

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.108 of 1999

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>10.02.2020</u>	<u>For hearing of main case</u>

Mr. Suresh Kumar advocate for applicant.
Mr. Allah Bachayo Soomro, A.A.G.

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This Revision Application involves conflicting findings of two courts below. The trial court rejected the plaint being Suit No.32/1998 under Order VII Rule 11 read with Order XXIII Rule 1 (3) C.P.C. whereas appellate court reversed the findings and set-aside the order of the trial court directing the trial court to proceed with the matter after recording the evidence on framing preliminary issues of the subject questions involved.

I have heard the learned counsel for the applicant as well as learned Additional Advocate General Sindh who has supported the case of the applicant, whereas, respondents' counsel has remained absent. This case has a chequered history. Originally the respondent filed first suit as Suit No.111/1993 disclosing cause of action in para 13 and the relief sought in para 15. Both the cause of action and the prayer sought are reproduced as under:-

“13. *That, the cause of action has initially been arisen to the plaintiffs to file this Suit about a fortnight back when the plaintiffs required the defts: No.1 to 4 to vacate the Dargah Sharif, Alam Sharif etc: but they refused to do so ultimately claiming to be the owners of entire building and requiring the plaintiffs to vacate the same to them, and finally about a week back when the defendants in all appeared on Dargah Sharif and required the plaintiffs to put the defendants No.1 to 4 into vacant possession of the same within 10 days, within the jurisdiction of this Hon'ble court, which is still continues.*

15. *That, the plaintiffs pray for judgment and decree as under:*

a) *This Hon'ble Court may be pleased to declare that the plaintiff No.1 is 'Sajida Nasheen' (Mutawali) of Dargah Sharif alias Wahdat Fakir, looks after, supervises and maintains Dargah Sharif, Masjid, Imam Bargah and Musafar khana with the help of remaining plaintiffs, who are followers of Allah Bux alias Wahdat Fakir, since 25/26 years and also for the reason that Musafari Khana exists on own S.No.24/4, of Deh Sarai Taluka Khipro, district Sanghar. The defendants No.1 to 4 or any one else has got no right, title or interest thereon, and that the certificate and soorat hall dated*

03.07.1993 issued by defendant No.4 is based on false and fabricated report of Tapidar of the beat being in collusion with defendants No.1 to 4 is without any legal and lawful authority hence the same is liable to cancellation, with further declaration that act of defendants No.5 and 6 forcing the plaintiffs to put the deft 5 and 6 forcing the plaintiffs to put the defendants No.1 to 4 into vacant possession of Dargah Sharif, Alam Sharif is illegal, un-authorized, unlawful, malafide, null and void ab-initio, hence not binding upon the plaintiffs.

- b) This Hon'ble court may be pleased to cancel the certificate and soorat hal dated 03.07.1993 issued by defendant No.5 on false and fabricated report of Tapidar of the beat.*
- c) This Hon'ble court may further be pleased to dispossess the defendants No.1 to 4 from the Musafair Khana under their use for their residential purposes, directing them to put the plaintiffs into vacant possession thereof.*
- d) This Hon'ble court may be pleased to grant permanent injunction against the defendants restraining them from dispossessing the plaintiffs from Dargah Allah Bux alias Wahdat Fakir, Masjid, Imam Bargah and Musafir Khana, and / or from any portion thereof in any way in any manner whatsoever.*
- f) Costs of the Suit be borne by defendants.*
- g) Any other relief, which this honourable court deems fit and proper may be awarded to plaintiffs."*

On a statement filed by the respondents, the aforesaid Suit No.111/1993 was dismissed as withdrawn. For the convenience, withdrawal order is reproduce as under:

"Order

The suit of plaintiff in view of the statement of advocate for plaintiff stands dismissed as withdrawn, with no order as to costs

Sd/-25.11.1993.

Senior Civil Judge, Sanghar"

The respondents then filed second suit bearing Suit No.167/1995 disclosing a cause of action in para 18 and the relief sought in the subsequent suit para 20. For convenience both the cause of action and the prayer sought are disclosed as under:-

"18. That the cause of action accrued to the plaintiffs in the month of August, 1994 when impugned order was passed and also thereafter in September, 1995 when plaintiffs gained knowledge about the impugned order and were adversely affected thereby within jurisdiction of this Hon'ble Court. The cause continues.

