

ORDER SHEET  
THE HIGH COURT OF SINDH, KARACHI  
RA. No. 168 of 2022

---

Dated: Order with signature of Judge(s)

---

1. For orders on Office Objection a/w reply as at "A".
2. For orders on CMA NO. 7642 of 2022
3. For Orders on CMA No. 7643 of 2022
4. For hearing of Main Case.

Date of Hearing : 19.04.2023.

Petitioner : Arif Hafeez Khan through  
S.M. Intikhab Alam, Advocate

Respondents : Zahid Maqsood Quresh and others.

**ORDER**

**MOHAMMAD ABDUR RAHMAN, J.**, This is an Application under Section 115 of the Code of Civil Procedure, 1908 that has been maintained by the Applicant praying to this court to revise the Judgment and Decree dated 17 October 2022 passed in Civil Appeal No. 158 of 2022 by the IVth Additional District Judge (MCAC) Karachi (Central) which had upheld an order dated 30 November 2020 passed by the IXth Senior Civil judge Karachi Central in Civil Suit No. 1498 of 2019 whereby the Plaintiff in Civil Suit No. 1498 of 2019 was rejected under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908.

2. The Applicant had instituted Suit No. 1498 of 2019 claiming that on the basis of an Agreement of Sale dated 6 May 1992, that he had entered into with the Respondent No. 7, the Applicant had acquired title to a Shed constructed on Plot No. ST-8/4, Sector 12-C, North Karachi Industrial Area, North Karachi, Karachi (hereinafter referred to as the "Said Property") on

which he had been paying property tax to the Province of Sindh under the Sindh Urban Immovable Property Tax Act, 1958.

3. On the basis of his possession of the Said Property he had rented out the Said Property to a tenant. A dispute arose as between him and the tenant which was settled amicably and the tenant surrendered possession of the Said Property back to the Applicant. At this stage, the Applicant came to know that the Respondent No. 1 had instituted Rent Case No. 252 of 2017 before the Illrd Rent Controller Karachi (Central) as against one Salamat Shah claiming to be the owner of Plot No. ST-8/4, Sector 12-C, North Karachi Industrial Area, North Karachi, Karachi including but not limited to the "Shed" constructed thereon i.e., the Said Property. The Applicant maintained an Application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 in Rent Case No. 252 of 2017 and which application was granted and he was impleaded as Opponent No. 2 in Rent Case No. 252 of 2017.

4. Rent Case No. 252 of 2017 was dismissed by the Illrd Rent Controller Karachi (Central) on 2 September 2020 the ground that on the basis of the information on the record no relationship of landlord and tenant could be established. Being aggrieved and dissatisfied by the order 2 September 2020 passed by the Illrd Rent Controller Karachi (Central) the Respondent No. 1 maintained an Appeal under Section 21 of the Sindh Rented Premises Ordinance, 1979 bearing FRA No. 82 of 2020 before the VIth Additional District Judge (MCAC) Karachi (Central) and which was also dismissed on 26 March 2022.

5. It seems that during the pendency of Rent Case No. 252 of 2017 before the Illrd Rent Controller Karachi (Central), the Respondent No. 1 also instituted Civil Suit No. 499 of 2019 before the VIth Senior Civil Judge

Karachi (Central) for Declaration, Cancellation of Sale Agreement and Permanent and Mandatory Injunction”, inter alia, as against the Applicant on the ground that he has valid title from the Karachi Development Authority to Plot No. ST-8/4, Sector 12-C, North Karachi Industrial Area, North Karachi, Karachi, including, but not limited to, the “Shed” constructed thereon i.e. the Said Property.

6. That from the pleading of Suit No. 499 of 2019 the Applicant became aware of the fact that the Respondent No. 1 had also instituted Suit No. 744 of 1995 and which was decreed on 16 April 1995 by the 1<sup>st</sup> Senior Civil Judge Karachi (East). The Applicant immediately filed an Application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 challenging the Judgment and Decree dated 16 April 1995 passed by the 1<sup>st</sup> Senior Civil Judge Karachi (East) in Suit No. 499 of 2019 alleging that it had been obtained through “fraud and misrepresentations”. The Application found favour with the 1<sup>st</sup> Senior Civil Judge Karachi (East) who on 22 February 2019 allowed the Application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 and set aside the Judgment and Decree dated 16 April 1995 passed by the 1<sup>st</sup> Senior Civil Judge Karachi (East) in Suit No. 499 of 2019.

