

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision No.S-108 of 2019

Syed Muzaffar Ahmed Ashraf and others

v.

Anwar Ali Janwri and Others

Applicant No.1 : Syed Muzaffar Ahmed Ashraf s/o Syed Aziz-ur-Rehman Shah through his Legal Heirs (1a) Mrs. Qudsia Ashraf w/o Syed Muzaffar Ahmed Ashraf; (1b) Zafar Iqbal Jami son of Syed Muzaffar Ahmed Ashraf; (1c) Al-Kazim Mansoor son of Syed Muzaffar Ahmed Ashraf; (1d) Abdul Khair Masrur son of Syed Muzaffar Ahmed Ashraf; (1e) Ishrat Fatima d/o Syed Muzaffar Ahmed Ashraf; (1f) Nusrat Fatima d/o Syed Muzaffar Ahmed Ashraf; (1g) Iffat Fatima d/o Syed Muzaffar Ahmed Ashraf; (1h) Manzoor Masood son of Syed Muzaffar Ahmed Ashraf through their Attorney Mr. Shadi Khan s/o Gahi Khan Kashkheli through Mr. Imdad Ali Mashori, Advocate.

Respondent No.1 : Anwar Ali son of Akhtar Ali Janwri, Advocate (In Person)

Respondent No.2 : The S.H.O, P.S. Hyderi, Larkana.
Respondent No.3 : The S.S.P. Larkana.
Respondent No.4 : Government of Sindh through Secretary, Home Department, Karachi through Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.

Date of Hearing : 02.02.2024

Date of Judgment : 12.02.2024

J U D G M E N T

JAWAD AKBAR SARWANA, J.: Plaintiff/Legal heirs (“LRs”) of Syed Muzaffar Ahmed Ashraf (“SMA Ashraf”) s/o Syed Aziz-ur-Rehman Shah (hereinafter referred to collectively as “LRs of SMA Ashraf”) have filed this Civil Revision Application No.108 of 2019 aggrieved by the Judgment and Decree dated 02.10.2019 passed by the learned Vth Additional District Judge Larkana in Civil Appeal No.99/2018 and the Judgment and Decree dated 16.11.2018 passed by the learned IVth Senior Civil Judge Larkana (“the trial court”) in FC Suit No.250/2013 filed by the Plaintiff/LRs of SMA Ashraf against Defendant/Respondent No.1-Anwar Ali Janwri, SHO, etc. The Applicant/LRs of SMA Ashraf have prayed that the impugned Orders passed by the two Courts below be set aside.

2. The brief facts as available in the revision, which the Appellate Court and the trial court have discussed in detail, are that Defendant/Respondent No.1-Anwar Ali Janwri allegedly approached Plaintiff/LRs of SMA Ashraf to purchase their residential bungalow, and apparently, when the Plaintiff/LRs of SMA Ashraf declined his request, the Defendant/Respondent No.1-Anwar Ali Janwri threatened to dispossess them from their bungalow forcibly. Accordingly, the Plaintiff/LRs of SMA Ashraf filed FC Suit No.250/2013 for declaration and perpetual injunction. They prayed for the following reliefs in the Plaint:

- (a) To declare that threatened action of defendant No: 01 for sale of house C.S. No:1748 Ward “A” Larkana, is illegal, null, void, abnatio & against the law.
- (b) To grant temporary as well as permanent injunction restraining the defendants from interfering peace full possession & issuing threats.
- (c) To grant costs of suit
- (d) Any other relief under the law & circumstances.

The Defendant/Respondent No.1-Anwar Ali Janwri filed his Written Statement in December 2013. A perusal of the Written Statement reveals that it was an admitted position that the Plaintiff/LRs of SMA Ashraf occupied City Survey No.1748, Ward "A" situated in Giyan Bagh, Larkana ("residential bungalow") whereas Defendant/Respondent No.1-Anwar Ali Janwri occupied City Survey No.1746/A which was adjacent to the Plaintiff/LRs of SMA Ashraf's bungalow. The two properties were totally different. The pleadings did not challenge ownership; however, when the trial court settled issues, it included, inter alia, issues regarding maintainability (issue no.1), whether the Plaintiff/LRs of SMA Ashraf/Plaintiff are lawful transferee and possessor of the residential bungalow C.S. No.1748 (issue no.2), whether Defendant-Respondent No.1-Anwar Ali Janwri has title in his C.S. No.1746/A (issue no.4) and other issues, etc. The parties led evidence, and after hearing the parties, the trial court dismissed the suit based on the first issue regarding maintainability. Plaintiff/LRs of SMA Ashraf challenged the trial court's judgment on the ground that the learned trial court judge did not decide other issues settled by the court. The District Court upheld the trial court's judgment, hence the revision filed by the Plaintiff/LRs of SMA Ashraf.

