

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.02 of 2016

Ali Mushtaq & others
Versus
Federation of Pakistan & others

Date	Order with signature of Judge
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Date of hearing: 24.11.2022 and 01.12.2022

Mr. Sarmad Hani for plaintiffs.

Qazi Ayazuddin Qureshi, Assistant Attorney General for defendant No.1.

Mr. Suresh Kumar, Assistant Advocate General for defendants No.2 and 3.

Mr. Muhammad Vawda for Pak PWD Karachi.

Mr. Shoaib Khatyan, for Defendant No.04

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Muhammad Shafi Siddiqui, J.- Application under consideration is one under Order VII rule 11 CPC (CMA No.12891/2016) filed on behalf of defendant No.1 i.e. Federation of Pakistan in this suit for declaration, possession and permanent injunction. The application seeks rejection of plaint on the count that the status of plaintiffs' predecessor has not been recognized in the earlier round of litigation and hence cause to file instant proceedings does not exist. Further that no such status in frame of Section 42 of Specific Relief Act is availed by plaintiffs in these proceedings except that plaintiffs be declared as bona fide transferee of suit lands whereas that could only be subject to plaintiffs' principal's suit (and/or his predecessor's suit), already pending as Suit No.432 of 2009.

2. It is pleaded by the Assistant Attorney General, in support of his application that in the earlier round of litigation plaintiffs' predecessor has failed to demonstrate their title, therefore, nothing could have

passed on to the successors on the strength of a Power of Attorney, which is claimed to be “coupled with interest”, hence seeks rejection of plaint within frame of Section 42 of Specific Relief Act. The arguments are supported by Mr. Vawda, who is appearing for defendant No.1(i) Ministry of Housing Works through its secretary, as well as for the intervener in the connected suit.

3. Mr. Sarmad Hani, learned counsel appearing for plaintiffs, has objected to the maintainability of this application on the point of law as well as on the facts. It is claimed that the learned Division Bench, in the earlier round has enabled “plaintiffs’ predecessor” to exhaust the remedy by approaching the Civil Court to establish their right, if any, which they did and on considering the arguments on an application under order VII rule 11 CPC in the connected suit bearing No.432 of 2009 such application was rejected, which order was maintained by division Bench of this Court.

4. I have heard learned counsel for the parties and perused material available on record.

5. The case has checkered history as far as disputed questions of facts are concerned however for the purposes of deciding application under order VII rule 11 CPC it may not be of much relevance however what is important is that the status of the subject plot remained under litigation and it still is in the shape of connected suit No.432 of 2009.

Brief history:

6. There was a dispute with regard to auction rights of some parties in the property in question which measures 7947 sq. yards. The predecessor of plaintiffs who is defendant No.4 (plaintiff in the connected suit bearing No.432 of 2009) claimed to have acquired the property by way of an auction wherein a part of consideration was through cash and part was through compensation books of two

individuals which were presented for consideration before Settlement Authority/auctioneer. The title of land of the predecessor of plaintiffs/defendant No.4 (Shafaat Ahmed Akhlaq son of Akhlaque Ahmed) claim to have remained under litigation by virtue of numerous petitions such as:-

- i) CP No.D-28 of 1996, which was disposed of on 22.09.1998 when case was remanded;
- ii) CP No.D-681 of 2000 which was disposed of on 23.05.2000 when matter was again remanded to the concerned authority;
- iii) CP No.D-894 of 2004 wherein order of Secretary (RS&EP), Board of Revenue dated 17.04.2004 (passed in compliance of order of petition at Sr. No.ii) was challenged. Petition was dismissed vide order dated 31.10.2006 by learned Division Bench of this Court however it carved out a room for plaintiffs' predecessor to approach civil Court for redress of the grievances, if it is so desired, to establish rights, if any.
- iv) The above order was assailed before Hon'ble Supreme Court in CPLA No.543-K of 2007 which CPLA was not pressed on 15.01.2009 on the count of disputed questions of facts and the petitioner of the petition before Hon'ble Supreme Court, who is predecessor of plaintiffs i.e. defendant No.4, was left at liberty to seek redress, if any, from appropriate forum.

7. It is claimed that in consequence of above order of Hon'ble Supreme Court, connected suit was filed on 01.04.2009 for declaration that the order of 17.04.2004 passed by the Board of Revenue was illegal and that the plaintiff (therein) namely Shafaat Ahmed Akhlaq/

defendant No.4 here and plaintiff in the connected suit, be recognized as lawful transferee of the title by virtue of the aforesaid auction.