7. The emboldened by his success the Applicant had instituted Suit No. 1498 of 2019 before the IXth Senior Civil Judge Karachi Central seeking the following relief:

“ ... (a) Declare that the Plaintiff is/was the physical possessor/occupier of the suit property through assessing and serving property tax notice dated 20/05/1997 under the Sindh Urban Immovable Property Tax Act, 1958 and Rules thereunder & Contract agreement of May 1992 prior to the alleged transaction of the Defendant No. 1 for the suit property of the plaintiff.

(b) Declare that the alleged transaction of Defendant No. 1 of the suit property without physical and existing possession over the suit property and its subsequent alleged transaction(s) are improper, fanciful, null and void, abinitio and liable to be cancelled and all other subsequent, future transaction(s) on the

basis of fraudulently obtained judgement and decree dated 16/04/1996 are void and illegal

(c) Declare that the Defendant No. 1 have made bogus transaction(s) with the Defendant No. 2 to 6 with over support of subordinate of Defendant No. 2 are illegal, being designed by them and issuance of baseless and alleged allotment and possession letter are no legal effect.

(d) Declare that the Defendant No. 1 using baseless, bogus/fake documents for obtaining alleged allotment and possession letter

(e) Declare that the Plaintiff is entitled to retain his physical possession over the suit property being the physical possessor prior to the alleged transaction of Defendant No. 1.

(f) Direct Defendants No. 2 to 6 to issue allotment letter on the same basis of physical possessor from 1992 prior to the alleged transaction(s) allotment and possession letter to the Defendant No. 1 on the basis of his alleged physical possession over the Suit Property.

(g) Grant perpetual and mandatory injunction, restrained the defendants No. 1 to 7, their servants, agents or anybody else acting under through them to create any change, third party interest over the suit property i.e., Shed constructed on the Plot No. ST-8/4, Sector 12-C, North Karachi Industrial Area, Karachi

(h) Grant the general damages worth of Rs. 8,000,000 (Rupees Eight Million only) to the Plaintiff against the Defendant no. 1 with 10% PA till the final disposal of the instant suit.

(i) costs of the Suit

(j) Any other /further relief which this Hon'ble Court deemed just and proper in the circumstances of the above case

Prayed is made in the interest of justice."

8. The Respondent No. 1 maintained an Application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 seeking the rejection of the Plaint and which was application was on 30 November 2020 allowed by the IXth Senior Civil Judge Karachi (Central) rejecting the Plaint filed in Civil Suit No. 1498 of 2019 on the grounds that:

- (i) Suit No. 1498 of 2019 was barred under Section 42 of the Specific Relief Act, 1877 as no declaratory relief could be granted under that section by a court on the basis of a person claiming title to a property through an Agreement of Sale or on the basis of receipts of the

payment of property tax by the Applicant in respect of the Said Property, and

- (ii) having no title, the Applicant could not maintain a lis for cancellation of the Respondent No.1 title to Plot No. ST-8/4, Sector 12-C, North Karachi Industrial Area, North Karachi, Karachi

9. Undeterred, the Applicant instituted Civil Appeal No. 158 of 2022 before the IVth Additional District Judge (MCAC) Karachi Central impugning the order dated 30 November 2022 passed by the IXth Senior Civil Judge Karachi (Central) rejecting the Plaint filed in Civil Suit No. 1498 of 2019 and which was on 17 October 2022 dismissed by the IVth Additional District Judge (MCAC) Karachi Central holding that:

