



IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 77 of 2017

Saleem Ahmed & others	-----	appellants
	Versus	
Mst. Marriam Rafique & another	-----	respondents

Date of hearing: 29.5.2018

Appellant: Through Ms. Naheed Akhtar Advocate

Respondents No.1: Through Mr. Jawad Rizvi Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This second appeal is arising out of the order passed in Civil Appeal No.86/2011. In this matter the subject property is Plot No.212, Sheet No.2, Street No. E/15, Agra Taj Mohallah Masjid Hanifa, Lyari Quarters, Karachi No.53. The property in question is in the name of one Shakil Ahmed son of Jameel Ahmed who died issueless leaving behind a widow Mst. Mariam Rafiq daughter of Muhammad Rafiq. After his sad demise, an application for Letter of Administration was filed wherein appellant also appeared and it was disposed on a statement filed by them on 10.11.2009. The controversy was then apparently resolved however subsequently a suit was filed on 08.2.2010 involving the same property wherein the appellant claimed their share under Mummadan law. It is the case of the appellant that in fact it was a suit for declaration that the property is benami as it was purchased from the funds of their father Jameel Ahmed. Perusal of plaint shows that this was not the case of the appellant in the suit. They simply sought relief and claimed their share as entitled under

Muhammadan Law out of the property left by deceased Shakil Ahmed. It was nowhere prayed that the property in question was a "benami". Since the controversy in respect of property in question has already been resolved by granting Letter of Administration wherein the appellant also appeared, the trial Court felt that the suit filed by the plaintiff/appellant is liable to be dismissed and/or plaint is liable to be rejected in consideration of an application under Order VII Rule 11 CPC hence the plaint was rejected and the order was also maintained by the appellate Court.

The appellant now contended that they were not allowed to record their evidence in the matter hence the rejection of the plaint or considering it to be barred by principle of res judicata amounts ousting the plaintiff/appellant from pursuing their remedy.

I have heard the learned Counsels and perused the material available on record.

I am afraid that the matter in issue has already been resolved by grant of Letter of Administration and the principle of res judicata was rightly applied. It was not the case of the appellant before the trial Court that the subject property was owned by their deceased father Jameel Ahmed and held benami in the name of deceased Shakil Ahmed. The appellant in their suit only prayed for their share out of the property left by deceased Shakil Ahmed and father in respect of which Letter of Administration was already granted on 10.11.2009. No interference is required insofar as the two impugned orders are concerned, however in case the appellant is aggrieved of the order dated 10.11.2011 passed while granting Letter of Administration they may file an appeal if permissible under the law and as requested. However the time consumed in filing the suit i.e. from 08.2.2010 and pursuing remedy be relaxed in terms of Section 14 for the Limitation Act. The appeal along with pending applications stands disposed in the above terms.

Judge

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Certified to be true copy,

Sd/-MUHAMMAD SHAFI SIDDIQUI
JUDGE

31/5/2018
Assistant Registrar (Civil/Writ SB)

11nd Appeal No.77 of 2017.

Karachi, dated: 31st May, 2018.

Forwarded for information and compliance to:

1. The VIIIth Additional District Judge, Karachi (South) in Civil Appeal No.86/2011, (Reg. Saleem Ahmed & others versus Marriam Rafique & another).
2. The Xth Senior Civil Judge, Karachi (South) in Civil Suit No. 89 of 2010, (Reg. Saleem Ahmed & others versus Marriam Rafique & another along with Original R&Ps (in One part).

31/5/2018
(Abdul Rasheed Baloch)
Assistant Registrar (Civil / Writ SB)

3rd copy

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
IInd Appeal No. 77 of 2017



Date: Order with signature of Judge

1. For hearing of CMA No.9624/17
 2. For hearing of main case
-

07.5.2018

Ms. Naheed Akhtar Bhatti for appellant
Mr. Jawad Hyder Rizvi for respondent
.X.X.X.X.

It appears that on account of certain issues that touches maintainability of the suit as well as it being hit by resjudicata, the provisions of Order VII Rule 11 CPC were applied. It is claimed that in fact it was a suit for declaration of the property that was purchased by their deceased father as benami in the name of his elder son who is the real brother of the appellant. Such contention was not taken into consideration by the two Courts below and the provisions of Order VII Rule 11 CPC were applied. The widow of deceased Shakil Ahmed filed a succession application wherein the brothers were also arrayed as legal heirs as Shakil Ahmed died issueless. It is the case of the appellant that despite filing objections, such contentions were not taken into consideration and they have filed a suit for declaration. It is submitted that they have not availed remedy of revision. It is the case of the appellant that even if it is a case of grant of succession, the plaint and suit is not liable to be rejected on the two counts mentioned in the order of the civil Court.

Let copy of the plaint be placed on record. In the meantime the record and proceedings be called from the trial Court.

To come up in the last week of May, 2018.


Judge

Hq of case - priority

1- For hq of CMA NO 9624/17 (C/O. XL1 Rule 5)
2- For hq of Main Case

Cajw @ Post (P)