IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

IInd Appeal No.S-29 of 2018

Mst. Farah Naz & another ---------- Appellants

Versus

The Province of Sindh & others ---------- Respondents

Date of hearing: 07.11.2022.
Date of judgment: 28.11.2022.

Appellant No.1 is present in person.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh

M/s. Ziauddin & Abdul Aziz Shaikh, Advocate for respondents 6 to 8.

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JUDGMENT

ADNAN-UL-KARIM MEMON, J. Through this IInd Appeal, appellants are asking for setting aside the Judgment and Decree dated 12.03.2018 and 14.03.2018 respectively passed by learned 3rd Additional District Judge, Hyderabad dismissing Civil Appeal No.142 of 2017 (Re-Mst. Farah Naz & another v. Province of Sindh & others) filed against the order dated 20.04.2017 whereby plaint of F.C. Suit No.311 of 2015 was rejected under Order 7 Rule 11 (d) C.P.C, inter alia on the ground that appellants were condemned unheard in violation of Article 10-A of the constitution; that both the learned Courts below failed to appreciate the legal character of the appellants in terms of the order passed by the competent authority under the revenue hierarchy; that both the Courts failed to appreciate the judgment and decree passed by the learned Civil/Family Judge & Vth J.M Hyderabad in favor of mother of appellants namely Mst. Sitara Jabeen in IIIrd Class Suit No.27 of 2010; that both the Courts below failed to appreciate the factum that the respondents attempted to dispossess the appellants from the suit property and criminal proceedings were initiated arising out of F.I.R. No.06 of 2015 under sections 447, 448, 506(2), 427, 509 and 34 P.P.C at police station B-Section Latifabad Hyderabad which was illegally disposed of under 'B' Class by declaring the subject property allegedly allotted to satellite town TMA Latifabad Hyderabad; that the learned Courts below failed to appreciate that the matter required evidence, as such, the ingredients of Order VII Rule 11 C.P.C were not met.

2. Brief facts leading from the instant appeal are that father of the appellants namely Raza Ahmed Rajput was enjoying possession of agricultural land admeasuring 03-28 acres out of Survey No.226, situated at Deh Guddu Bandar Taluka Latifabad Hyderabad since 1980 and died on 09.07.2009, thereafter appellants inherited the suit land; however, their deceased father before his death moved an application to District Officer Revenue Hyderabad on 26.10.2003 to grant *"Khata"*; that respondents 4 to 8 having evil eyes upon the said property attempted to dispossess the appellants with the support of respondents 2 & 3 hence cause of action accrued to them for filing FC Suit for Declaration and Permanent Injunction.

3. Upon service of summons, Mukhtiarkar Latifabad filed the written statement contending therein that per entry No.54 dated 31.01.1985 Survey No.226 was/is property of Satellite Town. Respondents 6 & 8 filed application under Order VII Rule 11 C.P.C on the premises that the appellants having no legal character were/are not owners of the property hence the suit was/is not maintainable under Section 42 of Specific Relief Act, 1877; thereafter the appellants filed a counter affidavit and in paragraph-6 stated that their mother filed T.C. Suit No.27 of 2010 for permanent injunction which was decreed by learned 6th Senior Civil Judge, Hyderabad but failed to state anything in respect of title; however, learned counsel for said respondents apprised the Courts below that land pertains to Government and learned D.D.A by supporting said application also stated that property was/is of Government as far as the point of its possession is concerned, same was/is illegal; however, before learned Trial Court appellants argued that their father was in possession of the subject property and they filed statement containing a copy of "Khusra Gardwari", and copies of "Dhal" receipts relating to the year 1981 and 2006 as well as application addressed to Revenue Official for issuance of "Khata" in respect of suit property.

