

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 952 of 2022

Present:

Mr. Justice Zafar Ahmed Rajput, J.

Mr. Justice Shamsuddin Abbasi, J.

Petitioner : Molvi Ali Bux Panhyar, through
Mr. Sohail Ahmed Khoso, Advocate.

Respondents : Province of Sindh through Secretary
No.1 to 6 Health Department and others (*Nemo*)

Respondents : Imtiaz Panhyar and others
No.7 to 9 (*Nemo*)

Date of hearing : 30.08.2022

Date of order : 30.08.2022

ORDER

ZAFAR AHMED RAJPUT, J. – The petitioner herein filed Civil Suit No.72 of 2018 (*Re: Molvi Ali Bux v. Province of Sindh and others*) for declaration, mandatory and permanent injunction before the Court of Senior Civil Judge-III, Khairpur, claiming therein that landed property from UA/Block No.441 was granted to him on permanent basis through VII-B with S. Nos. 464/1 (26 ghuntas), 461 (4 ghuntas), 452 (1.34 acres) and 463/1 (11 ghuntas), total 2.36 acres, situated in Deh Dadu, Taluka Nara, and he has been enjoying its peaceful possession from 1987/88 up to date without any interference as well as paying land revenue assessment (*dhal*) to the Government. The respondents/ defendants No.7 & 8 have denied the claim of the petitioner in their written statement filed before the learned trial Court and stated that UA/Block No.441 is consisted upon big area, out of which some area was granted to them with which the petitioner has no concern. The official respondents/defendants also submitted their written statement. The respondent/defendant No.5 {*Mukhtiarkar (Revenue), Taluka Nara*} in his written statement maintained that the property in question is originally owned by the State. Out of divergent pleadings of the parties, on

22.11.2019, the trial Court framed issues and parties were directed to adduce their evidence as well as to produce documents in support of their contentions; thereafter, in subsequent 07 dates of hearing in four months period, the petitioner/plaintiff failed to adduce his evidence and sought adjournments on one pretext to another. Later, on 14.03.2020, the petitioner/ plaintiff filed an application to withdraw the suit with permission to file the same afresh, but learned trial Court allowed the application vide order, dated 14.03.2020, to the extent of withdrawal and declined permission to file suit afresh. Against that, the petitioner preferred Civil Revision No.13 of 2020, which was heard and dismissed by the learned Additional District Judge- III, Khairpur, vide order, dated 11.06.2022. It is against these orders that the instant Constitution Petition has been preferred by the petitioner.

2. Learned Counsel contends that the impugned orders, being against the law are not sustainable and in case the same are not set aside, the petitioner shall suffer irreparable loss as his valuable rights are involved in the subject property.

3. Heard the learned Counsel for the petitioner and perused the material available on record.

4. It may be observed that Order XXIII, Rule 1, C.P.C., entitles the plaintiff of a case to withdraw his suit and/or abandon his claim or a part thereof; against all or any of the defendants at any stage of the proceedings and this is his absolute privilege and prerogative. Where the plaintiff exercised such privilege, he shall be precluded from instituting a fresh suit on the basis of the same cause of action qua the same subject matter and against the same defendants(s), and such bar is absolute and conclusive. Order XXIII, R.1(2), C.P.C., however, is an exception to such a bar, in that, where a plaintiff wants to file a fresh suit after the withdrawal of his pending suit on the basis of the same cause of action, on the same subject matter and against the same

defendant(s), he shall then be obliged to seek the permission of the Court in such regard. Such permission shall not be granted as a matter of right or as a matter of course/routine, rather the judicial conscious of the Court should be satisfied that, if permission was not given the said suit shall fail on account of any formal defect, or that there were other sufficient grounds for allowing the plaintiff to withdraw the suit with the permission to institute a fresh suit.

5. In the case in hands, it is matter of record that after framing of the issues, the petitioner/plaintiff in subsequent 07 dates of hearing in four months period, failed to adduce his evidence and sought adjournments on one pretext to another and intentionally and deliberately avoided to proceed with the matter, thereafter, he filed application to withdraw the suit with permission to file the same afresh, without disclosing any formal defect in the plaint or any other ground justifying his such request, which is gauged and judged that the request of the petitioner/plaintiff for withdrawal of the suit with permission to file the same afresh was tainted with an oblique and *mala fide* motive; it was meant to cause harm and prejudice the defendant(s) and put him in and disadvantageous position, and such request was motivated to misuse the authority of the Court and abuse the process of law; hence, the permission for filing a fresh suit was rightly declined.

6. For the foregoing reasons, there appears no illegality or irregularity in the impugned orders requiring any interference by this Court in its Constitutional jurisdiction, hence, this Constitution Petition is **dismissed in limine** along with pending applications.

J U D G E

J U D G E

Abdul Basit