- (i) Suit No. 1498 of 2019 was barred under Section 42 of the Specific Relief Act, 1877 as no declaratory relief could be granted under that section by a court on the basis of a person claiming title to a property through an Agreement of Sale or on the basis of receipts of the payment of property tax by the Applicant in respect of the Said Property, and
- (ii) Suit No. 1498 of 2019 was also barred under Article 64 of the First Schedule read with Section 3 of the Limitation Act, 1908

10. The Applicant has now preferred this application under Section 115 of the Code of Civil Procedure, 1908 calling on this court to revise the Judgment and Decree dated 17 October 2022 passed in Civil Appeal No. 158 of 2022 by the IVth Additional District Judge (MCAC) Karachi (Central) and the order dated 30 November 2020 passed by the IXth Senior Civil

judge Karachi Central in Civil Suit No. 1498 of 2019 whereby the Plaint in Civil Suit No. 1498 of 2019 was rejected under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908. Mr. S.M. Intikhab Alam, Advocate who appeared on behalf of the Applicant contended that both the Judgment and Decree dated 17 October 2022 passed in Civil Appeal No. 158 of 2022 by the IVth Additional District Judge (MCAC) Karachi (Central) which had upheld an order dated 30 November 2020 passed by the IXth Senior Civil judge Karachi Central in Civil Suit No. 1498 of 2019 had been passed in error inasmuch as both the courts could not have rejected Civil Suit No. 1498 of 2019 without recording evidence to confirm the title of the Applicant and the Respondent No. 1 to the Said Property and which he argued amounted to a material irregularity within the meaning given to that expression under Section 115 of the Code of Civil Procedure, 1908. He urged that this court should revise the Judgment and Decree dated 17 October 2022 passed in Civil Appeal No. 158 of 2022 by the IVth Additional District Judge (MCAC) Karachi (Central) which had upheld an order dated 30 November 2020 passed by the IXth Senior Civil judge Karachi Central in Civil Suit No. 1498 of 2019 and while granting this Applicant remanding the matter to the IXth Senior Civil judge Karachi Central to decide Civil Suit No. 1498 of 2019 on merits. The Counsel for the Applicant did not rely on any case law during the course of his Arguments.

11. I have heard the Counsel for the Applicant and have perused the record.

12. The Supreme Court of Pakistan in the decision reported as **Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad**<sup>1</sup> has held that where the plaintiff seeks multiple reliefs in a suit the test to determine as to whether a suit is maintainable is to see from the reliefs that have been claimed by a Plaintiff in his prayer clause as to which of such prayers is the main relief

---

<sup>1</sup> PLD 2015 SC 212

and which of the reliefs are only ancillary, dependent or consequential. Once identified if it is found that the main relief is barred, then the ancillary, dependent or consequential relief should also be denied. It was held that:

“ ... *In the instant case, the contents of the plaint, especially prayer part thereof which has been reproduced in one of the preceding paragraphs of this opinion clearly and undoubtedly envisages that the respondent is challenging the documents as being invalid against him on the grounds of fraud, forgery, misrepresentation etc., and as a consequential relief (per prayer clause (d)] he unambiguously is seeking a decree for possession of the plot in dispute by further asking for the demolition of the superstructure existing thereupon. This part of the relief upon proper construction of the plaint and the frame of the suit is merely ancillary, incidental, consequential and dependent upon the primary relief of cancellation of the documents which is the basic and the foundation relief being sought (emphasis supplied). If the main relief is time barred and the bar is not surmounted by the respondent, the incidental relief has to go away along with it and the suit is liable to be dismissed on account of being time barred.*”

13. I am of the opinion that the main prayer that the Applicant is seeking in Civil Suit No. 1498 of 2019 is in the nature of declaratory relief as to his possession to the Said Property on the basis of an Agreement of Sale dated 6 May 1992 and on the basis of receipts confirming the payment by the Appellant of property tax under the provisions of the Sindh Urban Immovable Property Tax Act, 1958 in respect of the Said Property. All the other relief that has been claimed by the Applicant in Civil Suit No. 1498 of 2019 is ancillary to the declaratory relief being claimed or are incidental consequential or dependent thereto. I am therefore of the opinion that in the event that the Applicant was not entitled to the declaratory relief as claimed by him in Civil Suit No. 1498 of 2019, the remaining reliefs being claimed by the Applicant being ancillary incidental, consequential or dependent on the main relief could not be granted.