20. That, the plaintiffs pray for judgment and decree as under:

- a) *Declaration that the impugned order dated 23.08.1994 passed by defendant No.2 is illegal, void, without jurisdiction, malafide and violative of principles of natural justice and resultantly the entries existing in the record of rights in faovur of plaintiffs which were scored off as consequence of impugned order would stand revived.*
- b) *Declaration that the entry of sale of land bearing No.137 mentioned in para 16 (supra) of the plaint is fraudulent and confer no right in the so alienated land in favour of defendant No.1.*
- C) *Issue injunction against defendants restraining and prohibiting them from acting on entry made in favour of defendant No.1 on the basis of impugned order of defendant No.2 dated 23.08.1994 personally or through any subordinate etc.*
- D) *Issue injunction against defendants restraining and prohibiting them from acting on entry of sale of B.No.10/2, 25/3, and 2 acres each from 24/4 and 10/3 of deh Sarari in favour of defendant No .1, personally or through any subordinate etc.*
- E) *Award costs of the suit to the plaintiffs.*
- F) *Grant any other relief to which the plaintiffs may be found entitled under facts and circumstances o the case.”*

The second suit bearing Suit No.167/1995 was yet again dismissed as withdrawn on the statement of respondents by order dated 11.12.1995, which is reproduced as under:-

“Order
Suit dismissed as withdrawn.

Sd/-11.12.1995.
Senior Civil Judge, Sanghar”

The respondents have not stopped here and they filed yet another suit (third Suit) bearing Suit No.103/1997 disclosing cause of action in para 21 and the relief sought in para 23. For convenience both the paragraphs are reproduced as under:

“21. *That the cause of action accrued to the plaintiffs firstly in the month of August, 1994 when impugned order was passed and also thereafter in September, 1995 when plaintiffs gained knowledge about the impugned order and were adversely affected thereby and again a week before, when the defendants started to threaten the plaintiffs to dispossess them from the ‘suit land’ within jurisdiction of this Hon’ble court. The same cause of action continues till today.*

23. *That the plaintiffs pray for Judgment and Decree as under:*

- a) *Declaration that the impugned order dated 23.08.1994 passed by defendant No.2 is illegal, void, without jurisdiction, malafide, and violative of principles of natural justice and resultantly the entries existing in the record of rights in faovur*

of plaintiffs which were scored off as consequence of impugned order would stand revived.

- b) *Declaration that the entry of sale of land bearing No.137 mentioned in para 16 supra of the plaint is fraudulent and confers no right in the so alienated land in favour of defendant No.1.*
- c) *Issue injunction against defendants restraining and prohibiting them from acting on entry made in favour of defendant No.1 on the basis of impugned order of defendant No.2 dated 23.08.1994 personally or through any subordinate etc.*
- d) *Issue injunction against defendants restraining and prohibiting them from acting on entry of sale of B.No.10/2, 25/3, and 2 acres each from 24/4 and 10/3 of deh Sarari in favour of defdt. No .1 personally or through any subordinate etc; and from interfering with the possession of the plaintiffs of the suit land.*
- e) *Award costs of the suit to the plaintiffs.*
- f) *Grant any other relief to which the plaintiffs may be found entitled under facts and circumstances o the case."*

The cause of action and relief sought is exactly similar to earlier Suit No.167/1995 which was dismissed as withdrawn without any permission to file fresh.

In this suit the plaint was rejected by the trial court under Order VII Rule 11 C.P.C on 05.11.1997. This order has attained finality as it was never challenged by the respondents, as argued.

The respondents have not stopped here and they have filed yet another suit (fourth suit) on the same cause of action and relief being Suit No.32/1998. The cause of action is disclosed in para 19 of the plaint whereas relief sought is disclosed in para 20. Both paragraphs for convenience are reproduced as under:

“19. *That the cause of action accrued to the plaintiffs firstly in the month of August, 1994 when impugned order was passed and also thereafter in September, 1995 when plaintiffs gained knowledge about the impugned order and were adversely affected thereby and again a week before, when the defendants started to threaten the plaintiffs to dispossess them from the suit land and plaintiff learnt about the fraud within jurisdiction of this Hon’ble court. The same cause of action continues till today.*

20. *The plaintiffs pray for Judgment and Decree as under:*

- a) *Declaration that plaintiffs are owners of the suit land and that their rights title, ownership and possession in the suit land is*

not affected by order dated 24.08.1994 passed by the Asstt. Comm: Khipro and the other orders of the court dated 11.12.1995 and 05.11.1997 and that the Mukhtiarkar Sindhri be directed to mutate the suit land in the khata of the plaintiffs as they stood before 24.08.1994.

- b) Injunction be issued against the defendants prohibiting them from interfering in the plaintiffs ownership and possession of the suit land.*
- c) Costs of the Suit be borne by the defendants.*
- d) This Hon'ble court may further be pleased to grant any other relief which may be considered appropriate under the circumstances of the case."*

The trial court on an application filed by the applicant rejected the plaint on 09.01.1999 available at page 31 (Annexure-C) disclosing detailed reasons and disclosure of facts regarding earlier suits having been filed by the respondents. The trial court rejected the plaint being barred under Order II Rule 2 C.P.C as well as under Order XXIII Rule 1 (3) C.P.C. Being aggrieved of the order respondents filed Civil Appeal No.10/1999, which was allowed on a solitary ground that the relief sought in the earlier suits were different and distinct whereas causes disclosed to file the last suit was also different and distinct. On this solitary ground the order of the trial court was set-aside and the case was remanded for its disposal afresh after recording the evidence and framing preliminary issues which may involve the subject question as to the maintainability.

