

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.888 of 2008

Plaintiff: M/s. Shamsi Cooperative Housing Society Ltd, through its Secretary Muhammad Waseeq Shamsi ,  
through Mr. Raja Ali Asghar Advocate.

Defendant The Chief Editor & Publisher, The Daily Karachi City & others.  
through Mr. Munir Ahmed, Advocate.

Date of hearing: 02.12.2015.

Date of judgment:19.01.2016

J U D G M E N T

SALAHUDDINPANHWAR-J, This judgment will dispose of the captioned suit, whereby plaintiff seeks *recovery of Rupees Twenty Millions against damages* with the following prayers:

..... to pass judgment and Decree in favour of the plaintiff and against the defendants jointly and severally as follows:

1. To direct the defendants to pay Rupees Twenty millions to the plaintiff on account of damages, mental torture, Agony suffered by the plaintiff and its office bearers/members due to defamatory, libelous and false news/allegation **published by the defendant No.1 in their News Paper on 21.02.2008, 22.4.2008 and 23.4.2008 in collusion with and on the false information of the defendant No.2.**
2. Cost of the suit may also be awarded.
3. Any other relief that this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Tersely, relevant facts of the case as averred in the plaint are that plaintiff, which is a Cooperative Housing Society, purchased land in

Surveys Nos. 51, 59 ,60, 359, 52A (western portion) 72, 73, 78, 310 and 68 (plot No.3,5m 6) Deh Digh, Tappo Malir Karachi from various persons through registered Sale Deeds in the year 1968 and name of the plaintiff was duly mutated in the record of rights; in the year 1991/1992 the defendant No.2 and his three associates by dint of un-registered power of attorneys got registered four sale deeds and claimed to have purchased certain land about 4258 sq.yds from different surveys in Deh Digh Tapo Malir where the land of the plaintiff is situated and they tried to encroach upon the plaintiff's land in Survey No.59, hence, the plaintiff filed suit No.41/93 before this Court, which later on transferred to the lower Court where it was numbered as 1650/2003 and eventually the same was dismissed. Against the said dismissal Civil Appeal No.111/2005 was filed by the Plaintiff, which too was dismissed and against that order plaintiff filed IInd appeal No.16/2008 before this Court, wherein not only notices were issued to the respondents of the said appeal, including Defendant No.2, but also stay was granted vide order dated 21.04.2008; on the information of the defendant No.2 the defendant No.1, who is the Chief Editor and publisher of the News paper "The Daily Karachi City", consecutively published report/News in his newspaper dated 21.04.2008, 22.04.2008 and 23.04.2008 containing defamatory, libelous, imputations under the caption "ORDER OF THE HIGH COURT HAS BEEN PUT TO DUST BIN. Chaudhry Muhammad Ashraf has become victim of cruelty of M/s. Shamsi Cooperative Housing Society. The officer bearers of the Society have grabbed the plot of Ch. Muhammad Ashraf measuring 4000 sq. yds". In the said news the plaintiff and its

office bearers have been shown land grabber/Land Mafia and this news was published by the defendant No.1 on the mis-information of the defendant No.2 to harm the prestige of the plaintiff. The plaintiff after going through this defamatory news sent legal notice to the defendant No.1 through T.C.S. calling upon them to pay damages of Rupees Twenty Millions but the same was not replied. Hence this suit.

3. Defendant No.1 in his written statement raised preliminary legal objections that the suit as framed is not maintainable in the eye of law; the suit has been filed with malafide intention and ulterior motives for harassing and pressurizing the defendant No.1 to restrain him from publishing true facts for the information of public at large in good faith in his newspaper, which is liable to be dismissed. It is averred that what was published in the newspaper by the defendant No.1 was in fair manner and all the material in this regard was provided by the defendant No.2 ; that defendant No.1 shown his ignorance as to ownership of the subject land by the plaintiff, however, defendant No.2 given two registered Conveyance Deed vide Registration Nos.3959 and 3960, dated 24.09.1991, to the Defendant No.1 wherein the defendant No.2 was mentioned as co-owner of Sikni land in Survey Nos.51, 59, 60, 359 situated in Deh Digh Tappo Malir Karachi ; that copies of documents relating to litigations between the plaintiff and defendant No.2 and others and of the letter dated 03.10.2007 issued by the Nazim of UC No.6 Refa-e-Aam Shah Faisal Town were provided by the defendant No.2 to the defendant No.1 on the basis whereof the publication was made and there is no personal grievance of the

defendant No.1 against the plaintiff. It is asserted by the defendant No.1 that conduct of the plaintiff and the documentary evidence provided by the defendant No.2 clearly reflects that in the presence of injunctive order passed by this Court the plaintiff wanted to encroach /sell the land of defendant No.2 hence the publication made was correct in the public interest, which caused no harm to the plaintiff's reputation and the legal notice sent by the plaintiff, which is based on false facts, has no legal value. Lastly Defendant No.1 prayed for dismissal of the suit of the plaintiff.