3. The learned Counsel for the Applicant has argued that the Judgment is liable to be set aside as the trial court decided the first issue only and did not decide the remaining issues settled by the Court, even though the parties led evidence on the issues settled. He contended that the Court should have decided all the issues instead of simply dismissing the suit on the sole ground of maintainability. He argued that the issues which ought to have been decided by the trial court were:

"2. Whether plaintiff is lawful transferee and possessor of C.S. No.1748 admeasuring 14500

square feet Ward "A" Gian Bagh Larkana by Settlement Department in open auction dated 27-06-1960 and such final PTD as well as City Survey mutation stand in his favour as per law..?"

"3. Whether the threatened action of defendant No.1 to dispossess the plaintiff from property C.S. No.1748, Ward "A" area14500 sq.ft (approx. :) situated in Bagh-e-Zulfiqar Muhalla Larkana is legal just and in accordance with law..?"

"4. Whether the defendant no.1 has right or title over the property bearing C.S. No.1748 area14500 sq. ft. (appr:)..?"

"5. Whether defendant No.01 and his real brothers namely Sajjad Ali, Mohammad Ali & Mohammad Tameer Hussain are lawful owners of C.S. No.1746/A area 12600 square feet Ward "A" near Zulfiqar Bagh Larkana in equal shares having boundaries disclosed therein as per registered sale deed bearing registration no.2704 dated 12-06-2013. . .?"

"6. What should the decree be?"

In support of his contention he relied on 1982 SCMR 815, PLD 2009 Karachi 38, 2002 CLC Peshawar 1262, 1992 CLC Karachi 1022, 2004 CLC Peshawar, PLJ 1987 Peshawar 08, 2021 YLR 2944 and 1999 CLC 62.

4. The Defendant/Respondent No.1-Anwar Ali Janwri, Advocate, who is impleaded in this case in person, submitted that the Plaintiff/LRs of SMA Ashraf had filed a bogus and frivolous suit against him and kept him engaged in litigation, consuming both time and resources in a suit which was not maintainable from the very start. He argued that he had nothing to do with the residential bungalow of Plaintiff/LRs of SMA Ashraf and that the trial court had framed issues based on the prayers in his Written Statement. The Defendant/Respondent No.1-Anwar Ali Janwri's prayers relevant to decide this revision are reproduced as hereinbelow.

“01. Declare the defendant and his brothers the rightful owners of the City Survey No.1746A as per record.

02. Order of City Surveyor to properly demarcate the Property between the Plaintiff and the defendant and his brothers

03. Dismiss the suit as being frivolous, vexatious and defamatory.

04. . . .

05 Order restoration of the illegally occupied property to the defendant and his brothers

06.”

5. The Defendant/Respondent No.1-Anwar Ali Janwri clarified that his Written Statement was silent as to the issues framed by the Court except for the prayer clause in the Written Statement as above. He further confirmed to the bench that he had not filed any counter-claim and relied on the Written Statement alone in his defence. To this end, he conceded that the body of the Written Statement did not contain any material as to facts and law or cited any document on which he (Defendant/Respondent No.1-Anwar Ali Janwri) was at variance with the Plaint filed by Plaintiff/LRs of SMA Anwar. He contended that he (Anwar Ali Janwri) had nothing to do with the residential bungalow of Plaintiff/LRs of SMA Ashraf. He urged that the impugned Judgments by the courts below dismissing the suit and appeal should be maintained in revision.

6. I have heard the learned Counsel of the Applicants, Respondent No.1, Anwar Ali Janwri, and AAG Sindh and perused the Revision file.

