

IN THE HIGH COURT OF SINDH AT KARACHI

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

C.P. No.D-2965 of 2018

Wajid Shaikh
Versus
Learned 1st Addl. District Judge & others

Date of Hearing: 23.12.2024

Petitioner: Through Mr. Mr. Muhammad Ramzan Advocate.

Respondents No.1 to 8: None present.

Respondent No.9: Through Mr. Mr. Qazi Abdul Hameed Siddiqui holding brief for Mr. Ashraf Ali Butt along with Abdul Basit departmental representative.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Impugned in this petition is judgment dated 24,03.2018 passed by 1st. Additional District Judge Malir whereby plaint in Suit No.613 of 2016 filed by the petitioner was rejected.

Brief facts are that the petitioner filed suit for performance based on the agreement dated 25.05.2016. Record reflects that perhaps there was yet another suit bearing No.37 of 2016 wherein the petitioner moved an application to be made party, however the revisional Court in view of the frame of Order I Rule 10(2) CPC dismissed it. Be that as it may, petitioner's case is that he has a right under the agreement, referred above, which he sought to be performed by filing suit bearing No.613 of 2016. While the trial Court dismissed the application under order VII Rule 11 CPC, the revisional Court in Civil Revision No.50 of 2017, by virtue of paragraphs 10 and 11, allowed it thereby rejecting the plaint hence this petition.

We have heard petitioner's counsel whereas the counsel for contesting respondents remained absent.

In paragraphs 10 of the impugned judgment the reasons assigned for rejecting the plaint was that a sale deed in pursuance of agreement was executed on 01.06.2016 while the suit of the respondent was pending and since it was without possession therefore it was hit by Section 52 of the Transfer of Property Act on the rule of *lis pendens*. These factors could hardly be ground for rejection of plaint under order VII Rule 11 CPC. The rejection of plaint is limited only to the extent described and provided under order VII Rule 11 CPC and the consequences of petitioner not being in possession and/or was not delivered the possession and that sale deed was registered while the suit of the respondent was pending could hardly be ground which could be articulated in pursuance of Order VII Rule 11 CPC.

There could the implied possession and/or there could also be a lawful registration of sale while the suit in respect of the same property is pending or otherwise, however, these would require evidence if that is done in defiance of the order or in ignorance of the pendency of the lis. Thus, in these circumstances, we are not in agreement the way the plaint was rejected in view of the aforesaid grounds described in paragraphs 10 and 11 of the impugned order.

In view of above, the petition is allowed and the impugned order is set aside. The trial Court may proceed with the suit from where it was left and decide it on merit in accordance with law.

Chief Justice

Judge