4. Defendant No.2 also in his written statement raised the objections as to the maintainability of the suit, which, according to him, has been filed by the plaintiff with malafide intentions to save its office bearers from the consequences of their ill deeds; that plaintiff is known as land mafia and in this respect the government of Sindh issued an order against it for investigation of misappropriations and malpractices, which was published in Daily Jang Karachi dated 01.01.2010; that defendant No. 2 and his partners are lawful owners of the subject land on the basis of registered conveyance deeds, mentioned above and an application 28.07.2005 was also filed by Defendant No.2 to the concerned Mukhtiarkar for issuance of fresh Form-VII and other relevant documents. The civil litigations between the plaintiff and defendant No.2 and others as mentioned by the former in paras-6 and 7 of the plaint were admitted by the latter. It is claimed that during civil proceedings the plaintiff having no authority handed over the land of defendant No.2 and others to Nazim, UC.

No.6, Shah Faisal Town, for constructing Katchra Kundi, whereon true facts regarding court proceedings and the stay operating in the matter were brought into the knowledge of the said Nazim by the Defendant No.2; that the plaintiff and its office bearers alongwith armed persons not only demolished the construction raised by the defendant No.2 for protection of his land but also evicted his chowkidar and when defendant No.2 visited his land, they threatened him for murder and in this regard he moved applications to various authorities, including lodging of FIR bearing No.200/2005 at P.S. Al Falah, against the plaintiff' members; that publication of news was made by the defendant No.1 on the basis of documentary evidence provided by the defendant No.2 in good faith and in public interest, which allegedly caused no reputation loss to the plaintiff; that the legal notice for demanding damages was also issued by the plaintiff without any lawful justification as the same is based on untrue facts and grounds; that the publication was made to save the innocent people from suffering any loss, as the plaintiff with malafide intentions was selling defendant No.2's and his partners' land and in this respect the plaintiff also sold the plot No.C-214, measuring 200 square yards, Shamsi Cooperative Wireless Gate Karachi, to one Ehtesham Raees, who also filed Suit No.1092/2009 against the defendant No.2 and plaintiff in the Court of IIIrd Senior Civil Judge, Karachi East; that the defendant No.2 and others filed a Suit No.42/1993 in the said Court against Muhammad Yousuf Shamsi and Muhammad Siddiq Soleja and others, wherein Shamsi and Soleja filed a statement that they are not owner of

disputed land. It averred that the plaintiff has no cause of action to file this suit, which is liable to be dismissed with cost.

5. Out of the pleadings of the respective parties the following issues were framed on 06.09.2010 which are as under :-

1. *Whether publication effected on 21.04.2008, 22.04.2008 & 23.08.2008 are defamatory and libelous, if so its effect?*
2. *Whether the plaintiff has suffered any mental torture, harassment or damages, if so to what effect?*
3. *Whether the plaintiff is entitled for any compensation or damages, if so to what amount?*
4. *What should the judgment and decree be?*

6. The matter was referred to the Commissioner for recording of evidence, where both the parties filed their affidavits in evidence, the plaintiff's authorized representative examined himself, produced documents as Exh. "P" to Exh. "P/7" while Defendant No. 2 & Defendant No.1 examined themselves wherein they produced documents as Exh. "D to D/17 & "D18 to "D/20" respectively. All the witnesses were cross examined by their rival counsel and thereafter their side was closed.

7. Heard learned counsel for plaintiff and defendants, perused available record.

**ISSUE NO.1**

8. The issue no.1, is a question of law. The instant suit has been filed as *ordinary suit* within meaning of Section 9 of the C.P.C but since

the issue is in respect of '**defamation**' with reference to publication, published in newspaper hence I find it in all fairness to *first* address the issue of maintainability of suit with reference to formation of the issue no.1 because there can be no denial to the legally established position that if a matter is decided by a court, having no legal jurisdiction to entertain and try it, then decision thereof shall lose its legality being *coram non iudice*.