8. The significant conclusion, drawn by the Board of Revenue while deciding the fate of land's title on 17.04.2004, is as under:-

“Moreover as Notification dated 15.10.1995 i.e. prior to auction the property bearing No.CL-7/16 (6930.223) sq. yds., CL-7/17/1 (7947) sq. yards. And CL-7/17/3 (368) sq. yds. were acquired by the Federal Government for the construction of HAJI CAMP in exchange of plot No.LY-22/1 belonging to government. The contents of letter No.SCK/79-442 dated 2nd April, 1979 of the Settlement Commissioner, Sindh, Karachi issued to the Director (Hajj) Ministry of Religious Affairs, Hajj Directorate, Karachi and its copy to Asstt. Commissioner, South Karachi as under:-

“Plot No.LY-22/1 belonging to Government had been given to the Settlement Origination in exchange of the aforesaid plots. Since then the aforesaid plots and the Hotel Building standing thereon wholly vested in the Government of Pakistan through Ministry of Religious & Minority Affairs for the purpose of housing Haji Camp.

As per city survey record the entries in record of Rights in respect of property No.CL-7/16, CL-7/17/1 and CL-7/17/3 Civil Lines Karachi have been made in favour of Ministry of Religious & Minority Affairs Government of Pakistan.

A correspondence file available on record further reveals that the articles of the Hotel bearing No.CL-7/16 (CALTON HOTEL) were auctioned by the Settlement Organization/Department in the year 1965 after due publication, but there is no mention of auction of property No.CL-7/17/1 in favour of petitioner. The subject property CL-7/17/1 and 3 were acquired by the Federal Government, therefore, in 1959 the property in question was not part and parcel of compensation pool and was not available for disposal.

The Director Haj, Ministry of Religious Affairs (Hajj Directorate) Karachi were also issued notices but he has informed under his letter No.1-20/94-DH(S) dated 7.1.2002 that the Ministry of Religious Affairs is not a party in the relevant case, hence they were not in a position to offer any comments in the subject matter.

After consultation of available record and the written statement filed by the petitioner's advocate, I am of the opinion that the auction of the subject property bearing No.CL-7/17/1 in favour of petitioner was not held at all as the subject property was not available for disposal in 1959. The property in question was acquired by the Federal Government for construction of HAJI CAMP in 1958. As such there is no auction proceedings/approval of the Chief Settlement Commissioner required under rules,

therefore no auction was held in favour of petitioner, therefore the question of cancellation does not arise. The letter bearing No.SECY(RS&EP)/BOR/96-03 dated 14.1.1996 issued by the then Secretary (RS&EP) has been misinterpreted.

Thorough scrutiny of file reveals that there is nothing available which substantially suggest the inference that the subject property was ever allotted to any body through public auction.

The petitioner has no case and hereby the petition is dismissed, thus the property No. CL-7/16, CL-7/17/1 and CL-7/17/3 will remain intact on the khata of Ministry of Religious Affairs (Haj directorate) Government of Pakistan.”

9. The reason for highlighting the relevant conclusion, as reached by the Board of Revenue is that in their wisdom, the property was never auctioned. It was rather articles of the “Calton Hotel”, which hotel was built on subject land i.e. CL-7/16, which (articles) were auctioned by the Settlement Department in the year 1965 after due publication but there was no mention of auction of the land itself in favour of petitioner (defendant No.4 in this suit). The subject land is claimed to have been acquired in 1959 by federal government and thus never formed part of the compensation pool to be made available for disposal against consideration; be it cash or through compensation book of “other individuals”.

10. The learned Division Bench of this Court while deciding the above referred petition perused coloured photostat copy of the bid sheet, placed on record along with statement of the Deputy Secretary Evacuee Property. Name of plaintiffs’ predecessor Shafaat Ahmed Akhlaq/ defendant No.4, per order of learned Division Bench, was visible to have been added in red ink at Sr. no.1 where name of Feroz Ahmed was mentioned. It was with different ink whereas highest bid as shown was of Feroz Ahmed, as recognized. Its genuineness (red ink insertion), as insisted in the connected suit is under adjudication on the count that invariably and on numerous occasions and for valid reasons, we as a

Court also direct offices/officers of branches to amend the order or pleading with red ink so why should such addition or insertion be doubted, hence the trial as claimed, will determine the cause in the connected suit and will take the questions to this logical end.

11. It is further concluded by the learned Division Bench that before repeal of evacuee laws in 1975, subject property was transferred and vested in the federal government through Ministry of Religious Affairs.

12. If the documents including the order impugned, presented before learned Division Bench concludes that it was Feroz Ahmed who was highest bidder (not clarified whether he was bidder of articles or land), then perhaps it was him who had bid either for articles or for land. It is also required to be determined in the trial whether it was articles which were auctioned as the land of Hotel had already been acquired as claimed. It is this order (17.04.2004 *ibid*) which says that the property was acquired in 1959 for federal government (Haji Camp). These facts are reproduced to keep facts alive in the connected suit only, however for the present controversy I further deliberate as under.

