

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No.S- 06 of 2007

Muhammad Ashraf and others.....Applicants

Versus

Province of Sindh and others.....Respondents

Date of Hearing: **13-12-2021**

Date of Decision: **13-12-2021**

Mr. Safdar Ali Bhatti, Advocate for the Applicants.

M/s Abdul Qadir Shaikh and Abdul Basit Shaikh, Advocates for the Respondents.

Mr. Ali Raza Baloch, Assistant A.G-Sindh.

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned judgment dated 27.11.2006, passed by Additional District Judge, Gambat in Civil Appeal No.13 of 2005, whereby, while allowing the Appeal, Judgment dated 17.02.2005, passed by Senior Civil Judge, Gambat in F.C.Suit No.70 of 2000, has been set aside through which the Applicants' Suit was decreed.

2. I have heard both learned Counsel for the parties and perused the record. It appears that the Applicants had filed a Suit for declaration and permanent injunction seeking the following prayer:

"i. It may be declared that Gulistan-e-Madina Masjid or suit Masjid exclusively belongs to plaintiff and their Co-Jamait men professing Ahale-sunnat Barelevi faith.

ii. It may further be declared that plaintiffs and their co-Jamait men are entitled to manage and run the affairs of all kinds of suit Masjid and offer prayer in it to the exclusive of persons of Dev-Bandi faith including the defendants 3 to 7.

iii. Restrain the defendants and other persons of Dev-Bandi faith by an injunction not to enter into or interfere with suit Masjid or its affairs in any manner.

iv. Give any other suitable relief as deemed fit and proper by this Honorable Court".

3. After exchange of pleadings and recording of evidence, Suit of the Applicants / Plaintiffs was decreed, against which Civil Appeal was

preferred, which has been allowed by setting aside the Judgment of the trial Court.

4. At the very outset, Applicants' Counsel was confronted as to how in view of the prayer clause, the Applicants' Suit was competent for seeking a declaration under Section 42 of the Specific Relief Act, as apparently the prayer as above, could not have been granted to the Applicants and to this, learned Counsel has not been able to satisfactorily respond. It is settled law that a Suit for declaration can only be maintained by a person who has some legal right, which is being denied; whereas on the face of it, the prayer as above, does not entitle the Applicants to seek such a declaration. Not only this, no legal right has been pleaded, which could have been denied or breached, except that the Applicants had contributed in construction of the mosque. It is also a matter of admitted position that the Suit was not filed by any Trust or Waqf, who for that matter could have had a legal status and perhaps might have been in a possession to assert their legal rights regarding affairs of the mosque, but for the present purposes, at least the present Applicants had no such legal right; therefore, the Appellate Court was fully justified in setting aside impugned Judgment of the trial Court; whereas, learned Appellate Court was also justified in observing that the mosque is a house of Almighty Allah reserved for offering prayers and every Muslim can enter into mosque and offer prayer, whenever he desires.

5. In view of hereinabove facts and circumstances of the case, no case for indulgence is made out; whereas Judgment of the Appellate Court is in accordance with law; hence by a short order, this Civil Revision was dismissed in the earlier part of the day and these are the reasons thereof.

Ahmad

J U D G E