

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 57 of 2015

Before: Mr. Justice Irfan Saadat Khan
Mr. Justice Fahim Ahmed Siddiqui

Ghulam Farid Memon. Appellant.

Versus

Province of Sindh
& others. Respondents

Date of hearing : 04.02.2020

Date of reasons : 06.02.2020

Appellant Ghulam Farid Memon through Mr. Muhammad Anwar Shahid, advocate.

Respondents No. 10 to 14 namely Muhammad Suleman, Mustafeez-ur-Rehman, Waseem Fatima, Muhammad Faizan Javaid and Abdul Qayyum Nathani respectively through Mr. Mr. Malik Altaf Jawed, advocate.

Respondents No.1 and 3 to 9, the Province of Sindh & others through Barrister Shaheryar Mehar, Addl A. G., Sindh.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- The appellant has filed this appeal against the impugned judgment dated 03-02-2015, whereby the learned Single Judge of this Court has dismissed the Suit No.750/2013, filed by the appellant.

2. The record reflects the facts of the case, according to which the appellant is one of the villagers of Ghazi Goth and president of 'Ghazi Goth Welfare Association'. The said village is situated within Scheme 36, Gulshan-e-Iqbal, Karachi East. Allegedly, the said village is an old village and the villagers have moved several applications for its sanction to higher

officials and also tried to get the village sanctioned/regularised from the Board of Revenue but it could not be regularized from any authority. As averted, some of the official respondents tried to dispossess the villagers and have demolished some shanties and houses, which was publicized in media also. Allegedly, the claim of villagers rested over the land of the village on the ground of their long settlement coupled with issuance of CNICs and inclusion of their names in the voters list of the constituency. As such the appellant filed the aforementioned Suit, as a representative Suit for declaration and permanent injunction.

3. Mr. Muhammad Anwar Shahid, learned counsel for the appellant, opens his arguments by submitting that the learned Single Judge mistakenly held that the plaint was not amended after joining defendants No. 10 to 14. According to him, after joining new defendants, not only the amended title was filed but also paragraph number 12 was added in the plaint. He submits that the said para described the role of newly added defendants. He submits that the learned Single Judge has overlooked certain important facts regarding the case of the appellant. According to him, the appellant has filed a teeming number of documents showing the possession of the appellant and other villagers over the land, where Ghazi Goth is situated. He submits that the learned Single Judge could not appreciate that the villagers are holding CNIC and their names are available in the voters list of the constituency and they have casted their votes several times. He points out that at the very initial stage of filing the Suit, a stay was granted in favour of the appellant but in a spite of injunctive order, the official respondents have demolished about 50 dwellings of the villagers for which contempt application was filed. He submits that the Suit could not be decided on the basis of available documents and it would be appropriate to record evidence. According to him, since not only contempt application but an application under Order 39 Rules 1 & 2 of CPC was also pending, hence before deciding those

applications, a final verdict could not be passed. He submits that the appellant and other villagers were not residing on any private land and it would be incorrect to say that the appellant or any of the villagers has encroached upon the land of the private respondents. According to him, the appellant was seeking protection for the villagers either through recognizing Ghazi Goth under Goth Abad Scheme or Katchi Abadi. He submits that although the Suit was a representative Suit and requisite publication has not been made but the appellant was ready to make requisite publication for the representative Suit. While closing his arguments, he submits that the impugned judgment may be set aside and the matter be remanded for proper trial of the Suit.

4. In contra, Mr. Malik Altaf Jawed, advocate prefers his brief submissions regarding the maintainability of the Suit. He submits that after going through the prayer clause, it appears that the appellant was not claiming any personal relief, while the relief of protection of possession could not be granted to the appellant without establishing their right over the land. He submits that the appellant has to claim all the reliefs in the plaint, as required under Order II, Rule 2 of CPC. According to him, the Suit filed by the appellant in its present form was a representative Suit but requirements of the representative Suit have not been fulfilled. According to him, the Suit of the appellant was dismissed after hearing an application, filed by his clients under Order VII, Rule 11 of CPC. He submits that the impugned order is based on proper reasonings and the same may be upheld.

