

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.232 of 2012

Mst. Shehnaz and another APPLICANTS.
Versus
Director Agriculture and others RESPONDENTS.

For hearing of CMA 1123/2012
For hearing of main case

18.04.2022

Mr. Rafique Ahmed Dahri AAG Sindh.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J. The applicants filed a suit No.79/2010 for declaration and permanent injunction in respect of a Quarter No.7-B, Agriculture Research Institute Tando Jam (ARI) Tando Jam being employees as Primary School Teacher within the Farm of University of Tando Jam. Applicants being plaintiffs further sought a declaration that the acts of the defendants No.2 and 3 in cancelling the allotment of quarter are illegal and without any lawful authority and then consequently sought permanent injunction. The trial court in consideration of sections 42, 54, 55 and 56 of the Specific Relief Act was pleased to reject the plaint which order was maintained by the appellate court.

None present for the applicants. However, I have heard learned AAG Sindh who attempted to assist this court that no declaration with regard to quarter of (ARI) Tando Jam, could be sought in terms of sections 42, 54, 55 and 56 of the Specific Relief Act as the applicants were Primary School Teachers i.e. employees of another department, whereas the quarter belong to Agriculture Research Institute (ARI) Tando Jam. Learned AAG further assisted this court that this being a situation the trial court invoked the provisions of Order 7 Rule 11 CPC and rejected the plaint.

I have heard the learned counsel and perused the record. I have attempted to reassess the consideration as maintained by the trial court and appellate court within the frame of Order 7 Rule 11 CPC but could not find any rationale. The applicants / plaintiffs filed a suit for declaration that they were lawfully allotted Quarter No.7-B, Agriculture Research Institute Tando Jam being employees as Primary School Teachers. There was no substantive law discussed by two courts below by virtue of which a plaint could be rejected under Order 7 Rule 11 CPC. The applicants / plaintiffs may not have made out a case for grant of injunction on the proposition of facts and circumstances mentioned in the two orders impugned here, however, this does not mean that it would end up in the rejection of the plaint. If at all in the wisdom of the trial court and appellate court the suit was not maintainable on the count that the plaintiffs do not enjoy the character as claimed in the suit in terms of sections 42, 54, 55 and 56 of the Specific Relief Act, an issue ought to have been framed and/or suit may be dismissed being not maintainable but the provision of Order 7 Rule 11 CPC cannot be invoked for the rejection of plaint under the circumstances. The principle was wrongly invoked by the trial court and appellate court. The appellate court was of the view that the employees of the department i.e. Agriculture Research Institute Tando Jam, whose quarter was being enjoyed by the applicants, are living houseless despite allotment in their favour and outsiders (applicants) were housed there. This could hardly be a consideration for the purposes of rejecting the plaint, and as observed this may be considered for deciding an injunction application but not the plaint being rejected. Hence, the jurisdiction was not rightly exercised by the two courts below while rejecting the plaint under Order 7 Rule 11 CPC. The two orders impugned here are set-aside and the revision application is allowed. The case is remanded to the trial court for expeditious disposal in accordance with law.

JUDGE

This revision application is arising out of judgment of 8th Additional District Judge, Hyderabad, passing in Civil Appeal No.162/2018. The applicant filed a suit No.706/2013 for a declaration and injunction that he is the sole owner of the property on the strength of a Will dated 27.03.2001 executed by his grandfather on 27.03.2001. The grandfather, per learned counsel, expired in the year 2013. The suit was filed after a delay of almost 12 years. Be that as it may, the notices were served and despite filing written statement the evidence was not adduced by the respondents. The applicant / plaintiff attempted to lead evidence by filing his affidavit-in-evidence and producing the alleged Will. However, in terms of the findings of the appellant court's order the document was not approved. The trial court took a view that since the witness was not examined and nothing was said in rebuttal, therefore, the version of the applicant stood proved. The order was challenged by the respondents in Civil Appeal No. 162/2018 and the appellate court found that the suit was not maintainable in view of section 213 of Succession Act, 1925, which reads as under :

“213-Right as executer of Legatee when established (1) No right as executer or Legatee can be established in any court of Justice unless a court of competent Jurisdiction in Pakistan has granted probate of the under which the right is claimed or has granted letter of Administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans and shall only apply:

(A) In the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in classes (a) & (b) of section 57 and

(B) In the case of Wills made by any Parsi dying after the commencements of succession (amendment) Act 1974 where such Wills are made within the local limits of ordinary civil jurisdiction of Sindh & Balochistan High Court, and where such Wills are made outside those limits, insofar as they relate to immovable property situated within those limits”.

I have heard the learned counsel for the parties and perused the record. Learned counsel for the applicant has relied upon Section 53 of the Land Revenue Act which provides that any person who considers himself aggrieved of any entry in record of rights as to any right of which he is in

possession, he may institute a suit for a declaration of his right. Learned counsel for the applicant is of the view that on the strength of Section 213 of the Succession Act, he cannot be ousted from the court on the strength that no probate was obtained from the concerned court before filing a suit. However, learned counsel was unable to satisfy appellate court as well as this court that production of a Will is not sufficient to satisfy the conscious of the trial court as well as appellate court since it has to be proved through impartial and independent evidence as in this case the witnesses who allegedly signed the document did not appear. Learned counsel has not been able to express himself as to how the document was proved in terms of Article 78 of the Qanun-e-Shahadat Order, 1984. Thus, even if the suit be considered to be one u/s 53 wherein applicant challenged the entries made by respondents then the document itself ought to be proved independently which has not been done by the applicant, therefore, the applicant could not gain anything by asserting that section 213 of the Succession Act would not come in the way.

Since the applicant has made challenge to the entries, I am of the view that notwithstanding the ouster clause of section 213 of Succession Act even on merit the applicant has failed to prove the document of Will and hence he cannot succeed on the strength of just producing a document which has not been proved otherwise. No interference as such is required. The revision application is dismissed along with pending applications.