

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 224 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

[Atta Muhammad Soomro Vs. Hussain Bux]

Date of hearing : 26.02.2025
Date of decision : 26.02.2025
Appellant : Through M/s. Hussain Bux Saryo and Hadi Bux, Advocates.
Respondent : In Person.

JUDGMENT

Muhammad Iqbal Kalhoro, J: This Appeal is filed against the order dated 22.04.2024, passed by the learned Single Judge of this Court in exercise of Original Jurisdiction allowing application under Order VII, Rule 11, CPC 1908, rejecting the Plaint in Suit No.1675/2019, filed by the Plaintiff against the Defendant for declaration, administration, partition, cancellation of documents, recovery of amount Rs.3,27,25,000/- along with damages at Rs.20 Million and permanent injunction.

2. Learned counsel for the Appellant has argued that the impugned order is contrary to law and against principles of justice; that Respondent had already filed the application under the same provision of law, which was dismissed by the learned Single Judge vide order dated 07.02.2024 by holding that the Plaint discloses the cause of action and that there were controversial questions of facts and law which could not be decided until and unless relevant issues were framed and the evidence was recorded; that filing of second application by the Respondent without challenging the first order in Appeal was contrary to law. On the other hand, Respondent in person has supported the impugned order and submits that the Appellant has no title over the subject property and this Suit is not maintainable and liable to be dismissed.

3. We have heard the parties and perused the material available on record.

4. The record reflects that the Respondent had filed an application under Order VII, Rule 11 CPC in the Suit, which was decided by a different Judge, when he was seized with the matter, on 07.02.2024. In his order, he has observed that the Plaintiff, a primary document to be looked into for deciding the ratio of Order VII, Rule 11 CPC, pleads the cause of action. And it is altogether a different proposition that whenever the Suit will be successful or otherwise.

5. After, dismissal of the said application, it appears that Defendant filed an application, U/S 151 CPC at the time when Roster Sitting had changed and assignment was given to some other Judge. While arguing, application U/S 151 CPC, CMA No.5199/2024, the Defendant had raised the question over maintainability of the Suit pleading that Appellant / Plaintiff had not filed a single document in respect of subject property, and except a statement on oath which was forged one, nothing was available on record to show any connection of the Plaintiff with the property, Respondent also raised the objection in his arguments that the Suit was barred under Order VII, Rule 11 CPC as the Plaintiff had no cause of action.

6. The learned Single Judge in consideration of his arguments has concluded in the impugned order, without recording evidence that Plaintiff had no title over the property, hence no cause of action to file the Suit. And then on the basis of such observations has proceeded to reject the Plaintiff under Order VII, Rule 11 CPC without taking into account an earlier order passed on 07.02.2024, whereby the application under the same provision of law was dismissed by a different Judge, who had held that the Plaintiff does disclose the cause of action.

7. From the impugned order, it is apparent that at the time of arguments on the listed application, the Court was not assisted properly, nor the earlier order was brought into its notice as there is no mention in entire impugned order about earlier application of Plaintiff under Order VII, Rule 11 CPC having been dismissed. Once such application was dismissed, the Defendants had a remedy to file revision application against the order but he chose to remain content. And then through some other application U/S 151, CPC, he succeeded in getting the relief which he was denied earlier in terms of his application under Order VII, Rule 11 CPC, 1908.

8. The learned Single Judge, who had first decided the application under Order VII, Rule 11 CPC, had observed that the Plaintiff has a cause of action to file the Suit, whereas in the impugned order, another learned Single Judge has observed that the Plaintiff has no cause of action to file the Suit. The subsequent Presiding Officer, it appears, had set in Appeal against the first order, although no such jurisdiction was available to her. We, therefore, find the impugned order not sustainable in law. As consequences, allow this Appeal, set-aside the impugned order with directions to the learned Single Judge to expedite the trial and decide it on merits within six (6) months.

The Appeal is disposed of accordingly in above terms.

JUDGE

JUDGE

M. Khan