7. This is a curious action filed by Plaintiff/SMA Ashraf and pursued by his legal heirs after his death. The Plaintiff/LRs of SMA

Ashraf have been pursuing this civil suit to restrain Anwar Ali Janwri, Advocate, from harassing them and interfering with the peaceful possession of their residential bungalow on C.S. No.1748, Ward "A", Larkana. They sought only a declaration concerning alleged harassment and interference from peaceful possession of their residential bungalow. They sought no other relief. They have no prayer in the Plaint seeking any declaration of title/ownership of their residential bungalow or any ancillary relief such as a declaration that they are lawful transferees of the residential bungalow. There is no claim for damages or compensation against Defendant/Respondent No.1-Anwar Ali Janwri concerning this alleged harassment or apparent interference in the peaceful possession of the residential bungalow C.S. No.1748. Finally, there is also no prayer in the Plaint seeking a negative declaration regarding Defendant/Respondent No.1-Anwar Ali Janwri's ownership/title in his plot C.S. No.1746/A (which is of no concern to Plaintiff/LRs of SMA Ashraf if the contents of the Plaint were to be believed). At the outset, I agree with the reasoning of the Appellate Court and the trial court for dismissal of the FC Suit No.250/2013 on the ground that the same is not maintainable as it sought a negative declaration. The analysis made by the two Courts based on the case law cited is squarely applicable to the facts and circumstances of the case. In my opinion, the main issue in the Revision was the maintainability of F.C. Suit No.250/2013, thus on this score too this Revision is liable to be dismissed. However, having concluded that the suit was not maintainable, this bench has turned to examine if there has been any illegality or material irregularity in ignoring the remaining issues not decided. Therefore, this bench proposes to discuss the remaining issues not as a matter to decide them but to examine if they were rightly ignored and were not required to be decided, even otherwise, apart from the maintainability of the Suit. To this end, I find it odd that the trial court framed all the issues that it did. After the trial court settled

issues, it is curious too that the entire evidence produced by Plaintiff/LRs of SMA Ashraf and Defendant/Respondent No.1-Anwar Ali Janwri, as recorded by the learned trial judge, focused entirely on the title/ownership of Defendant/Respondent No.1-Anwar Ali Janwri's plot C.S. No.1746/A. While the learned Counsel for the Plaintiff/SMA Ashraf argued at length about the trial court not giving reasons for its decision on each and every issue settled by the trial court and deciding the entire suit simply on the single issue of maintainability; yet nothing was adduced in evidence by the Plaintiff/LRs of SMA Ashraf's in support of title/ownership/transfer/possession of the residential bungalow C.S. No.1748, Ward "A", Larkana or for that matter the remaining issues, i.e. Issue Nos.2 to 5.

8. I have examined the contents of the Plaint and the Written Statement and frankly find there is/was no reason for the trial court to have even framed Issue Nos.2, 4 and 5. Defendant/Respondent No.1-Anwar Ali Janwri had not denied anything in the Written Statement that contravened Plaintiff's assertion that could culminate in the Court framing Issue nos.2 and 4. Issue No.3 regarding the deceased SMA Ashraf being allegedly harassed by Anwar Ali Janwri stood abated on the death of the Plaintiff. Further, the Plaint contained no assertion which could lead the Court to frame Issue no.5. Thus, in my view, the trial court correctly concluded not to decide any other issue except the issue of maintainability. All the remaining issues were misconceived and did not arise from the pleadings. I now propose to discuss the irrelevancy and lack of materiality of each of the issues settled by the trial court, which the trial court did not consider in its judgment.

9. Issue No.2: The contents of the pleadings contained no information regarding Issue No.2, which the trial court settled. The Plaint had neither any content nor prayer seeking declaration that the Plaintiff/LRs of SMA Ashraf are lawful transferee and possessor

