IN THE HIGH COURT OF SINDH AT KARACHI

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

High Court Appeal No. 129 of 2017

Nooruddin & others

Versus

M/s Sindh Industrial Trading Estate & others

Date of Hearing:	05.12.2023
Appellants:	Through Mr. Mushtaq A. Memon Advocate.
Respondent No.1:	Through Mr. Pervaiz Ahmed Memon Advocate.
Respondents No.2 and 3:	Through Mr. Abdul Jaleel Zubedi, AAG.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Subject matter of this appeal is an order passed by learned Single Judge dated 15.12.2016 in Suit No.421 of 1987 in terms whereof application under section VII Rule 10 CPC filed by respondent No.1 was allowed and the plaint was returned for its presentation after almost 30 years, before the Court having local territorial jurisdiction within limits of District Jamshoro where, the subject property is situated. This appeal is pending on such issue since last more than 6 years.

2. 36 years before from now, a suit for declaration, injunction, recovery of possession, mesne profit and in the alternate for recovery of compensation was filed by the appellants before the original side of this Court as Suit No.421 of 1987 in relation to property bearing Survey No.783 to 847 and 849 to 988 measuring in all 774 Acres or thereabout, in Chak No.3 Deh Kalo Kohar, Tappo Kalo Kohar, Taluka Thana Bulla Khan, District Dadu Sindh. The land claimed to have been purchased from the legal heirs of one Malik Bulla Khan. The rights were claimed on the strength of "Dakhil/Kharij Register Parwari Form No.15". The appellants after describing necessary facts in the memo of plaint, prayed as under:-

(a) Declaration that the defendant No.1 has unlawfully dispossessed the plaintiffs from the lands bearing Survey Numbers 783 to 847 and 849 to 988 measuring in all 774 acres or thereabout, situated in Chak No.3 Deh Kalo Kohar, Tappo Kalo Kahar, Taluka Thana Bulla Khan, District Dadu, Sindh.

(b) Declaration that either under Notification dated 29.4.1984 or otherwise defendants have no lawful authority to enter upon, allot or rent out the lands of the suit land on premium basis and to realize premium of the rent therefrom, or in any manner deal with the lands of the plaintiffs.

(c) Declaration that any allotment made by defendant No.1 pursuant to annexure 'G' or at the strength of any other document issued by them is without lawful authority and is of no legal effect;

(d) Permanent injunction against defendant No.1 and/or any person claiming any title/interest through or under the authority of defendant No.1 restraining them from parting with possession, raising construction, allotting, renting and/or alienating or transferring in any manner whatsoever the said lands to any person except the plaintiffs;

(e) Directing defendants jointly and/or severally to pay the plaintiffs mesne profit for unlawful possession of the lands of the plaintiffs at the rate of Rs.9,000/- per acre per annum for 774 acres from date of dispossession/trespass till the realization of the amount with interest at the bank rate.

(f) To grant possession of the suit property to the plaintiffs

OR IN THE ALTERNATIVE OF AFORESAID

Reliefs, Hon'ble Curt be pleased to pass a judgment and decree directing the defendants jointly and severally to pay compensation to the plaintiffs for the said lands at the rate of Rs.2,00,000/- (Rupees two lacs only) per acre which comes to Rs.154800000/- with interest at the bank rate till the realization of the amount.

……."

3. The suit was contested by the respondents as written statement was filed by respondent No.1 whereas it is claimed that respondent No.2 did not file the same. Respondent No.3 was impleaded on an application dated 07.09.1990 which was allowed and written statement was filed by respondent No.3 on 07.01.1992. The amended written statements were also filed and were also taken on record. On 08.03.1992 issues were framed and evidence was recorded later. Later on, a High Court Appeal No.197 of 2006 was also preferred in respect of written statement on behalf of respondent No.2 which was allowed on 02.10.2007.

4. On 26.01.2004 it was realized and noted by original court that the subject land falls outside the local territorial jurisdiction of this Court and it was then desired by learned Judge to adjudicate the matter of jurisdiction first before hearing final arguments, for which purpose it was being fixed. Again a decade passed and nothing happened. The impugned order was then passed on application which was filed on 04.10.2016 bearing CMA No.14095/2016 on the count that this Court lacked local/territorial jurisdiction as the land in question is situated and located within District Jamshoro, not only at the time when the application was filed but also when the suit was presented this Court lacked territorial jurisdiction. The application was opposed in view of Section 16, 17 and 20 CPC as it is claimed that the provisions of territorial jurisdiction are not applicable to the original jurisdiction of this Court by virtue of Section 120 CPC. It was further argued that the suit is at the stage of final arguments and at this stage the question of territorial jurisdiction could not be raised in view of Section 21 CPC. Reliance was also placed on the cases of Searle[1], Muslim Commercial Bank Ltd.[2], Lilley International[3] and Haji Riaz Ahmed[4].