13. This suit was filed in the year 2016 by the so-called successors of Shafaat Ahmed Akhlaq. Now as attorney of plaintiffs in the connected suit he is not obliged to file present suit as the principal has already invoked the jurisdiction of this Court by filing Suit No.432 of 2009 and plaintiffs of this suit are party to it. Further, in a capacity of successor in interest, under irrevocable Power of Attorney, which is being read by plaintiff as “coupled with interest”, Section 10 CPC may have its implication for the purpose of trial of this suit. The successor of Shafaat Ahmed Akhlaq, as claimed in the pleadings, was late Raja Mushtaque Ahmed son of Haji Zaman Ali who was survived by four sons and a widow, arrayed as plaintiffs in this suit. Apparently there was no dispute between plaintiffs’ father Raja Mushtaq Ahmed and his so-called

predecessor Shafaat Ahmed Akhlaq and on this understanding there was no litigation between them. This suit in fact is against government functionaries to recognize plaintiffs' predecessor's title, followed by them as being its transferee.

14. Raja Mushtaq Ahmed (plaintiffs' father) claimed to have acquired subject property by virtue of an Irrevocable Power of Attorney on 27.05.2000 which is claimed to be coupled with interest and consideration claimed to have been paid, however proper stamp duty has not been levied on alleged consideration except that it was on Rs.500/- stamp paper. However what is important for the purposes of this suit is whether plaintiff or plaintiffs' father were successor of title which could enable them to pursue their remedy under the law. Plaintiffs' predecessor never got their title cleared from any Court of law therefore it is difficult to presume if any valid title is passed on to them through aforescribed Power of Attorney, except for enforcement of rights as pressed in Suit No.432 of 2009. As attorney, they could not continue the "instant suit" in view of pendency of principal's own suit. Plaintiffs in this suit have not sought any declaration that they are successors of title of Shafaat Ahmed Akhlaq i.e. plaintiff of the connected suit. Let us now compare the two prayers/reliefs sought in the two suits:-

Suit No.02 of 2016		Suit 432 of 2009	
1)	Declare that the order dated 17.04.2004 passed by defendant No.2 is void ab-initio, illegal, of no legal effect and consequences.	1)	Declare that the order dated 17.04.2004 passed by the defendant No.1 is based on malafide intention, in violation of the order dated 22.9.1998 passed by the Hon'ble High Court in CP No.28 of 1996 and has tried to make out a false case based on new, fake and illegal documents neither agitated nor relied prior to the passing of the order dated 17.4.2004.

II)	Set aside the order dated 17.04.2004 passed by the defendant No.2.	II)	Declare that documents relied upon by the plaintiff are on the record of the defendant No.1 having attained period more than 40 years are presumed to be correct, genuine and undisputed under the provisions of Article 100 of Qanoon-e-Shahadat and the defendant No.1 is therefore debarred to deny the same and question the genuineness and legality of documents of his own record.
III)	Declare that the plaintiffs are bona fide transferees of the suit property being Plot No.CL-7-17/1-VC-64, Bonus Road, Karachi admeasuring 7,947 sq. yards.	III)	Declare that where proper adjudication of transfer price is pending it is not available property and is not open to settlement authorities to cancel the transfer on the ground of non-payment of full transfer price, without prior notice to the plaintiff.
IV)	Declare that the defendants No.1(i) and (ii) have no right, title, claim or interest in the suit property being Plot No.CL-7-17/1-VC-64, Bonus Road, Karachi admeasuring 7,947 sq. yards.	IV)	Declare that the defendants had not issued any demand notices to the plaintiff.
V)	Declare that the notification dated 15.10.1959 (Annexure Y-4) issued by the Government of Pakistan in the absence of payment of compensation to the plaintiffs under the Land Acquisition Act, 1894 is void, illegal and of no legal effect and consequences.	V)	Declare that the proceedings application of the plaintiff having remained pending and are still pending the property auctioned to the plaintiff is not liable to be transferred to anyone except to the plaintiff.
VI)	Direct the defendants No.2(i) and (ii) to issue Challan in favour of the plaintiffs for the balance consideration in respect of suit property being Plot No.CL-7-17/1-VC-64, Bonus Road, Karachi admeasuring 7,947 sq. yards.	VI)	Direct the defendant No.2 to dispose of the matter legally under section 4 of the Act XIV of 1975, exercising his jurisdiction and issue demand notice and on payment of amounts by the plaintiff PTO be issued within a period to be specified by the Hon'ble Court.
VII)	Direct the defendant No.2(i) and (ii) to execute lease deed in favour of the plaintiffs	VII)	That this Hon'ble Court may be pleased to pass any other order as deemed