of C.S. No.1748 admeasuring 14500 square feet Ward "A" Giyan Bagh Larkana by the Settlement Department in open auction dated 27-06-1960 and such final PTD as well as City Survey mutation stood in his favour as per law. The Plaintiff had not pleaded anywhere that it was seeking such a declaration of being transferee or possessor of the residential bungalow. The Plaintiff mentioned that they were in occupation, and Defendant/Respondent No.1-Anwar Ali Janwri did not object to the same. Indeed, the framing of issue no.2, presupposed that the Plaintiff/LRs of SMA Ashraf may not be the owners of the residential bungalow they claimed to occupy. Hence, it was nobody's case that Plaintiff/LRs of SMA Ashraf did not occupy the residential bungalow C.S. 1748. Additionally, there was no reason for the trial court to frame any issue regarding possession. It was peculiar that Plaintiff/LRs of SMA Ashraf accepted Issue No.2 as is when there was no reason for them to accept the same unless they doubted their own possession/occupation. Finally, the Plaintiff sought no declaration that Plaintiff/LRs of SMA Ashraf had title/ownership of the residential bungalow as "lawful transferee". The Defendant/Respondent No.1-Anwar Ali Janwri did not raise any objections regarding Plaintiff/LRs of SMA Ashraf ownership/title in their residential bungalow C.S. No.1748 in his Written Statement. This was not the Plaintiff/LRs of SMA Ashraf's case as set out in the Plaintiff. Yet the trial court framed this as Issue No.2. Notwithstanding that the Plaintiff/LRs of SMA Ashraf did not plead that they were transferee and did not occupy/have possession of the residential bungalow, according to the evidence recorded, the learned Counsel for the Plaintiff/LRs of SMA Ashraf did not put a single question to the Sub-Registrar and the City Surveyor regarding issue no.2 about his ownership/title as transferee and possession of the residential bungalow C.S. No.1748. It appears that the Counsel wished to avoid altogether bringing anything on record about the residential bungalow C.S. No.1748 in FC Suit

No.250/2013. Plaintiff/LRs of SMA Ashraf did not produce any documentary evidence to establish the chain of ownership or transfer or having possession of the residential bungalow C.S. No.1748 from 1947 till present, which they ought to have done if they genuinely desired to prove Issue No.2 in the affirmative. In view of the foregoing, firstly, Issue No.2 went beyond the pleading and ought not to have been framed by the trial court as an issue in FC Suit No 250/2013, and secondly, the prerequisites to prove it was missing from the pleadings and in the evidence. Hence, Issue No.2 was rightly discarded by the trial court in determining the suit filed by the Plaintiff/LRs of SMA Ashraf.

10. Issue No.3: Issue no.3 related to SMA Ashraf's allegation that Anwar Ali Janwri had harassed him. This claim could not be agitated by anyone other than SMA Ashraf. Hence, the issue became irrelevant after the death of SMA Ashraf. Reliance is placed on the provisions of Order 22 Rule 6 and Zahid Hussain Awan v. United Bank Limited, 2018 MLD 1369. Accordingly, there was no need for the trial court to decide Issue No.3.

11. Issue No.4: The Issue no.4 framed by the trial court was also misconceived and should not have been framed as an issue. Neither Plaintiff pleaded in his Plaint nor Defendant/Respondent No.1-Anwar Ali Janwri stated in his Written Statement that Defendant had right or title over the residential bungalow bearing C.S. No.1748. Plaintiff equally did not appear to be interested in proving this issue; hence, the relevant parties / departments / authorities, such as the Settlement Department, were not impleaded nor made a party after the settlement of issues. When the Sub-Registrar and the City Surveyor were called as witnesses in FC Suit No.250/2013, Plaintiff did not bother even to put a single question regarding the residential bungalow C.S. No.1748. Finally, as Plaintiff was not claiming any title in C.S. No.1748 in the Plaint, Issue No.4 was wholly irrelevant.

12. Issue No.5: It is also a mystery why the trial court framed issue No.5 of whether Anwar Ali Janwri and his real brothers, namely Sajjad Ali, Mohammad Ali & Mohammad Tameer Hussain are lawful owners of C.S. No.1746/A area 12600 square feet Ward "A" near Zulfiqar Bagh Larkana in equal shares having boundaries disclosed therein as per registered sale deed bearing registration no.2704 dated 12-06-2013. The detail in the framed issue was nowhere to be found in the Plaint or the Written Statement available in the Revision File, which begs the question of how the trial court obtained such detailed information about C.S. No.1746/A when it was missing from the pleadings. The brothers of Anwar Ali Janwri were neither named in the Plaint nor mentioned in any other document filed with the Plaint. Further, Anwar Ali Janwri did not mention their names in his Written Statement. The trial court could not frame an issue which did not arise from the Plaint and Written Statement. There was no information available regarding any registered sale deed either. There was no mention in the Plaint of any demarcation proposed to be made by Plaintiff/LRs of SMA Ashraf, which could lead to framing an issue on boundaries. Defendant/Respondent No.1-Anwar Ali Janwri submitted a prayer to determine the boundaries of the bungalows: C.S. No.1748 and C.S. No.1746/A. However, that was in his Written Statement, which ought to have been ignored as it was not his suit.