14. Section 42 of the Specific Relief Act, 1877 reads as under:

“ ... **42. Discretion of Court as to declaration of status or right. Bar to such declaration.–**

*Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its*

*discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*

*Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."*

It has recently been held by the Supreme Court of Pakistan in the decision reported as **Rao Abdul Rehman (Deceased) vs. Muhammad Afzal (Deceased)**<sup>2</sup> that:

" ... On the basis of a sale agreement, no legal character or right can be established to prove the title of the property, unless the title is transferred pursuant to such agreement to sell, but in case of denial or refusal by the vendor to specifically perform the agreement despite the readiness and willingness of the vendee, a suit for specific performance may be instituted in the court, but suit for declaration on the basis of a mere sale agreement is not the solution for appropriate relief. This Court in the case of *Muhammad Yousaf vs. Munawar Hussain others* (2000 SCMR 204) held that the agreement to sell by itself cannot confer any title on the vendee because the same is not a title deed and such agreement does not confer any proprietary right and thus it is obvious that the declaratory decree as envisaged by section 42 of the Specific Relief Act cannot be awarded because declaration can only be given in respect of a legal right of character. The only right arising out of an agreement to sell is to seek its specific performance."

It has also been held by the High Court of Lahore in the decision reported as **Liaqat Ali vs. Khalid Mehmood**<sup>3</sup> and by this Court in the decision reported as **Muhammad Zaman vs. Muhammad Jamil**<sup>4</sup> that the simpliciter payment of property tax cannot be considered as evidence of ownership over an immovable property. It is therefore settled that a Plaintiff cannot maintain a suit for declaration as to his title on the basis of an Agreement of Sale and in the event such a *lis* is maintained, declaratory relief such as was prayed for by the Applicant in Civil Suit No. 1498 of 2019 could not be granted under Section 42 of the Specific Relief Act, 1877. Similarly, as receipts of payment of property tax are also not documents which can form the basis of a person's title to immovable property, declaratory relief can also not be granted on the basis of such receipts of payment of property tax under Section 42 of the Specific Relief Act, 1877.

---

<sup>2</sup> 2023 SCMR 815

<sup>3</sup> 2013 MLD 1818

<sup>4</sup> 1992 CLC 873

15. It is noted that despite having arrayed the Respondent No. 7 as a Defendant in Civil Suit No. 1498 of 2019 and who is the purported seller of the Said Property pursuant to the Agreement of Sale dated 6 May 1992, no relief in the form of specific performance has been prayed for by the Applicant as against the Respondent No, 7 in Civil Suit No. 1498 of 2019. If such relief had been claimed, then Civil Suit No. 1498 of 2019 may have been maintainable to that extent but as no such prayer has been made by the Applicant, I am of the opinion that the Plaint in in Civil Suit No. 1498 of 2019 was correctly rejected under Order 7 Rule 11 of the Code of Civil Procedure, 1908 as the declaratory relief as to possession of the Said Property that was claimed by the Applicant in Civil Suit No. 1498 of 2019 could not have been granted to the Applicant under Section 42 of the Specific Relief Act, 1877 on the basis of an Agreement of Sale and receipts of the payment of property tax.

16. I am therefore am of the opinion that neither the Judgment and Decree dated 17 October 2022 passed in Civil Appeal No. 158 of 2022 by the IVth Additional District Judge (MCAC) Karachi (Central) nor the order dated 30 November 2020 passed by the IXth Senior Civil judge Karachi (Central) in Civil Suit No. 1498 of 2019 whereby the Plaint in Civil Suit No. 1498 of 2019 was rejected under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908, suffer from any material irregularity or can be considered to be either illegal or irregular and for which reason I have dismissed this application on 19 April 2023 as being misconceived and the foregoing are the reasons for that decision.

JUDGE

Dated: 17 July 2023

Nasir P.S.