9. Now, before proceeding any further I would say that there had never been any specific law providing a remedy for a claim '*to have suffered damages on account of defamation*' and normally such cause were being dealt as '*tort*' which even included the remedy against a claim of *malicious prosecution*. I would tag the relevant portion of the judgment of Honourable Supreme Court of Pakistan, passed in the case of Abdul Majeed Khan v. Tawseen Abdul Haleem (PLD 2012 SC 80) which reads as:

20. Where the claimant has been subjected to a criminal prosecution, as a consequence of which he loses or risks of losing his liberty and /or his reputation, a remedy in the tort of malicious prosecution will lie. The institution of a civil action should exceptionally, results in liability under tort, when the claimant loses the suit, the defendant's reputation is restored and he recovers his cost spent on defending the action. However, for malicious proceedings in bankruptcy and winding up, which may wreck the claimant's business, destroy confidence in his competence and integrity and in his company's goodwill, a remedy in the Tort will lie.;

Underlining is provided for emphasis.

However, the '**Defamation Ordinance**' does provide a special mechanism. The preamble of the '**Defamation Ordinance**' would make its object and purpose clear which is:-

**'Whereas it is expedient to make provisions in respect of defamation and for matters connected therewith or incidental thereto;'**

The preamble sufficiently makes it clear that it (defamation Ordinance) is a special enactment. At this juncture, the term '*defamation*' needs to be referred with reference to the Defamation Ordinance which is :

- '3. Defamation.—(1)** Any wrongful act or publication or circulation of a *false statement* or *representation* made orally or in written or visual form from which injures the reputation of a person, *tends to lower him* in the estimation of others *or tends to reduce him* to ridicule, unjust criticism, dislike, contempt or hatred shall be actionable as defamation.
- (2) Defamation is of two forms, namely:--
- (i) Slander; and
- (ii) Libel.
- (3) Any false oral statement or representation that amounts to defamation shall be actionable as *slander*.
- (4) Any false written, documentary or visual statement or representation made either by ordinary form or expression or by electronic or other modern means or devices that amounts to defamation shall be actionable as *libel*.

From reading of the above definition, it should not be disputed *any more* that a *slander* or *libel*, if falling within said meaning then same shall be actionable within four corners of the Ordinance and *aggrieved* shall be entitled to remedy, provided by Section 8 of the Ordinance. The provision of Section 8 of the Ordinance has explained the '**remedies**' one may be entitled at the end of the day under such special enactment. The minimum has been given but no upper limit for '**general and special damages**' has been sketched by the law makers



hence issue of the '**pecuniary jurisdiction**' is not there. This should stand clear from the Section 13 of the Ordinance whereby the jurisdiction to try the cases under this Ordinance has been conferred to '**the District Court**' alone. The deliberate use of the '**the District Court**' in Section 13 of the Ordinance with word '**shall**' is sufficient to establish the intention of the law makers that no other court **shall** have the jurisdiction to try the cases, filed under this Ordinance. The High Court does as a '**Civil Court**' but this should never be confused that it (High Court), while exercising **original civil jurisdiction** , becomes the '**District Court**' or can dresses it up as a '**particular court**'. Needless to say that what the law itself does not confer the jurisdiction then no court can *legally* create such jurisdiction, even the High Court because the law permits the Courts the *interpretation* but not to step onto domain of legislatures i.e '*making of law*'. To confer the jurisdiction, *undeniably*, is the function of the Law Makers. Thus, the instant suits, at material times, were / are triable by the '**District Court**' concern which jurisdiction cannot be taken away even on ground of '**pecuniary jurisdiction**'. At this juncture, it would be conducive to refer the case of the PAKISTAN HERALD PUBLICATIONS (Pvt) Ltd and 2 others v. KARACHI BUILDING CONTROL AUTHORITY through Controller of Buildings. [2012 CLD 453], wherein it is held:-

*"8. The Defamation Ordinance, 2002 on its reading shows that it is a special law made by Federal Government on the subject of defamation creating special remedies and also provide for specific Court for trial of cases and appeal. It has conferred jurisdiction for trial of cases under the Ordinance on the District Court."*

*"9. The Karachi Courts Order, 1956 so also the Sindh Civil Courts Ordinance, 1962 refer to establishment of the Court which, inter alia, provides for the Court of District Judge. The*

