

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**Civil Revision Application No. 109 of 1994**

Applicants : Mst. Rasheeda Begum & others  
through Mr. Irfan Ahmed Qureshi,  
Advocate

Private Respondents : Muneer Ahmed & others through  
Mrs. Razia Ali Zaman Khan Patoli,  
Advocate.

Official Respondents : Through Mr. Allah Bachayo Soomro,  
Addl. A.G Sindh.

Date of hearing : 05.05.2023

Date of Judgment : 05.05.2023

**JUDGMENT**

**Muhammad Junaid Ghaffar, J:-** Through this Civil Revision, the Applicants have impugned judgment dated 28.02.1994 passed by the 6<sup>th</sup> Additional District Judge Hyderabad in Civil Appeal No.71 of 1992, whereby the appeal has been allowed by partly decreeing Suit No.10 of 1986 and by setting aside the judgment of the Civil Judge, Hyderabad dated 27.02.1992 through which the suit of the private respondents was dismissed.

2. Heard both the learned counsel for the parties and perused the record. It appears that respondent No.1 filed a Suit for declaration, injunction and cancellation wherein a declaration was sought that he is the lawful allottee of the suit property pursuant to allotment dated 27.12.1978 and is entitled for Malkana Huqooq. It was further prayed that the allotment and the lease deed of the present Applicants obtained subsequently are void, illegal and nullity in the eyes of law; hence, liable to be cancelled. It was further prayed that permanent injunction be granted to the extent of demanding any rent or ejection by the official defendants / respondents. The learned trial Court after exchange of pleadings settled the following issues: -

1. *Whether the suit is not maintainable and time barred?*
2. *Whether plaintiff and Chand Mohammad did not occupy quarter No.71 Block-D Unit No.6 Latifabad Hyderabad?*

3. *Whether defendant No.2 after observing all required formalities did not issue allotment order to the plaintiff on 28.12.1978?*
4. *Whether the allotment and lease deed of the defendant No.3 are forged and illegal documents if so what is its effect?*
5. *Whether the plaintiff is entitled for the relief claimed in the suit?*
6. *What should the decree be?*

3. The suit filed by the respondent No.1 was dismissed by the trial Court by holding that the Suit was initiated after the Applicant had filed some rent proceedings against his wife being a tenant; that his witness Amanullah (Exh-59) failed to produce the original record of the purported allotment of Respondent No.1; that on the other hand the witnesses produced by the Applicants from the office of the official defendants / Respondents No.1 & 2 fully supported its claim; that all original documents in favor of the Applicants were produced along with original record; hence, the Plaintiff / Respondent No.1 was not entitled for a decree and judgment as prayed. In Appeal, however, through impugned judgment the Appellate Court has partly decreed the suit to the extent of validity of the allotment order by setting aside the judgment of the trial Court. It would be advantageous to refer to the relevant findings of the learned Appellate Court in respect of Issues Nos.5 and 6 which reads as under:

### **Issues Nos.5 & 6**

*From the discussion on issue No.1 to 4 it is cleared that the allotment in favour of plaintiff is legal but it has come on the record that he has not made payment, which has been admitted by the learned counsel for the plaintiff frankly, therefore, prayer "a" is allowed, and it is held that the plaintiff is lawful allottee of the quarter No.71 Block-D Unit No.7 Latifabad, Hyderabad by virtue of allotment dated 27.12.1978 and is entitled for Malkana Huqooq and prayer in that regard is allowed but the cancellation of the allotment in favour of the defendant No.3 is declined, although it is illegal and nullity in the eye of law, but since Malkana Huqooq in favour of the appellant are yet to be issued, therefore, before issuance of those Malkana Huqooq with respect to prayer D it is held that since the sale deed has been executed in favour of the defendant No.3 therefore, till the Malkana Huqooq are issued in favour of the appellant for which the plaintiff has to make payment, and sale deed is executed in his favour till then sale deed in favour of the defendant No.3 will not be cancelled, but it will remain suspended, and said sale deed will not create any right, title or interest in favour of the respondent No.3 until and unless appellant fails to make payment when required by HMC under due course of law, and is denied Malkana Huqooq if at all it comes to the notice of the concerned authority that he has made any infringement and has violated any condition of the allotment order. Prayer is allowed.*