4. Learned trial Court after hearing the parties rejected the plaint under Order VII Rule 11(d) C.P.C vide order dated 20.04.2017. The appellants being aggrieved by and dissatisfied with the order dated 20.04.2017, filed Civil Appeal No.142 of 2017 which was also dismissed by learned 3rd Additional District Judge Hyderabad on the premises that the suit filed by the appellants was rightly dismissed under Order VII Rule 11 C.P.C as the appellants had no legal character in terms of section 42 of Specific Relief Act, 1877.

5. Appellant No.1 who is present in person has reiterated the grounds mentioned in the instant appeal with the narration that the judgment, decree and order passed by respondents 10 & 11 are illegal, unlawful based on

erroneous findings of facts hence are not sustainable in the eyes of law; that though on merits appellants is / was having good case to prove but the Courts below did not offer opportunity to lead evidence in respect of their claim as the averments made in the plaint are to be treated as true and correct until refuted through evidence, thus this principle was completely ignored as well as learned Courts below failed to appreciate right and legal character as is / was evident from the available record even then plaint of appellants was rejected and appeal preferred also dismissed without recording evidence; that learned *fora* below also erred in appreciation of record as the decree of Civil Court was already in favour of mother of appellants wherein their right stood established and same was not challenged by respondents; that the case law cited by the appellants was not even considered; that appellants paid all revenue assessment (Dhal) of Suit land same were received by revenue authorities without raising any question; that Directorate of Survey & Land Record through report dated 5.3.2016 requested some time on the premises that old record was much necessary to peruse from which it would be cleared that how the suit land had been mutated in the name of Satellite Town but same record had not been produced which could be a solid evidence to reach proper decision and resolving the controversy regarding the title of the suit land. She lastly prayed for allowing the instant appeal by setting aside the impugned judgment, decree, and order passed by the courts below.

6. Learned counsel for respondents 6 to 8 argued that they have no concern with the alleged suit land and they have been erroneously arrayed as party in the proceedings, they prayed for dismissal of the appeal against them.

7. Learned A.A.G has refuted the stance of the appellants with the narration that the record in respect of survey No.226 explicitly shows that while rewriting the aforesaid entry of the land was in the name of the satellite Town Department. At this stage, appellant No.1 has referred to the order dated 03.11.2011 passed by the District Officer/Collector Hyderabad whereby the competent authority under para-5 of the statement of the condition under the colonization act granted an area of 03-28 acres in favor of appellants and submitted that appellants ought to have been heard by the learned Civil Court to lead evidence, as such, giving shut-up call in beginning was/is not called for as these are the property rights which could be established through evidence which right has been snatched by not allowing the appellants to prove their case before the Trial Court and under the garb of non-availability of title documents the appellants were non-suited which order on the part of learned Trial Court is illegal and without lawful justification under the law and is liable to be set aside. Appellants have relied upon various documents

attached with the memo of appeal and submitted that this appeal is liable to be allowed.

8. I have heard appellant No.1 who is present in person, as well as learned counsel representing the private respondents, and learned A.A.G representing respondent No.1 & 3 and have also gone through the record available before me.

9. The basic grievance of the appellants is that they filed F.C Suit No.311/2015 for declaration and permanent injunction before learned II-Senior Civil Judge, Hyderabad, however, their plaint was rejected vide order dated 20.04.2017 on the ground that they were not entitled to claim relief as they had no legal character or legal right to prove the title of the land in terms of Section 42 of Specific Relief Act.

10. Civil Appeal No.142/2017 preferred by the appellants was too dismissed on the premise that appellants have no cause of action as they have no title documents of the suit property in their favor. This second appeal has been preferred on the ground that the appellants/plaintiffs were not allowed to prove their case through evidence and they were technically knocked out on the premise that they failed to prove their title documents. The Appellants want their case to be decided on merits on the premise that the Khusra Gardwari and receipt Dhal as well as the judgment passed by the learned VI-Civil Judge Hyderabad in Civil Suit No.27 of 2010 is in their favor, therefore, they could not be knocked out on the purported plea of non-availability of title documents of the suit land.