	after the payment of challan and other ancillary dues for the suit property being Plot No.CL-7-17/1-VC-64, Bonus Road, Karachi admeasuring 7,947 sq. yards. Or upon their failure to execute the Lease Deed, direct the Nazir of this Hon'ble Court to execute the Lease Deed in favour of the plaintiffs.		appropriate in the interest of justice and equity.
VIII)	Direct the defendant No.1(i) to hand over vacant and peaceful possession of the portion of the suit property being Plot No.CL-7-17/1-VC-64, Bonus Road, Karachi admeasuring 7,947 sq. yards in their unlawful possession after demolition of the unlawful construction raised thereat.		
IX)	A prohibitory injunction restraining the defendants, their respective officers, representatives, agents, employees, successors-in-interest, assigns, and/or any other person or persons acting under their control or guidance of the defendants from harassing, intimidating coercing the plaintiffs, their agents, employees, associates, representatives, etc. and from taking any adverse, coercive or punitive action against the plaintiff in any manner whatsoever.		
X)	Any other or additional relief as this Hon'ble Court may deem fit and proper in the circumstances of the case; and		
XI)	Costs of the suit		

15. The principle reliefs in this suit are similar that touches upon title of the subject land. Apparently, some of the reliefs in this suit are being pressed "for plaintiffs" of the connected suit, hence a second suit, for same causes and reliefs does not lie. Nothing could have passed on to these plaintiffs unless the title of plaintiff in connected suit is

recognized. On the strength of Power of Attorney alone title is not passed on to anyone to claim himself/ themselves as successors of plaintiff of connected suit No.432 of 2009. At the most they act only as agent and only carries the object of his principal forward and cannot maintain its own suit as being transferee under the above facts and circumstances. Nothing of the sort that they are owners by virtue of Power of Attorney is pleaded or prayed except that they are transferee. Now this could only be done and claimed if and when earlier suit succeeds.

16. As to the limitation point, instant suit was filed in the year 2016 when all sons of Raja Mushtaq Ahmed became major hence a material denial from plaintiffs of the connected suit is a crucial date to start a countdown to enforce limitation even if this suit is presumed to have been filed against defendant No.4 for performance.

17. While the Power of Attorney claimed to have been executed in favour of plaintiffs' father in the year 2000, precisely on 27.05.2000 yet connected suit No.432 of 2009 was filed by principle for the declaration cited above. It is plaintiff in the connected suit who was and is claiming ownership in the property to the exclusion of plaintiffs and it was all the more necessary to seek such declaration which plaintiffs failed, nor any application for such amendment was filed.

18. With the above understanding of facts, in the present set of pleadings, as set out, at the most it concludes that it is rather a suit by attorney for almost similar reliefs as claimed in the earlier suit, however even if plaintiffs' additional claim, that they are lawful transferees of property is considered as a main relief, which they and their father agitated to have acquired from the plaintiff of the connected suit, then also unless the connected suit is decreed, to me present suit appears to

be a case hit by Section 10 CPC as plaintiffs in this suit claims through and under plaintiff of the connected suit.

19. For the convenience Section 10 is reproduced as under:-

“10. Stay of suit. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Pakistan having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Pakistan established or continued by the Federal Government and having like jurisdiction, or before the Supreme Court.

Explanation. The pendency of a suit in a foreign Court does not preclude the Courts in Pakistan from trying a suit founded on the same cause of action.”

20. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue and thus the insertion of section 10 is to avoid two parallel trials on the same issues. Even if the cause of action and some consequential relief prayed for is added and/or some of the issues in a former and subsequent suits may differ, that will not be a ground for non-application of Section 10 *ibid*, if it is being observed that the final decision in the earlier suit may either operate as *resjudicata* or would materially affect the proceedings and trial of subsequent suit, which effect could be seen is the instant case. Reliance is placed on the case of *Shri Ram Tiwari v. Bholi Devi* reported in AIR 1994 Patna 76.

21. The legislature has purposely carved out the language of Section 10 to include all those issues which are directly and substantially in issue in previously instituted suit and does not talk about identical and similar nature of issues and reliefs. It is enough if the relief claimed in the subsequent suit is somehow directly and substantially linked with the earlier one. Any formal or informal addition of a party having no substantial effect to the proceedings and the relief claimed, will not materially affect the operation of Section 10 CPC. Reliance is placed on

the case of S.K. Rangta & Co. v. Nawal Kishore Debi Prasad reported in AIR 1964 Calcutta 373.

22. In view of above facts and circumstances, I am of the view that there is enough material to invoke the provisions of Section 10 CPC hence I, by invoking the provision of Section 10 CPC *ibid*, stay the trial of the instant suit till decision of the connected suit No.432 of 2009 by this Court. Application in hand under order VII rule 11 CPC stands disposed of in these terms.

Dated: 19.01.2023

J U D G E