5. Mr. Memon, learned counsel appearing for appellants, pressed into service not only the principle of equity and fair play but also Section 21 read with Section 16, 17 and 20, 120 and Order 49 CPC.

6. On the other hand learned counsel appearing for respondent No.1 i.e. Sindh Industrial Trading Estate Ltd. opposed this appeal as well as principle of equity raised by Mr. Memon on the strength of language of Section 21 CPC and submitted that principles of jurisprudence developed for interpreting Section 21 CPC, as relied upon, cannot be pressed into service either before the Judge exercised original jurisdiction or before this division bench.

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

8. Section 21 CPC placed a bar before appellate or revisional court to take cognizance in respect of the place of suing, unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been consequent failure of justice. [Emphasis applied).

[1] Searle IV Solution (Pvt.) Ltd v. Federation of Pakistan (2018 SCMR 1444)
[2] Muslim Commercial Bank v. Nisar Rice Mills, Lahore (1993 CLC 1627)
[3] Lilley International (Pvt) Ltd. v. National Highway Authority (PLD 2012 Sindh 301)
[4] Haji Riaz Ahmed v. Habib Bank Limited (2012 CLC 507)

9. To our understanding the underlined text has an overriding effect of whatever adverse conclusion could be drawn in view of territorial defence having not been taken at the earliest in the first instance, yet the court considered it at a later stage.

10. So Section 21 CPC has its own comprehensive jurisprudence which could overview the original court`s proceedings. The ibid section is primarily for appellate/revisional court where an appeal is preferred apparently by the appellant defending the suit but one must not be misled by such language. The language is couched in such a way that for appellant, who defended the suit, some restrictions were imposed, before enabling the appellate court to take cognizance. It has, however, provided a legal frame for the trial court considering the nature of jurisdiction being objected.

11. The issue before us is slightly different as could apparently be seen from Section 21 CPC. It is an appeal by plaintiff as the original court took cognizance of local jurisdiction at the stage of final arguments when no such objection was taken before conclusion of evidence or even thereafter. At the stage when the matter was fixed for final arguments before the original court, an application under Order VII Rule 10 CPC was filed on 4.10.2016 on account of lack of local/territorial jurisdiction.

12. Such jurisdictions, such as pecuniary jurisdiction or lack of local/territorial jurisdiction, on account of situation of a property in different districts is quite different and distinct from inherent lack of jurisdiction on the subject. It is only the lack of inherent jurisdiction which goes to the root of jurisprudence required to interpret Section 21 which could have an adverse affect even if no defence in written statement is taken. Competence of a court to try a case, in our opinion, could be challenged at any time but not any other kind of jurisdiction which may not come in the definition of inherent lack of jurisdiction on the subject, on an appeal/revision. An objection relating to the ground of lack of pecuniary and/or local territorial jurisdiction can not be entertained by an appellate court or revisional court unless it is taken at the earliest opportunity [earliest opportunity defined] before the trial court and also when court sees failure of justice; that is when defendant preferred appeal/revision. Lack of territorial or pecuniary jurisdiction becomes a mere irregularity at a later stage, if not taken at the earliest which does not make a decree nullity and in fact if taken belatedly and successfully may lead to a failure of justice.

13. In our understanding of law, generally, jurisdiction of court may be classified in some general/common categories and the important ones being (a). territorial or local jurisdiction (b). pecuniary jurisdiction and (c). jurisdiction over the subject matter/inherent jurisdiction.

14. So far as territorial or pecuniary jurisdiction is concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues[5] and that is it. The person objecting to such jurisdiction belatedly has to show reasons why it was not taken at the earliest i.e. at the time of filing written statement and settlement of issues and what prejudice to defendant/s, in case such a challenge to jurisdiction continue, may be caused which could lead to proceedings ending in the shape of a decree as a nullity. The jurisdiction of categories [a] and [b] had to be objected at the earliest whereas for inherent lack of jurisdiction, timeframe does not count and in such cases (later) a decree may be a nullity.

15. The stage of filing written statement is the last option available to the defendant in "raising" such objection regarding jurisdictions of categories [a] and [b], although before filing written statement such objections in terms of Order VII Rule 10/11 CPC could also be filed. The maximum cap of raising such issue of jurisdiction of categories [a] and [b] above was left till the stage of filing written statement. It is then upto the court to decide such preliminary issue of jurisdiction either as a preliminary issue or alongwith other issues if it is dependent on evidence or otherwise. The other jurisdiction such as inherent lack of jurisdiction and lack of jurisdiction on the subject matter has no time limit and can be raised at any time because it relates to the competence of the court, to which jurisdiction cannot be bestowed/conferred.

16. A jurisdiction to which no inherent embargo is attached could be acquiesced and implied actions/inactions of litigant could adjudge it (acquiescence). Indian jurisprudence had enabled the legislature to amend the relevant Section 21 of CPC by incorporating and adding subsection 2 and 3 which deals with pecuniary and executing limitations, additionally. The case in hand however, relates to place of suing which is covered by subsection 1 which is the only section in our jurisdiction.

