

2018 M L D 1336

[Sindh]

Before Muhammad Shafi Siddiqui, J

MUHAMMAD SALEH and 2 others---Applicants

Versus

MUHAMMAD QASSIM and 3 others---Respondents

Revision Application No.2 of 2017, heard on 8th December, 2017.

Specific Relief Act (I of 1877)---

---S.9---Civil Procedure Code (V of 1908), O. VII, R. 11---Suit for possession of immovable property---Application for rejection of plaint---Scope---Plaint was rejected on the grounds that plaintiffs had no legal right, character and title over the suit land and they were not in possession on the suit property---Validity---Relief in a suit filed under S.9 of Specific Relief Act, 1877 was not dependent upon the title of suit property---Said suit was to be decided only on the ground as to whether plaintiffs were dispossessed from the immovable property without their consent and without due process of law---Plaintiffs in such suit could recover possession notwithstanding any other title that might be set up in that suit--Dispute of possession was a bundle of facts which could not summarily be decided while considering an application under O. VII, R. 11, C.P.C.---Impugned orders passed by the Courts below were set aside---Matter was remanded to the Trial Court to frame issues including maintainability of suit and decide the controversy at the earliest within four months---Revision was disposed of in circumstances.

Haji Maqbool-ur-Rehman's case 1991 SCMR 301 distinguished.

Mirza Sarfraz Ahmed for Applicant.

Abdul Hafeez Memon for Respondent.

Date of hearing: 8th December, 2017.

JUDGMENT

MUHAMMAD SHAFI SIDDIQUI, J.---This revision application is arising out of an order passed in Civil Appeal No.113/2010 which is a follow up of an order passed in Suit No.06/2010.

2. Brief facts are that the applicants filed a suit under section 9 of Specific Relief Act seeking restoration of their possession as they claimed to have been dispossessed without due process of law. The trial court while disposing of an application under Order VII, rule 11, C.P.C., rejected the plaint on the ground that the applicants had no legal right, character and title over the suit plot, and the plaint was not held to be maintainable. The applicants filed an appeal and the order of the trial court was maintained by observing that the plaintiffs were not in possession of the subject land nor had title documents in their possession. After detailed discussion of facts these were the reasons assigned by the trial court and the appellate court.

3. Learned counsel for the respondents has relied upon brief history of the case. He first relied upon an earlier suit filed on 06.10.2009 as Suit No.29/2009 for declaration and injunction. During pendency of this suit, the applicants claimed to have been dispossessed on 30.10.2009 and an application for merger of causes of action with permission to file fresh was filed which was declined, however a separate Suit No.6/2010 under section 9 of the Specific Relief Act was filed. Subsequently a complaint under Illegal Dispossession Act was filed having

same number as 29/2009, wherein it is alleged that a different date of dispossession is shown. Counsel for the respondents lastly relied upon a third Suit which was filed as Suit No.102/2010 which is in respect of seeking declaration as to their title. Counsel submits that disposal of this suit would act as res-judicata to the second suit i.e. Suit No.06 /2010.

4. I have heard learned counsel and perused the material available on record. The facts in earlier suit i.e. Suit No.29/2009 and the facts of complaint No.29/2009 under Illegal Dispossession Act may not be relevant for the purposes of deciding application under Order VIII, Rule 11, C.P.C. filed in a suit under section 9 of the Specific Relief Act. The relief is not dependent upon the title of the property. It is to be decided only on the ground as to whether the applicants were dispossessed from the immovable property without their consent and without due process of law and they may recover possession thereof notwithstanding any other title that may be set up in such suit. The trial court rejected the plaint under the garb that applicants were not in possession of the suit plot and that they had no title. I would not appreciate the reasoning assigned by the trial court and the appellate court in rejecting the plaint in the absence of the title as it is not the requirement of section 9 of the Specific Relief Act. Further the dispute of possession is a bundle of distorted facts which cannot summarily be decided while considering an application under Order VII, rule 11, C.P.C. It may lead to an ultimate dismissal but not to a rejection of plaint. The contention of the learned counsel for the respondents that by moving an application for the merger of two causes of action would not entitled the applicants to file a separate suit on the basis of subsequent cause of action is also a futile attempt for rejection of plaint as the subsequent cause of action of alleged illegal dispossession was never merged by the Court allowing an application for withdrawal of Suit No.29/2009. It is misconception that dismissal of an application for the merger of two causes of action is sufficient for the purposes of considering the subsequent suit as barred under Order II, rule 2 C.P.C. or under Order XXIII, Rule 1, C.P.C. as the cause for subsequent suit accrued later to the filing of earlier Suit No.29/2009 and the causes were never merged. Counsel for the respondents relied upon judgment of Haji Maqbool ur Rehman reported in 1991 SCMR 301, however, facts of that case are distinguishable as both the causes were sought to be challenged i.e. an earlier cause and subsequent cause and withdrawal of the petition having causes, with permission to file afresh petition was not granted. In the instant case there is no such merger by any order of the court and subsequent cause was still alive when a Suit No.29/2009 was filed.

I set-aside orders of the two courts below impugned here and remand the case to the trial court to frame appropriate issues including maintainability of the suit and decide the controversy at the earliest since it is a suit under section 9 of Specific Relief Act, preferably within four months.

The Revision Application stands disposed of along with pending applications.

ZC/M-19/Sindh
remanded.

Case