*Although issues are not properly framed and judgment is also not passed by discussing each issue separately, but since parties have not raised any objection to the issues during trial, therefore, they are decided as are framed in the light of the record, evidence and law*

*referred by the learned counsels for the parties. There is ample evidence, oral and documentary in favour of the plaintiff regarding his earlier allotment, and the same is held to be legal, valid and binding on the defendants including the defendant No.3. Besides documentary evidence has got more evidentiary value, therefore, entire evidence need not be discussed. The allotment in favour of the defendant No.3 is as per record produced in Court, subsequent to the allotment in favour of the plaintiff, therefore, except the record regarding allotment and sale deed in her favour, oral evidence in that regard is not discussed, although the same has been considered.*

*The documents sought to be produced by the appellant by application u/o 41 Rule 27 CPC have been taken into consideration being true copies of the Court record, along with her evidence and the case is finally decided hence said application stands disposed off.*

*It may be clarified that since the allotment in favour of the plaintiff is earlier in time therefore, it is held to be valid, and binding on the respondents including respondent No.3 therefore, judgment and decree of the trial Court are set-aside, appeal is partly allowed to the extent that allotment of the plaintiff is legal and valid and he is entitled to Malkana Huqooq, and partly dismissed as the Malkana Huqooq are yet to be issued after the payment is made by the plaintiff / appellant when he is required to pay the same and sale deed is executed in his favour. Suit is partly decreed and partly dismissed accordingly as observed in this judgment.*

4. Insofar as the aforesaid findings of the Appellate Court are concerned, a bare perusal of the same reflects that the conclusion has been drawn without any support from the evidence so led by the parties. The learned Appellate Court has observed that since the allotment in favour of respondent No.1 is earlier in time; hence, is valid and legal. This on the very face of it, does not appear to be a correct appreciation, either of evidence or of law. It has come on record through the witnesses of Respondent No.1 itself that no original record of any such allotment was available; hence, merely for the fact that such purported allotment was dated earlier in time, would not in and itself make it valid and lawful. It had to be corroborated with at least some affirmative evidence to that effect. At the same time, the Appellate Court has also observed that though allotment was issued but it has been admitted on behalf of the plaintiff / respondent No.1 that he has not made payment of any installment(s) pursuant to the said allotment Order; however, he may be permitted to pay the same now, and if he does so, he is entitled for Malkana Huqooq. How in such circumstances, the Appellate Court could have come to such a conclusion and partly decree the suit to that effect? It is totally bereft of any sound lawful reasoning. Similarly, as to the cancellation of the allotment and the lease deed of the present Applicants, it has been observed that once the Malkana Huqooq is transferred in favour of respondent No.1 upon payment of the intallments, if any, then the lease deed and allotment of the applicants would be deemed to be cancelled,

whereas, in the interregnum it will remain suspended. Again this does not find any support either from law or from the available evidence. On the other hand, when the evidence of respondent No.1 is examined, it appears that the evidence is not confidence inspiring nor supporting the stance taken by him in his plaint. It would be advantageous to refer the cross examination of the Respondent No.1 / Plaintiff Muneer Ahmed (Exh-58) which reads as under:

