

IN THE HIGH COURT OF SINDH AT KARACHI

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

High Court Appeal No.491 of 2024

Qaisar Saleem and others
Versus
Mian Aftab Iqbal and others
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Date of hearing: 09.12.2024
Date of short order: 09.12.2024
Date of Reasons: 10.12.2024

Mr. Mayhar Kazi, Advocate for the Appellants.
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J U D G M E N T

Muhammad Shafi Siddiqui, C.J.- This appeal is arising out of an order dated 29.10.2024 passed in Suit No.1952/2010 whereby an application to amend the issues, which were earlier settled on 24.03.2021, was dismissed.

2. We have heard learned counsel and perused the material available on record.

3. The subject suit wherein the referred application for amendment in the issues was filed, was suit for declaration, injunction and cancellation with the following prayers:-

- (A) *Declare that the plaintiffs abovenamed are lawful owners of the suit property bearing No.41-A, Survey Sheet No.35-P/1, measuring 2000 square yards situated in Muhammad Ali Memorial Cooperative Housing Society Ltd., Karachi having acquired by means of a registered Conveyance Deed, (Annexure "A" to the Complaint).*
- (B) *Restrain the defendants No.1 and 2 from claiming any title, right or interest in the suit property.*
- (C) *Direct the defendant No.3 and 4 to mutate and transfer the suit property bearing No.41-A, Survey Sheet No.35-P/1, measuring 2000 square yards*

situated in Muhammad Ali Memorial Cooperative Housing Society, Karachi in the record of Society.

- (D) *Restrain the defendants from transferring/creating any charge or third party interest in the suit property.*
- (E) *Direct the defendant No.2 to deliver the sale deed in respect of suit property in possession of defendant No.2 and cancel the same with the direction to the concerned Sub-Registrar to make such entries in the record.*
- (F) *Any other relief/reliefs which this Hon'ble Court deems fit in the circumstances of this case.*
- (G) *Costs of the suit.*

4. In consideration of the pleadings, by consent, the following issues were framed: on 25.03.2021.

1. *Whether the Plaintiffs are lawful owners having acquired the Suit Property bearing No.41-A, Survey Sheet 35/P/1, measuring 2000 Sq. Yds., Muhammad Ali Memorial Cooperative Housing Society, Karachi from the previous owner Mian Aftab Iqbal Defendant No.1?*
2. *Whether the Plaintiffs are entitled for mutation of their names in the record of Muhammad Ali Jauhar Cooperative Housing Society, Karachi as owners?*
3. *Whether the suit of Plaintiffs is not hit by Section 54 and 70-A of the Cooperative Societies Act, 1952?*
4. *Whether the Defendant No.1 is not legal and lawful owner of Suit Property Bearing No.41-A, Survey Sheet 35-P/1, measuring 2000 Sq. Yds. Muhammad Ali Memorial Cooperative Housing Society, Karachi, as per record of defendant No.3?*
5. *What should the Decree be?*

5. It is argued that since Respondent No.1 had earlier filed suit No.1552/2009, which seeks a declaration in respect of the same property to their benefit, was dismissed, therefore, such declaration since was not granted should also be made part of the issues, which issue was left out to be framed. The application which proposed additional issues is at page-55. The proposed

issue No.1 is a negative declaration that is “*whether defendant No.2, (that is respondent No.2 in this appeal), the rival claimant to the subject property, is entitled to object to this court declaring the plaintiff as owner of the subject property following the judgment of 02.07.2024 (referred above in suit No.1552/2009)*”. This is a totally misconceived attempt, as neither a negative declaration could be granted in a suit nor he could succeed on the strength of such declaration in the earlier suit against the respondent. The appellant had to succeed on his own strength as far as his suit and the evidence likely to be recorded is concerned.

6. Proposed issue No.2 is “*whether the defendant No.3 and 4 are obligated to mutate the subject property in the name of the Plaintiff based on the registered conveyance deed dated 28.09.1977*”. This issue is covered by the framed issue No.2 dated 25.03.2021.

7. The third proposed issue is “*whether the judgment dated 02.07.2024 in Suit No.1552 of 2009 invalidates sale deed dated 29.10.2007 in favour of Defendant No.2*”. This issue has already been taken to its logical end apparently in view of the referred judgment being in suit No.1552/2009 subject to appeal, if filed; that issue cannot be reframed in the suit of the Plaintiff, as it would then be a resjudicata. Even otherwise, the issue which has already been decided cannot be urged to be reframed in the connected suit. However, if in support of issue No.1, as framed on 25.03.2021, the Plaintiff wishes to place all such relevant orders, he may do so but under no stretch of imagination a case for reframing of additional issue/ issues is made out.

8. The appeal in view of the above reasoning was dismissed by a short order dated 09.12.2024 and these are the reasons for the same.

Dated: - 10.12.2024

CHIEF JUSTICE

JUDGE

Ayaz Gul