[5] Arshad Cheemanlal Modi Lodhi v. DNF Universal - 2005 I&DLAW SC 582, (2005) 7 SCC 791 & AIR 2005 S.C. 4446.

17. As observed, the objection of the defendant/respondent in the suit, ought to have been taken at the earliest i.e. until framing of issues whereafter it could be seen as if it is acquiesced as not being an objection that could be seen as lack of inherent jurisdiction, only which could adjudge the decree as nullity. The respondent has not been able to show if such proceedings continue, it may result in miscarriage of justice as an appeal is available to appellate court in either situation.

18. However, when an objection with regard to jurisdictions [a] and [b] is taken by the defendant in a suit, the plaintiff could have requested the court to frame an issue and decide the same before entering the trial. If the plaintiff has not chosen to adopt the procedure, he could not complain of the fact that now since the evidence has been recorded on all the issues which could entail hardship to him, in case such suit or matter is sent to a court having jurisdiction, the objection in this regard then deemed to have been taken at the earliest.

19. In the case of Manoranjan Sactradhari v. Subhashini[6], the court explained that the legislature took all possible care to ensure that time and labour spent by the court in adjudication of the issue do not go in vain if the party concerned decide in the adjudication process to join an issue and allowed the court to try the suit on merit without raising objection to the two jurisdictions of the court referred above [`a` and `b`] at the earliest opportunity; to the later jurisdiction i.e. lack of competence is, of course, excluded from the application of such principle as it would result in the nullity in the later case. In far and rare cases the appellate or revisional court may entertain an appeal or revision on such ground only in the case of consequent failure of justice. Section 11 of the Suit Valuation Act is at par apparently to the extent of pecuniary value that ends up in providing jurisdiction.

20. The principle of estoppel, waiver and acquiescence or even res-judicata which are procedural in nature would have no application in a case where an order has been passed by the tribunal/court which has no authority in that behalf i.e. total lack of inherent jurisdiction as far as subject matter is concerned, however, decree passed by court which has no territorial/local jurisdiction or pecuniary jurisdiction and the decree passed by the court

[6] 1999 AIHC 2369 (2372)(Goa)

having no inherent jurisdiction as far as the subject is concerned has marked distinctions; in the first instance when such decree was passed by a court which lacks only local and pecuniary jurisdiction, the appellate court may not interfere with the decree as the action complained of has not defeated the interest of justice whereas second category of cases where the court lacks the jurisdiction in its totality i.e. inherent lacks of jurisdiction on the subject, the appellate court must interfere as such the decree is a nullity in the eyes of law. Such principles were drawn in the case of Faqir[7] and Malik Khan[8].

21. The two jurisdictions of the appellate court have been established to have acted lawfully i.e. (i). In the first instance where on account of procedural illegality or irregularity, identified above for [a] & [b] kinds of jurisdiction not by way of inherent lack of jurisdiction, a litigant plaintiff is ousted and (ii). In a case of lack of inherent jurisdiction, the court continue to proceed with the matter which may have resulted in the failure of justice. For both these limbs, the appellate jurisdiction is available.

22. In the instant case subject matter falls in the first category i.e. it was only a local territorial jurisdiction which was not available, however, it was acquiesced, though the subject of the dispute in the suit i.e. entertaining a dispute as to the property was not ousted from court`s jurisdiction, in relation to properties, i.e. the subject is/was not novel for the court.

23. Notwithstanding above, normal jurisdiction of court is ascertained from substantive relief claimed; however, part of a relief claimed cannot be ignored.

24. In the instant case an alternate relief claimed is money decree against the defendants. If such relief is allowed on account of any unlawful actions of defendants, it could be recovered from such defendants performing function in connection with their statutory duties within territorial limits of this court. This aspect of the matter was not considered by the original court.

25. With these understanding of law, we are of the view that for almost 30 years, the suit remained pending when in the year 2016, the impugned order was passed and in 2017, the appeal was filed in respect of the said order. Such objection ought to have been taken at the initial stage i.e. at the most, at the time of filing written statement or at the time of framing of the issues

[7] 2000 SCMR 1312 – Faqir Muhammad v. Pakistan through Secretary, Ministry of Interior & Kashmir Affairs Division, Islamabad.
[8] 2018 SCMR 2121 – Malik Khan Muhammad Tareen v. M/s Nasir & Brother Coal Co, & Others

which were framed in 1992 and the evidence was concluded in 1999. The plaint in the case was returned to the appellants for filing it afresh in the court having local territorial jurisdiction which as of now, in view of above facts, may cause grave prejudice to the appellants and would be a failure of justice.

26. The impugned order as such is set aside. Learned Single Judge shall decide the pending suit at the earliest.

JUDGE

JUDGE

Dated: .01.2024