13. I have examined the Plaint, which does not allege anywhere that Defendant/Respondent No.1-Anwar Ali Janwri, Advocate does not have right or title over the property bearing C.S. No.1746/A. In the circumstances, it is not understood how the trial judge came to frame Issue No.5. The starting point when framing an issue is that it must first emerge as an allegation raised in the Plaint by the Plaintiff. Plaintiff/LRs of SMA Ashraf did not raise any such allegation questioning the title and ownership of Anwar Ali

Advocate's title in Anwar's property C.S. No 1746/A in the Plaint. SMA Ashraf had no business with Anwar's property. The trial court had no reason to frame an issue based on the position taken by Defendant in his prayer clause in the Written Statement when there was not even any assertion raised in the body of the Written Statement, and Plaintiff/LRs of SMA Ashraf had not raised any such plea. The Defendant had not filed F.C. Suit No.250/2013; it was the Plaintiff who had filed the suit. The onus was on the Plaintiff to prove his claim to succeed in his suit. A prayer clause has no place in the Written Statement, and the trial court should have ignored it. Instead, the trial court copied and pasted the prayer clause from Defendant/Respondent No.1-Anwar Ali Janwri's Written Statement as an issue on which parties were at variance when this was clearly not the case. Issue No.5, framed by the trial court, was wholly alien and did not arise from the pleadings. As such, it was rightly ignored by the trial court in its judgment.

14. This Court, too, has the power to strike down an issue which has been wrongly framed and modify the settlement of issues while exercising its civil jurisdiction under Section 115 CPC. Yet there may be no need to do so at this stage as the two Courts below have rightly held that FC Suit No.250/2013 filed by the Plaintiff/LRs of SMA Ashraf was liable to be dismissed on maintainability.

15. There is another aspect that I would like to mention in parting with this Revision. It appears that the residential bungalow bearing C.S. No.1748, Ward "A", Larkana has been subject to previous litigation, namely in F.C. Suit No.35/1991 before the Court of 1st Senior Civil Judge, Larkana Order dated 25.01.2000; Civil Misc. Appeal No.05/2000 before the Vth Additional District Judge, Larkana Order dated 20.12.2001; and Civil Revision No.S-10 of 2002 Judgment dated 14.10.2003. Each of the three forums dismissed all actions filed by Mst. Hajani Janat Khatoon w/o Mohammad Soomar d/o Shakar Khan claiming title/interest in C.S.

No.1748. SMA Ashraf was impleaded as a Defendant/Respondent in all three actions but the lis was dismissed for non-prosecution. It may well be that Counsel for the LRs of SMA Ashraf continued to keep a distance from matters relating to ownership of C.S. No.1748 in spite of Issue No.2, which, however, misconceived for reasons discussed herein was, nevertheless, framed as an issue by the trial court, because of the past (unresolved) litigation of C.S. No.1748 Ward "A" Larkana.

16. In view of the above analysis, no jurisdictional error or irregularity in the concurrent findings of facts or on the point of law has been identified in the impugned judgments and decree of either the trial court or the District Court that could justify this Court's interference under Section 115 CPC. The trial court correctly decided the suit on the sole issue of maintainability, and for the reasons discussed hereinabove, there was no need to examine the other issues framed by the trial court. The Applicants have not shown that the two courts have acted in the exercise of their jurisdiction illegally or with material irregularity, which calls for any interference by this Court.

17. Given the above, the impugned Judgment and Decree dated 02.10.2019 passed by the learned Vth Additional District Judge Larkana and the trial court's judgment and decree dated 16.11.2018 are hereby confirmed, and the Revision is dismissed with no order as to costs.

J U D G E