*word District Court in itself is not used in both the laws. The Sindh Civil Courts Ordinance in section 7 as it reads today provides for original jurisdiction of the Court of District Judge and further says that subject to this Ordinance or any law for the time being in force the original jurisdiction of Court of District Judge in civil suits and proceedings shall be without limit of the value thereof except in the Karachi Districts where the original jurisdiction in civil suits and proceedings of the value exceeding Rs.15 million shall be exercised by the High Court.*

*10. The Defamation Ordinance, 2002 specifically confers jurisdiction for trial of cases on District Court. For its application it is not dependant on the pecuniary limits prescribed by the Sindh Civil Court Ordinance specially when it is read in the context that it is a Federal law and will hold the field on its own without being subordinated or subjected to the latter Ordinance which only is Provincial law. This is also made clear by section 15 of the Ordinance which has conferred jurisdiction on the High Court to hear the appeal under the Ordinance. It does not require that appeal will be heard by more than one member bench of the High Court. The appeal, therefore, in such state of law could very well be heard by one member bench of High Court. It cannot be that a case heard and decided by one member bench of High Court and then appeal against it is also heard by one member bench of High Court. This cannot be the situation that could have been visualized by framer of the Ordinance as in its mind the concept of District Court and High Court were altogether two different courts."*

In case of KHADIM HUSSAIN and 12 others v. GUL HASSAN TIWANO and 3 others [2014 MLD 574] para No.8 is relevant, which is reproduced as follows:

*"8. I would like to refer here to two reported cases of this Court on the point of exclusive jurisdiction of the District Court in the cases pertaining to defamation under the Ordinance. In the case of Pakistan Herald Publications (Pvt.) Ltd. and 2 others v. Karachi Building Control Authority through Controller of Buildings 2012 CLD 453, a learned Division Bench of this Court was pleased to hold that the Defamation Ordinance, 2002, on its reading shows that it is a special law made by the Federal Government on the subject of defamation creating special remedies and also provides for specific court for trial of cases and appeal. It has conferred jurisdiction for trial of cases under the Ordinance to the District Court. It was further held that the Ordinance has provided District Court as the court of trial of cases under it; it will be the District Court and no other court including the High Court; it is the appeal against the final*

*decision and decree of that court which will be heard by the High Court. Similarly, in the case of A. Khalid Ansari v. Mir ShakilurRehman, 2011 CLD 1196, it was held by a learned single judge of this Court that section 13 of the Ordinance has created an exception to the rule contained in section 15, C.P.C. to the effect that now suits in respect of defamation shall be instituted in the District Court."*

10. In case of Khadim Hussain (supra) the suit was decreed by the Senior Civil Judge, Naushehro Feroz, and in First Civil appeal such judgment was set aside by this Court and it was observed in para 14 that:

*14. It is, therefore, concluded that the impugned judgment and decree, being void ab initio, cannot be allowed to remain in field. The objection raised by the learned counsel for the respondents that this Court has no jurisdiction to decide this appeal as the appeal should have been filed by the appellants before the District Judge, has no force in view of the cases discussed above. It is a settled law that this Court has inherent and constitutional powers to remedy/correct the wrongs committed by subordinate courts by passing judgments/orders which are void or without jurisdiction. It is also a settled law that this Court in its inherent jurisdiction can convert an Appeal, Constitutional Petition or Revision to any other remedy, as held by the learned Division Bench of this Court in the case of Syed Ghazanfar Hussain through Legal Heirs and others v. Nooruddin and others, 2011 CLC 1303. In the present case, since the entire proceedings before the Senior Civil Judge were coram non iudice, the appellants did not have the remedy for filing the appeal before the District Judge, as in the case of defamation filed under the Ordinance, the appeal lies before the High Court. Even otherwise, this Court has inherent powers to exercise its extraordinary constitutional jurisdiction in case of order or judgments which are void ab initio.*

11. In view of above discussion with reference to above judgments I am clear in view that the Defamation Ordinance, 2002, is a special enactment and a case, under this Ordinance, has to be tried by the Court (District Court) directed by such Special Law and not before this Court even. Therefore, I find it in all fairness and equity to refrain

myself from commenting about merits on factual side of the case or issues even as it may prejudice to the case of either parties for which they would have ample opportunity before proper court. Accordingly, plaint is returned back. Plaintiff may file the same to the Court having jurisdiction, subject to legal exceptions.

Suit stands disposed of in the above terms.

Sajid

J U D G E