*“Prior to occupation of suit property I was residing with my relatives in House No.2355 situated at Sehwan Lane Ward-D. Hyderabad. I was residing with my relatives up to 1959. From 1959 to 1962 I was residing with one Chand Khan in quarter No.D/71. I am in exclusive possession of suit property from 1962. I do not know the name of wife of Chand Khan. The name of my wife is Meraj Banoo. I had not seen the wife of Chand Khan. The Chand Khan was not my relative. The Chand Khan was known to me through one Syed Abdul Hameed Broker who is now dead. No other person had knowledge about the facts of acquaintance with Abdul Hameed. The Chand Khan allowed me to live within him on the basis of friendship. At that time the Chand Khan was living alone in the suit property. At the time when Chand Khan allowed me to live with him in suit quarter, my family was living in House No.2355, I received Ex.59 from D.H.O office. I do not know the name of the person who delivered me Ex.59. At the time when I received Ex.59 there was no receipt of payment in my possession. I had approached Municipal Authorities for registration of allotment, sale deed in my favour. On 14.06.1986, I made an application before H.M.C requesting there in to recover the amount if any against me. I cannot give exact date on which I had made an application after issuance of Ex.59. I have not received any letter from H.M.C in reply of my application. It is incorrect to say that Ex.59 is bogus document which has been fraudulently prepared by me. I do not know whether the official record of Ex.59 is available in HMC or not. I see Ex.60 and 61 and say that these document are genuine and were issued by HDO. I do not remember the exact date, year, on which Ex.60 and 61 were received. I do not know the name of person who banded over me the above documents. I do not know whether the official record of Ex.60 and 61 is available with HMC or not. I do not know if Ex.60 and 61 are forged and fraudulent documents or not. I do not know the defendant No.3. I never heard the name of defendant No.3 Mst. Rashida before today. It is correct to say that there is litigation in between Mst. Rashida Begum and my wife Meraj Banoo. I do not know from what date the litigation is pending. I came to know about the litigation between Mst. Rashida Begum and my wife about one month back when I got power of attorney executed by my wife in my favour. I and my wife are residing in one and same house. My wife never informed me that she has taken the house is disputed on rent from defendant No.3. It is incorrect to suggest that there was verbal agreement between my wife and defendant No.3 about 10 years back. It is incorrect to suggest that name of wife of Chand Khan was Mehmooda Begum and she after the death of her husband was in occupation of suit property. It is incorrect to say that Mehmooda Begum got executed sale agreement in favour of defendant No.3 in respect of suit property. it is incorrect to say that prior to my occupation, Mst. Rashida Begum was residing in suit property. it is not in my knowledge that HMC executed allotment order and title document in favour of defendant No.3. It is incorrect to suggest that in the life time of Chand Khan and his wife I never resided in the suit property but in fact I resided with Chand Khan. It is incorrect to say that electric connection in suit property is in the name of defendant No.3 have not paid property tax of the disputed*

*house. I do not know whether defendant No.3 is paying property tax or not. It got the electric meter installed in suit property in 1964. Prior to installation of electric meter by me there was a electric connection but it was disconnected. The said connection was in the name of Chand Khan. It is correct that I have filed present suit after the ejectment proceeding pending in the Court of 1<sup>st</sup> Senior Civil Judge Hyderabad against my wife. I visited the office of DHO 1980 and 1983, and gave applications but I cannot give the in word number and copies of the same. It is incorrect to say that I have filed present suit on the basis of forged and fraudulent documents deprive the defendant No.3 at her right in suit property.*

5. In his cross examination he has not been able to prove as to how a declaration can be given on the basis of mere allotment of which no payment whatsoever has been made, whereas in the plaint itself it has been admitted that the suit property was initially allotted to one Chand Khan and he was residing in the suit property pursuant to consent and permission of said Chand Khan who had been in possession of the Suit property since 1960. This fact was disclosed in the plaint with a further averment that when Chand Khan left for Karachi in 1962, the property remained in his possession and thereafter was allotted to him in 1978. However, it has not been stated as to what he had done between 1978 and 1986 to get some lease deed in his favor, as mere allotment was not a title document by itself. The entire plaint and evidence is silent to that effect except that the cause of action accrued in 1986 when it came to his knowledge that a lease deed has been executed in favor of the Applicants. Insofar as the present Applicants are concerned, their case is that the property is owned by them on the basis of allotment and a lease deed and respondent No.1 was in possession through his wife as their tenant. It is their further case that after filing of ejectment proceedings under the rent law, Suit was filed by Respondent No.1 on the basis of forged and fabricated document obtained with connivance of some official in the department. The Respondent No.1 was asked a pertinent question in this regard and he has responded in his cross examination that ***“It is correct to say that there is a litigation in between Mst. Rashida Begum and my wife Meraj Banoo. I do not know from what date the litigation is pending. I came to know about the litigation between Mst. Rashida Begum and my wife about one month back when I got power of attorney executed by my wife in my favour. I and my wife are residing in one and same house. My wife never informed me that she has taken the house in dispute on rent from defendant No.3”***. He has further responded that ***“It is correct that I have filed present suit after the ejectment proceeding pending in the Court of 1<sup>st</sup> Senior Civil Judge Hyderabad against my wife”***. It is, but quite surprising that a husband coming into evidence says that he has not been informed by his wife about such pending litigation, whereas, he only came to know about it

