

**IN THE HIGH COURT OF SINDH,  
BENCH AT SUKKUR**

**Revision Application No. S-192 of 2019**

Nawab Khan.....Applicant

Versus

The Civil Surgeon Civil Hospital  
Naushehro Feroze and others.....Respondents

Ghulam Ali Bozdar, Advocate, for the Applicant.  
Ali Raza Balouch, AAG.

Date of hearing : 30.10.2023

**JUDGMENT**

**YOUSUF ALI SAYEED, J.** - The captioned Civil Revision impugns the Judgment rendered by the District Judge/Civil Model Appellate Court, Naushehro Feroze, in Civil Appeal No. 25/2011, whereby the Appellate Court set aside the Judgment and Decree dated 09.02.2011 entered by the Senior Civil Judge Naushehro Feroze in F.C Suit No.10/2005, so as to dismiss the Suit.

2. The underlying facts are that the Applicant had filed the aforementioned Suit, stating that he was the contractor of a canteen situated at Civil Hospital Naushehro Feroze since the year 1996, having constructed the same at his own cost at the behest of the Respondent in pursuance of an agreement entered into between him and the Medical Superintendent of the Civil Hospital, as per which a monthly payment of Rs. 150 was settled.

3. It was alleged that whilst the Applicant had been running the canteen as per the stipulated terms and conditions without any complaint, the permission had been cancelled vide an order dated 07.01.2005, directing him to vacate the premises, hence the Suit, whereby it was sought that the aforementioned order be declared void and the respondents be permanently restrained from interfering with the running of the canteen.
  
4. Following admission of the Suit, the Respondents were served and filed their written statement denying the averments while stating that the period for which contract of a canteen had been awarded to the Applicant had already expired in the year 2002 and that he was in wrongful possession and had also sublet the premises to a stranger without permission. It was stated further that the Suit was not maintainable and was liable to be dismissed.
  
5. Upon examination of the pleadings, the learned trial Court framed the following issues:
  1. Whether the suit is not maintainable at law?
  2. Whether the plaintiff had been granted permission after all codal formalities? If so, were such terms and conditions approved by the competent authority of the Health department of Sindh Government?
  3. Whether the permission to run the canteen in premises of Civil Hospital Nauehrhro Feroze amounts to license, revocable by the authority at any time?
  4. Whether the plaintiff had constructed the canteen building, in the Hospital premises, at his own risk and costs, and defendants are not liable to compensate the plaintiff?

5. Whether defendant No.2 had cancelled the permission to run the canteen, according to law?
  6. Whether the plaintiff had sub-letted the canteen premises to some stranger, in violation of any term and condition of contract? If so as it's legal effect?
6. The Applicant examined himself and produced the original Qabooliatnama, permission order of Government of Sindh Health Department dated 18.12.1996, copy of letter of Government of Sindh Health Department dated 23.12.1996 and original copy of a challan. Thereafter, two other witnesses, were also examined by him regarding the construction and operation of the canteen. Conversely, from the side of the Respondents, Dr. Ali Muhammad Baladi was examined and produced a letter of the Civil Surgeon dated 07.01.2005 and letter of the Government of Sindh.
7. Following the arguments, the Suit then came to be decreed in favour of the Applicants as prayed, but with the determination being reversed on appeal, where the Appellate Court framed the following points for determination:
1. Whether the health department had granted permission to the respondent/plaintiff in respect of the canteen within the premises of the Civil Hospital Naushehro Feroze under approved terms and conditions and such terms were irrevocable in any case as claimed?
  2. What was the legal status of the respondent/plaintiff over the property in suit?

3. Whether the respondent/plaintiff is entitled to retain the possession of the property in question in the light of permission issued by the health department and deserved for the relief of declaration and injunction as granted by the trial Court under the impugned judgment and decree?
  4. What should the judgment be?
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8. As regards points Nos.1 & 2, the Appellate Court considered the same to be interconnected and decided then together, with it being observed and found that there was no proper agreement or document to determine the actual period of the agreement, which indicated a period from 1997 to 2002, extendable with permission of the competent authority, but there was no evidence to establish that any fresh agreement had subsequently been executed. Furthermore, it was observed that the status of the Applicant was that of a licensee, subject to the grant being revoked at any stage, hence the Applicant could not conceivably have been entitled to a declaration and permanent injunction of the nature that had been claimed, and allowed by the fora below. As such, the judgment and decree of the trial Court were set aside and the Suit was dismissed.
  9. Learned counsel for the Applicant was heard on that score but was unable to point out any misreading or non-reading of evidence so as to establish any status better or beyond what had been determined by the Appellate Court, but merely sought to argue that the Appeal had earlier been dismissed for non-prosecution and wrongly restored after a protracted period.

10. However, on query posed, he acknowledged that the order of restoration had not been challenged at that time and the Applicant had also long since handed over possession of the premises following the Appellate Judgment that then came to be passed and was thereafter conducting his business at a location outside the precincts of the hospital.
  
11. Under the given circumstances, no discernible case for interference stands made out in exercise of revisional jurisdiction under Section 115 CPC and the Revision Application stands dismissed accordingly.

JUDGE

Irfan/PA