff, by Judgment dated **27.07.2017** dismissed the suit of the appellant/plaintiff. Appellant/Plaintiff against the judgment of trial Court filed Civil Appeal **No.195/2017** before the appellate Court which was also dismissed by judgment dated **03.10.2019** and the findings of the trial Court were upheld and suit of the appellant/ plaintiff was dismissed. The appellant has impugned the orders/judgments of both the Court below here in this IInd Appeal.

7. I have heard the learned counsel for the appellant and perused the record.

8. Learned counsel for the appellant has failed to satisfy the Court that how the suit of mere declaration by the plaintiff seeking amendment of trust as illegal would be of any consequence in the absence of any declaration to their own right in absence of Trustees under any registered trust to sever the subject property which is

being run under a Trust. The appellant has challenged trust and the authority of trustees under registered trust but the appellants have not sought permission of Advocate General as required under Section 92 of CPC. The appellant has not described themselves as the interesting trustees to have any right in the administration of property of trust namely Muhammadi Jamia Masjid Trust.

8. In view of the above circumstances even if this appeal is allowed the appellants shall not be allowed to run the affairs of the trust as they have not claimed that they are entitled to look after the affairs of the Trust. In the circumstances, both the Courts below have rightly nonsuited the appellant. I do not find any illegality in the decision of the two Courts below as contrary to law nor there is any failure of the Court to determine any material issue between the parties.

9. In view of the above, instant IInd appeal was dismissed by short order dated **02.03.2020** and these are the reasons for the same.

JUDGE

Karachi, Dated:13.03.2020

SM