As I have for convenience reproduced the relevant paras of all four suits, it is very essential to peruse the same. All earlier suits disclosed a common cause as far as the subject / common property is concerned. In the last three suits even the order impugned was common.

2nd Suit i.e, Suit No.167/1995 disclosed cause of August 1994 and September 1995 and declaration of order dated 23.08.1994.

3rd Suit No.103/1997 disclosed cause of August 1994 and September 1995 and declaration regarding order of 23.08.1994.

4th Suit No.32/1998 disclosed cause of August 1994 and September 1995 and declaration of order dated 23.08.1994 (incorrectly written as 24.08.1994 as in para 10 of said suit date is disclosed as 23.08.1994). A comparative table of last three suit is given as under:-

	Suit No.167/1995	Suit No.103/1997	Suit No.32/1998
Cause disclosed	August 1994 and September 1995.	August 1994 and September 1995.	August 1994 and September 1995.
Declaration Sought:	<p>a) Regarding impugned order dated <u>23.08.1994</u> as illegal, void, without jurisdiction, malafide and violative of principles of natural justice and as a result thereof revival of entries existed prior to impugned order.</p> <p>b) Regarding Entry No.137 mentioned in para 16 of the plaint conferring right in the so alienated land in faovur of defendant No.1 as fraudulent.</p>	<p>a) Regarding impugned order dated <u>23.08.1994</u> as illegal, void, without jurisdiction, malafide and violative of principles of natural justice and as a result thereof revival of entries existing prior to impugned order.</p> <p>b) Regarding Entry No.137 mentioned in para 16 of the plaint conferring right in the so alienated land in faovur of defendant No.1 as fraudulent.</p>	Regarding ownership of plaintiffs over suit land and protection of their rights title, ownership and possession thereof against order dated <u>23.08.1994</u> (incorrectly written as 24.08.1994 as in para 10 of the plaint date is disclosed as 23.08.1994) passed by Assistant Commissioner Khipro and the orders of the court dated <u>11.12.1995</u> and <u>05.11.1997</u> , with direction to Mukhtiarkar Sindhri to mutate the Suit land in favour of plaintiffs as stood before 23.08.1994.
Conclusion:	Suit was dismissed as withdrawn vide order dated <u>11.12.1995</u> by the Senior Civil Judge Sanghar.	Plaint was rejected under Order VII Rule 11 C.P.C. by the trial court by order dated <u>05.11.1997</u> .	Plaint was rejected under Order VII Rule 11 CPC being barred under Order II Rule 2 as well as under Order XXIII Rule 1 (3) C.P.C. by the trial court by order dated <u>09.01.1999</u> , which was set-aside by the appellate court by order dated <u>26.03.1999</u> , reversing the findings and directing the trial court to proceed with the matter after recording the evidence on framing preliminary issues of the subject questions involved.

When such cause was consumed by filing a Suit No.103/1997 how then subsequent suits on the same causes could be maintained? Needless to mention that in Suit No. 103/1997 plaint was rejected under Order VII Rule 11 C.P.C. and the order was never challenged by the respondents. They were dare enough to file the fourth suit on same cause of action in respect of the same property and against the same parties. The trial court on hearing the parties reached to a lawful conclusion that the respondents have already exhausted their remedies rather over exhausted their remedies by filing four suits on the same cause and property. None of the suits was withdrawn with permission to file fresh and for this consideration Order XXIII Rule 1 (3) C.P.C. would come into play that where plaintiffs / respondents withdrew Suits, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Although there is no additional relief disclosed in the subsequent plaint or at least in the last one which may distinguish the cause or the relief sought, it was nowhere disclosed in the ultimate plaint that the alleged relief was not available to the respondents when the earlier suits were filed and were either withdrawn or the plaint therein was rejected. A bird eye view of the causes of action and relief sought leads to an irresistible conclusion that it is the same cause which is being utilized again and again in respect of the same property and against the same parties. Hence, the respondents cannot be allowed to agitate their grievances again and again despite the fact that the cause has already been consumed not once or twice rather thrice and it was on the fourth occasion when the trial court rejected the plaint. The appellate court set-aside the order of the trial court and remanded the case without pointing out what relief sought by respondent was different and distinguished from earlier ones and that the additional reliefs (if any) was not available when such suits were filed. There was no reason or occasion for remanding the matter back as it was apparently barred under Order XXIII Rule 1 (3) read with Order II Rule 2 C.P.C. No justified reason was provided by the appellate court except a statement without application of mind that the causes of action accrued to file suit was different. Perhaps the appellate court has not minutely perused such causes of action right from the inception of the first suit till last one. The appellate court has failed in attempt to identify the differences in all such causes and reliefs. I, therefore, allow this Revision Application and set-aside the order of the appellate court while the order of the trial court is maintained.

JUDGE