11. This court vide order dated 04.06.2021 appointed the Additional Registrar to inspect the subject land i.e. Survey No.226 as well as adjoining land who filed a report along with photographs of the subject land to ascertain whether any portion of Survey No.226 had been occupied or otherwise. The Mukhtiarkar and other officials of the Settlement & Survey Department were directed to assist the Additional Registrar for such a purpose. The inspection Report has been filed by the Additional Registrar on 10.02.2022 and he found the following factual position of the case:

> "6. From the inspection of the site, I have observed that Survey No.226, 218 and adjoining Survey No's are fully constructed with houses and Commercial activities. So far the alleged contemnor have constructed "Nimra Plaza" and occupied any portion of Survey No.226 is concerned, the survey was manually conducted; I found no exact point of any survey surrounding Survey No.226 so I can surely be said that such and such survey starts and ends at the exact place though the officials have got started survey stating that the village Tando Bughio is the starting point of Survey No.218 but no any official document was produced supporting such version. From further inspection of Survey No.226, it was impossible to accurately come to the just and proper outcome which enables us to find the exact location of the Survey. However, it is stated that as per manual measurement the subject plaza is situated

in Survey No.218. It is stated that there was a big graveyard consisted about 09.20 acres out of Survey No.226 and about 0.22 ghuntas from the area of S.No.218,219 and 221. Based on the site visit, the officials were directed to prepare a sketch, as such, the map duly signed by Tapedars and Mukhtiarkar, Latifabad was produced.

7. It is pertinent to mention here that as per revenue authorities the subject project including others constructed in the flood zone, as evident from the letter of Assistant Executive Engineer, Phuleli Bund Sub-Division, Hyderabad addressed to the Director Building Control Department (HDA) on 11.04.2014, which is also mentioned in the order dated 04.06.2021 of this Hon'ble Court.

8. Moreover, as I have observed that the entire area except 39 ghuntas is in possession of countless inhabitants who are residing by constructing their houses/flats and keeping in view the ignorance of said officials from the Settlement and Land Survey Department, a team consisting of Mukhtiarkar, Taluka Latifabad, Director Settlement & Land Survey Department well acquainted technical persons be constituted with a mandate for demarcation and locating the actual claimed area of the appellants, if this Hon'ble Court deems appropriate."

12. The appellants claim that the piece of agricultural land admeasuring 3-28 acres out of Survey No.226 Deh Gudu Badar Tehsil Latifabad was mutated in favour of their father in the year 1980 and was/is in their possession after the death of their father in 2009 and in the intervening period, appellants moved an application to the office of District Officer/Collector Hyderabad District regarding grant of compensation in lieu of their agricultural land out of Survey No.226 area 3-28 acres in Deh Gudu Taluka Latifabad Hyderabad, which was allowed vide order dated 03.11.2011.

13. On the contrary, Mukhtiarkar Taluka Latifabad has submitted the report with the narration that according to entry No.54 dated 31.10.1985 of V.F-VII (rewriting), the above Survey No.226 admeasuring 14-02 acres stood entered in favor of Satellite Town Deh Gudu Badar Taluka Latifabad Hyderabad and the appellants have nothing to do with the said property.

14. These two contradictory stances could only be threshed out if Mukhtiarkar concerned and District Officer Revenue / Collector Hyderabad District are examined by the trial Court including any other official well conversant with the subject land.

15. Coming to the core issue of rejection of the plaint under Order 7 Rule 11 CPC, clause A deals with the disclosure of the cause of action. The idea undermined in the said provision is that when no cause of action is disclosed in the plaint, the Court will not unnecessarily protract and the party should not be unnecessarily harassed in the suit. To invoke the power, the Court has to read the plaint whether it discloses the cause of action and if it does, then the plaint cannot be rejected by the Court by exercising power under Order 7 Rule 11 CPC.