5. Mr. Shaharyar Mehar, learned Addl. A. G., Sindh supports the impugned judgment. He submits that there is a proper procedure for establishing a village or recognizing a katchi abadi. He submits that now no fresh village can be established within the metropolis of Karachi.

6. We have heard the arguments advanced by the learned counsel for the parties and have gone through the available record.

7. It is an admitted position that the appellant has filed the aforementioned Suit for declaration on the basis of possession only. The appellant was not claiming a personal right in his favour but he was seeking a declaration without having any property rights in respect of certain land in favour of his co-villagers including himself for which he was seeking regularisation without having any property rights over the said land. We are of the view that in absence of any property rights in favour of the appellant, no question of threat of such right from any corner arises, hence a declaratory relief could not be extended to the appellant. The appellant has no title in favour of himself or other villagers, and in absence of any title over the land in question, the status of the appellant was not more than an encroacher. So far as regularization is concerned, it is subject to the statute for which the proper procedure and remedy is provided under the statute itself, while no question of regularization arises for a private land without the will of the landowner. Nevertheless, an application for regularization does not create any title or right and on the basis of the same, the appellant could not seek declaratory relief in his favour and other persons residing on the said land. While arguing in favour of the appellant, Mr. Muhammad Anwar, advocate emphasized upon issuance of CNICs to the appellant and other dwellers of the questioned land so also insertion of their names in voters lists but all these documents may not create an invariable and natural title of the appellant over the said land.

8. Another aspect of the case is important. The appellant has filed the aforesaid Suit in the representative capacity. The learned counsel for the appellant has submitted that the appellant will ensure the requirements of a representative Suit by publicizing an advertisement, as per directions of

the Court. In this respect, we are of the view that a representative Suit could not proceed further unless the requirements of Order I Rule 8 of CPC are fulfilled. The Suit was filed in the year 2013 and thereafter the appellant (plaintiff of the Suit) succeeded in getting interim relief and has also filed a contempt application but during such a long time, he did not seek permission for such Suit and publication, which is mandatory under the law for a representative Suit, while it was mentioned by the appellant (plaintiff) in the heading of the plaint that it was a representative Suit. The reason was that if the Suit was either brought or defended under Order I, Rule 8 of CPC, the persons either suing or defending an action in representative character, must notifies others, so that a judgment and decree passed in such a Suit binds all those, whose interests were represented either by the plaintiff or by the defendant. We are of the view that unless the provisions of Order I Rule 8 of CPC i.e. permission to sue in a representative capacity, are complied with, even an injunctive order will not bind the defendant of the Suit for the whole community and its violation cannot expose them for a contempt proceedings. We are of the view that issuance of notice and at the time of issuance of the notice, granting some interim relief, was not equivalent to granting permission to sue in representative character because usually such permissions are granted subject to all just exception. We are also of the view that it is not the duty of the Court to pass an order for permission and publication of notice suo-moto but it is the duty of the plaintiff or defendant, as the case may be, to file an application under Order 1 Rule 8 of CPC for the permission to sue or defend in representative capacity, and after considering all the aspects of the case, the Court may grant such permission and allow publicizing of the notice to the group of people or community for or against whom the legal action is brought. Even the Court may decide the mode and style of publicizing, which include any method sufficient to bring into the knowledge of all those for or against whom the

litigation is intended. We are clear in our mind that unless such permission is obtained by the person suing or defending in a representative capacity, his action is not binding effect upon those whom he is representing in the legal action. We are also of the view that such permission should be obtained simultaneously or at the most at the initial stage of the Suit and not after a considerable delay.

9. In view of the above discussion, we have come to the conclusion that neither the appellant was entitled to any declaratory relief nor any cause of action has ever accrued in his favour, hence his Suit was rightly dismissed. We, therefore, find the instant appeal unmeritorious, hence the same alongwith the listed application was dismissed through our short order dated 04-02-2020 and these are the reasons for the same.

JUDGE

JUDGE