when she executed a power of attorney in his favor. It further appears from the evidence of respondent No.1 that as to his allotment and payments, if any, there is no supporting material nor the official respondents have supported his case in any manner. On the contrary, Syed Saleem Ahmed, Head Clerk HMC (Exh-127) entered into the witness box and his examination in chief was recorded more than once and was also subjected to extensive cross examination on behalf of Respondent No.1. His cross examination reads as under:

**CROSS EXAMINATION**

*"I have gone through and am well familiar with almost all the rules and regulation regarding allotment of the type of D type quarters and plots. At the time of applying allotment one has to give declaration in the form of an affidavit showing there in that he nor any number of his family owns or possess any house for shelter in Pakistan. Mst. Rasheeda Begum had given such declaration which is with the file. The allotment orders are always signed by the DHO. I am well conversant with the signature of late Jalaluddin Mari. My Statement was recorded in this Court on oath. I am not hand writing expert. I do not know about the fate of the Anti Corruption cases against said Amanullah Siyal. I can't say if he has been acquitted. It is correct that at the time of issue Proprietary Rights, spot verification regarding the assessment of physical possession is very necessary and is made by our officer. According to our record, Mst. Rasheeda Begum was found in possession before Malkana issued to her. I do not know if at that time munir was in possession was of the said quarter. It is incorrect to suggest that I am deposing falsely at the instance of defendant No.3. It is correct that record of our office was shifted to several places. It is incorrect to suggest that we have misplaced the entire record of allotment of Munir Ahmed Plaintiff".*

6. The said witness has deposed that insofar as the allotment of the Applicants is concerned, it is genuine and found correct, whereas the dues, if any, were also paid. In his cross examination he has affirmed and has further stated that verification regarding physical possession is to be made and as per their record, the applicants were found in possession before issuance of Malkana Huqooq in their favour. As to the claim of Respondent No.1 no affirmative deposition has been made, whereas, his evidence has not been shattered in cross examination; hence, the Appellate Court could not have discarded this very important piece of evidence, by merely stating that the allotment of Respondent No.1 is prior in time, and therefore, a valid document. We respect this Court is unable to agree with such bald finding not supported by any piece of acceptable evidence or material.

7. In view of hereinabove the facts and circumstances of this case, it appears that the learned Appellate Court has misdirected itself in passing the impugned judgment as it is not based on the evidence available on record and is a case of non-reading and misreading of the available

evidence which ought to have been appreciated in accordance with law; hence, cannot be sustained. Moreover, the impugned judgment is neither here, nor there, as the part relief so granted is dependent on some future happening, which judgment cannot be executed through a decree until the Court itself cancels the lease deed of the Applicant. This was never done by the Appellate Court, whereas, Respondent No.1 was satisfied with such judgment of the Appellate Court and has not impugned it any further so as to seek the relief of cancellation of the allotment and lease deed as well. Accordingly, this Revision Application was allowed by means of a short order dated 05.05.2023 by setting aside the impugned judgment of the Appellate Court dated 28.2.1994 and restoring / affirming the judgment of the trial Court dated 27.2.1992 whereby the Suit of Respondent No.1 stands dismissed. These are the reasons in support thereof.

**JUDGE**

*\*Hafiz Fahad\**