

# IN THE HIGH COURT OF SINDH

Circuit Court, Hyderabad.

**R.A. No. 219 of 2019.**

Applicant: Muhammad Ayoob, Through Mr. Muhammad Iqbal Qassar, Advocate.

Respondents: Muhammad Ismail & another, Through Mr. Sajjad Ali, Advocate.

Date of hearing: 02.12.2019

Date of decision: 13.12.2019

## **ORDER**

**ADNAN-UL- KARIM MEMON, J.** - Through this revision application the applicant has impugned the Judgment dated 15.10.2019, passed by the learned District Judge, Badin/Model Civil Appellate Court in Civil Appeal No.66 of 2019, whereby the order and decree dated 24.8.2019, passed by learned Senior Civil Judge, Golarchi at Badin, in First Class Suit No.138 of 2018, rejecting the plaint under order 7 Rule 11 CPC. Was set-aside and remanded the case to learned trial court for decision on merits.

2. The case of the applicant is that he is original owner of residential Plot admeasuring 7230 square feet situated in Khorwah Town, Taluka Shaheed Fazil Rahu, and never sold out to anyone. Conversely Respondent No.1 claims bonafide purchaser of the subject property under sale agreement dated 23.12.1992 and requested respondent No.2 to execute sale deed and due to non-adherence of commitment, he filed suit No.138 of 2018 before learned Senior Civil Judge, Golarchi at Badin for specific performance of contract with direction to No.2 to execute registered sale deed in his favour after obtaining necessary documents from concerned authorities. Respondents contested the matter by filling their respective written statement and also filed an application under order 7 rule 11 CPC. The learned Trial Court after hearing the parties and their counsel allowed the application under order 7 rule 11 CPC and rejected the plaint vide order dated 24.08.2019. Respondent No.1 being aggrieved by and dissatisfied with the aforesaid decision preferred Civil Appeal No. 66 of 2019 before the learned District Judge Badin against, who

passed the impugned judgment dated 16.10.2019 and remanded the matter to learned trial court for decision on merits. Applicant feeling aggrieved has approached this court.

3. I have considered the arguments of learned counsel for the parties and have gone through the material brought on record.

4. For interpreting scope of Order VII, Rule 11 of Code of Civil Procedure, 1908 its provisions are reproduced as follows:

The plaint shall be rejected in the following cases:

- a) Where it does not disclose a cause of action;
- b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- c) Where the relief claimed is property valued; but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- d) Where the suit appears from the statement in the plaint to be barred by any law.

5. I have noted that the above provision of law is mandatory in nature as the word "shall" has been used; meaning thereby that a Court is bound to reject a plaint if it "appears" from the statement in the plaint to be barred by any law.

6. I have examined the plaint and noted the following aspects of the case:-

- a. suit land is katchi abadi land
- b. Parties have no title documents of the subject land
- c. suit is barred under Section 54 of Transfer of Property Act
- d. Suit is barred under Section 18, 42 and 54 of Specific Relief Act

7. The pivotal question which need to be addressed in order to reach a just decision is whether the plaint of the applicant is barred under the law?

8. Addressing the first question I observe that the learned trial Judge has rejected plaint on the point of law on the premise that vendor

had no title documents to sale the subject property to anyone, thus no specific performance of contract can take place. The respondent No.1 filled above specified Suit, which is not sustainable under the law. Secondly, the parties have no title documents and have relied upon some copies which are disputed and denied by them. Therefore, all such documents are subject to proof by means of evidence. It is a settled principle of law that no reliance can be placed on a document which is relied upon by one party in the proceedings and is denied by the other. Reliance is placed on the case of Haji Abdul Karim and others Vs. Messrs Florida Builders (Pvt) Limited (PLD 2012 SC 247).

9. The learned trial Judge has dealt with every aspect of the case and has rightly concluded in the impugned Order that the plaint is barred by law and the applicant has failed to make out his case on merit.

10. It appears from record that the subject property belongs to government, thus no order can be passed. Suit being barred under Section 18 & 56 of Specific Relief Act, the learned trial Court has rightly rejected the plaint; hence, no interference is warranted by this Court.

11. Before parting with this order it may be observed that the competent authority of Sindh government i.e. Director Katchi Abadi Badin Region, shall take steps to retrieve government land if the subject land actually belongs to Government, the same exercise shall be undertaken within a period of one month from the date of receipt of this order.

12. In the light of above facts and circumstances of the case, this Revision Application is disposed of in the terms whereby the judgment dated 15.10.2019 passed by the learned District Judge, Badin in C.A. No. 66 of 2019 is set-aside and the order and decree dated 24.8.2019 passed by the learned Senior Civil Judge, Golarchi at Badin is up-held.

**JUDGE**