

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

High Court Appeals No. 93 and 94 of 2022

Jameel Ahmed & others
Versus
Hayat Muhammad Sher Pao & others

Date of Hearing: 07.11.2023

Appellants: Through Mr. Salahuddin Ahmed Advocate

Respondents No.1 to 3: Through Mr. Umair Bachani Advocate.

Respondents No.4 to 7: Through Mr. Abdul Jaleel Zubedi, Assistant Advocate General.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- In a suit filed by respondents No.1 to 3 against official respondents only i.e. respondents No.4 to 7, an application under order I Rule 10 CPC was filed by the appellants. The said application was dismissed summarily after recording the details of the contentions of the counsel, by the learned Single Judge via order dated 22.02.2022 impugned in High Court Appeal No.94 of 2022; whereas on the same day the suit of respondents No.1 to 3 (plaintiffs of suit) was decreed against above official respondents only via judgment impugned in High Court Appeal No.93 of 2022. Since both the impugned order and judgment are interconnected with each other, the two appeals have been heard together and are being disposed of with this common judgment.

2. Mr. Salahuddin Ahmed, learned counsel for appellants, submitted that the appellants have presented a case to be impleaded as being necessary and property party in the suit. The appellants have given history of litigation in respect of the subject property that originates in

1994 when their land claimed to have been exchanged with subject land vide allotment/exchange of land order dated 27.06.1994, followed by possession and order of the Deputy Commissioner of 22.12.1994 and entries were accordingly inserted in the revenue record. Counsel has also relied upon pending litigation that includes C.P. No.D-3769 of 2021, tagged with these appeals, wherein land in question was shown as subject matter between the parties including appellants/interveners, now also disputing in these appeals.

3. Mr. Bachani, learned counsel appearing for private respondents, on the other hand, has refuted the claim on the count that the entries in the original grant have already been nullified to the effect that no subsequent interest could be drawn/passed on and hence the application under order I Rule 10 CPC was rightly dismissed. He further added that since in the suit the plaintiffs and the official respondents/defendants in the suit were not in dispute, it was decreed having no other alternate recourse. Mr. Bachani has also attempted the trail and history of subject land.

4. Learned Assistant Advocate General has opposed the claim of the private respondents over the subject land and has adopted the arguments of learned counsel for appellants to the extent of impleading them as necessary and proper party.

5. We have heard the learned counsel appearing for the parties as well as learned Assistant Advocate General and perused material available on record.

6. The subject land has a history and the pedigree of title has to be traced. As record of this file reveals an order of exchange of land i.e. land of Muhammad Qasim, attorney of A. Aziz and Allah Bux in Survey Nos.266 to 270, 275 to 279, 104, 258, 283 in Deh Narather, District Karachi West, was exchanged with land measuring 134-24 Acres from

Sector No.6-B, 19-B, 30, 6-C and 32, Corridor Scheme No.33, Karachi Malir. (*Such exchange has to be seen within the frame of requisite law which could have enabled such exchange but that is not a precise question here*). It is urged that possession letter and allotment of exchange, disclosing the exact area which came in their pool as determined by the Deputy Commissioner, was issued with consequential entries in revenue record. It is appellants' case that the subject land was acquired by the appellants after it being regularized and challans of requisite payments were paid in installments as permitted. While this could constitute a ground for presenting a case of a necessary and proper party, but this alone will not succeed in acquiring valid title unless the barriers of law regulating land exchange policy is crossed.

7. The record also reflects that private respondents who have filed instant suit, out of which the impugned order and judgment have arisen, have also filed a petition against some of the respondents including appellant No.1 and predecessor of appellant No.1 i.e. A. Aziz and Allah Bux, both sons of Ghularm Rasool bearing C.P. No.D-3769 of 2021, which is coming up and/or being fixed with these appeals. In this petition they (private respondents and plaintiffs of suit) have sought a declaration that the exchange of land measuring 134-24 Acres in KDA Scheme No.33 by the Chief Executive of province is illegal and unlawful (exchanged land identified above). While they impleaded the appellants No.1 and his predecessors in the petition, the respondents mischievously have not arrayed appellants and/or appellant No.1 at least and/or his predecessor in interest in the suit and in this manner have attempted to obtain a judgment and decree, in collusion with the official respondents and in fact succeeded. On acquiring knowledge before decree could be passed, the appellants moved application under order I rule 10 CPC on which the impugned order was passed whereby summarily not only that it was

dismissed but the suit was also decreed on the same date despite the two written statements of the official respondents, out of four, as rest were yet to be served. Incidentally one of the written statements has opposed the claim of the private respondents/plaintiffs of the suit.

8. Even learned Assistant Advocate General has opposed the claim of private respondents i.e. respondents No.1 to 3, as made in the suit, and has adopted the arguments of the appellants to the extent that a notice of order I Rule 10 CPC ought to have been issued and the case of the appellants ought to have been given deeper appreciation rather than dismissing the application summarily followed by a judgment immediately decreeing the suit.

9. It seems that a prima facie case has been presented by the appellants, based on the documents, which though were disputed by the respondents No.1 to 3, but it does not call for a summary dismissal of application under order I Rule 10 CPC. The appellants are not only proper but necessary party as suit involves determination and adjudication of title of suit land wherein appellants' interest at least is apparent. It is also to be noted that learned Assistant Advocate General has opposed the impugned order and judgment but has not preferred any appeal at least to the extent of judgment decreeing the suit as prayed. The case, as presented by the appellants, requires proper appraisal and adjudication before they could be thrown out of a contest whereas on the other hand there was sufficient material already available on record, which do not call for dismissing of application under order I rule 10 CPC summarily.

10. In our understanding order I Rule 10(2) CPC demands that name of the person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon

and settle all questions involved in the suit, be added, but such aspect was not given due consideration. The party has only to present a reasonable case for the indulgence of the Court, which could disclose interest in the property, which could have been sufficient for the Court to add him/them as party, which is done by the appellants in the instant case.

11. We would not like to go in further details and pass any order which could go into the root of the merits of the case as rival claims of the parties are yet to be tried, adjudicated and determined by the learned Single Judge.

12. In view of above we deem it appropriate to set aside the order and the judgment, impugned in these appeals i.e. (i) whereby application under order I Rule 10 CPC was dismissed and (ii) whereby the suit was decreed. The case is remanded to learned Single Judge. Resultantly, the application under Order I Rule 10 CPC is deemed to be pending before the learned Single Judge who shall then pass orders on it in accordance with law after providing opportunity of hearing to all the parties after notice.

13. Appeals are allowed in the above terms.

Dated:

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