16. It is a trite law that the cause of action is a bundle of facts and whether the plaint discloses a cause of action is a question of fact that has to be

gathered based on the averments made in the plaint in its entirety by taking those averments to be correct. So long as the plaint discloses some cause of action that requires a determination by the Court, the mere opinion that possession was not with the appellants and they failed to approach in time or the appellant /plaintiff may not succeed, cannot be a ground for rejection of the plaint.

17. Primarily a Plaint should not be rejected under Order 7 Rule 11 of the Civil Procedure Code at the initial stage without proper inquiry. At the same time, a Court of Law has enough powers to see that vexatious litigation are not allowed to consume the time of the Court. However, a Plaint should be rejected as per Order 7 Rule 11 of the Civil Procedure Code where it does not disclose a cause of action and not where there is a cause of action.

18. A cause of action means every fact, which if traversed, would be necessary for the plaintiff to prove to support his right to a judgment of the court. In other words, it is a bundle of facts that are taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defense which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff, thus a Plaint would be read as a whole and the merits of the case are not to be considered at this stage.

19. From the submissions made by both sides, this Court is of the considered opinion that the allegations made in the plaint cannot be gone into at the threshold as it is a matter to be tried in the civil suit. Even if the cause of action pleaded is a false or deliberate falsehood, the same cannot be gone into an application under Order 7 Rule 11 CPC.

20. In view of the above, all this further leads me to draw the inference that a mutation is always sanctioned through summary proceedings and to keep the record updated and for collection of revenue, such entries are made in the relevant Register under Section 42 of Land Revenue Act, 1967. It has no presumption of correctness before its incorporation in the record of rights. It is also settled law that entries in mutation are admissible in

evidence but the same is required to be proved independently by the persons relying upon it through affirmative evidence. An oral transaction reflected therein does not necessarily establish title in favor of the beneficiary. A mutation cannot by itself be considered a document of title and may have been attested as an acknowledgment of past transactions.

21. Furthermore, there are more than one prayer as mentioned in the plaint, it is settled now that partial rejection is not permissible under the law. Further, if with regard to any one prayer the jurisdiction of the civil court is barred and with regard to other prayers it is not, the plaint cannot be rejected. In the instant matter when there are other prayers also the rejection of plaint was not justified by the civil court, therefore, all two fora below fell in error while rejecting the plaint.

22. Since the Appellants have to substantiate their case through evidence thus the courts below drew the wrong conclusions by non-suiting the appellants on the purported pleas for the simple reason that the appellants prayed for a declaration that they are in lawful possession of the suit property and the letter dated 23.01.2015 about allotment of the subject land in favor of Satellite Town was illegal and had fraudulently been entered in the revenue record.

23. Primarily, each entry in the revenue record gives a fresh cause of action to an aggrieved person, and adverse entries in the revenue record even if allowed to remain unchallenged do not have the effect of extinguishing the rights of a party against whom such entries had been made. Even otherwise, the record does not show that revenue entry as claimed by the appellants has been canceled or extinguished based on Khusra Gardwari. Besides, the disputed mutation in favor of a third party in the intervening period, if any, is to be thrashed out in evidence by examining the Mukhtiarkar concerned and the title holder of the document.

24. In view of the above facts and circumstances of the case, I deem it appropriate to remand the matter to the trial Court to examine the appellants/plaintiffs, as well as Mukhtiarkar concerned and District Officer Revenue / Collector Hyderabad District and/or any other aggrieved person claiming ownership of the subject property by making him as a party in the proceedings and decide the case afresh on merits after allowing the parties to lead evidence within one month, consequently the judgment and decree dated 12.03.2018 passed by the learned III-Additional District Judge Hyderabad in Civil Appeal No.142 of 2017 and order dated 20.04.2017 passed by the learned Second Senior Civil Judge Hyderabad in F.C Suit No.311 of 2015 are set-aside.

25. The appeal is allowed in the above terms with no order as to costs.

JUDGE

Muhammad Danish