

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd Appeal No. 16 of 2023
[Faqeer Muhammad Ibrahim v. Province of Sindh and others]

Appellant : Through Mr. Amanullah Memon, Advocate

Respondents No.1 to 5: Nemo

Respondents Nos.6 to 8: Through Mr. Allah Bachayo Soomro, Addl. A.G.

Date of Hearing & Order: 28.04.2025

ORDER

ARSHAD HUSSAIN KHAN, J -. This IInd Appeal is directed against the judgment dated 14.11.2022, passed by District Judge / MCAC Tando Allahyar in C.A. No. 22 of 2022, whereby learned Judge while dismissing the appeal maintained the Judgment dated 30.10.2021, passed by 1st Senior Civil Judge, Tando Allahyar rejecting the plaint filed by the present appellant in F.C. Suit.

2. The necessary facts giving rise to this IInd Appeal are that appellant/plaintiff filed Suit for Declaration, Cancellation, Possession and Permanent Injunction before 1st Senior Civil Judge, Tando Allahyar, claiming that he had given the suit land to defendants 1 and 2 on lease / muqata. The respondents/defendants intended to register such lease agreement before concerned Sub-Registrar; however, the said defendants in collusion with the staff of Sub-Registrar managed the things and got sale deed executed instead of lease deed. Subsequently, the plaintiff's mother passed away. Thereafter, he approached the concerned Mukhtiarkar to effect the Foti Khata Badal of his mother's property, where he discovered the aforementioned fraud and filed a suit.

3. Learned trial court after examining the plaint without issuing the notice to the respondents/defendants rejected the same in limine, vide order dated 20.10.2021. The Plaintiff being aggrieved and dis-satisfied with the above order filed Civil Appeal No. 22 of 2022, which was also dismissed by learned MCAC/ District Judge, Tando Allahyar, hence the instant IInd Appeal.

4. Learned counsel for appellant / plaintiff contended that the trial court has committed illegality by rejecting the plaint under Order VII Rule 11CPC holding that the Plaintiff has no cause of action to file the suit and bare reading of plaint

shows that valuable rights of the plaintiff are involved and he had cause of action to file the suit; therefore, the impugned order is completely illegal and needs to be reversed; that the trial court instead of recording evidence, discussing law and taking into consideration the averments of the plaint summarily rejected the plaint under Order VII Rule 11 CPC; that the trial court has failed to consider that the property under alleged sale was mortgaged, then how the mortgage entry was removed and sale certificate was issued by the revenue authorities; that the sale certificate is managed one and has been got issued by the respondents/defendants in collusion with concerned revenue authorities; that instead of preparing lease deed the respondents prepared Sale Deed and the appellant being illiterate person could not understand the difference between lease deed and sale deed. He argued that learned appellate court also committed illegality in maintaining the order of trial court, therefore, prayed for setting-aside both the impugned decisions.

5. Learned A.A.G. supported the impugned decisions. Insofar as the private respondents are concerned, record reflects that despite notices none has shown appearance on their behalf to contest the matter.

6. Heard arguments and perused the record.

7. Perusal of the order of trial court shows that the plaint was rejected on the ground that the appellant/plaintiff has no cause of action to file the suit as the Sale Agreement / Sale Deed is written in Sindhi language and a Sale Certificate has also been obtained by the Plaintiff for execution of Sale Deed and further the plaintiff's side is involved in criminal cases. The appellate court also mainly reiterated the same grounds and dismissed the First Appeal.

8. Perusal of the record shows that the appellant stood surety for accused in criminal cases in the year 1996 and deposited the documents of subject land as surety and while accepting the said surety documents the concerned court issued letter to Mukhtiarkar concerned for keeping mortgage entry against the subject land. Subsequently on conclusion of said criminal cases the appellant moved application for return of surety documents on 23.2.2022, the said application was allowed and the surety documents were ordered to be returned to the appellant and a letter for removal of mortgage entry was also sent to Mukhtiarkar Taluka Chambar. The appellant approached the said Mukhtiarkar for removal of mortgage entry who informed him that the mortgage entry was already removed in compliance of letter No.A/-16288 dated 30.11.2016 issued by the concerned court. Perusal of record further reflects that the alleged Sale Deed was executed on 18.9.2019 and on coming to know about such Sale Deed the appellant on 16.03.2022 moved a

Complaint to 1st Additional Sessions Judge, Hyderabad, praying that the subject land was mortgaged vide letter dated 12.8.1996 and the said mortgage entry was illegally removed by the concerned Mukhtiarkar in the year 2016 and has illegally issued a sale certificate on the basis of which above Sale Deed was prepared; therefore, he prayed for taking action against all concerned. Learned 1st Additional Sessions Judge, Hyderabad called report from Nazir of the court, who reported as under:-

“ Sir, after perusal of record shows that there is no letter (viz. letter No.A/-16288 of 2016 dated November 20, 2016) had been issued by the office.

It is further submitted that only letter No. A/-2537 of 2022 dated 8.3.2022 has been issued by this office to Mukhtiarkar Tando Allahyar for removal of mortgage entry of property viz Agricultural land of 80-00 acres situated in deh Jariyoon, Taluka Tando Allahyar.”

The learned Judge on the basis of above report ordered as under:-

“ Since, the subject letter seems to be issued by the accounts office, or otherwise of District court and applicant claim the same to be false; therefore, matter requires order by the Honourable District Judge, being competent authority. Applicant is advised to move his application accordingly.

Subsequently, the appellant moved a Complaint dated 20.4.2022 to District & Sessions Judge, Hyderabad. The said complaint was assigned to Senior Civil Judge-II, Hyderabad for inquiry who during the course of inquiry recorded evidence of all concerned, called report from Mukhtiarkar Chambar and opined as under:-

“OPINION

8. After going through the record and the statements recorded I am of the opinion that the letter dated 30.11.2016 is fake and fabricated on following accounts;

- (i) No original has been produced by the Mukhtiarkar Office Chambar;
- (ii) There is no signatures of the then Account Officer of Sessions Court Hyderabad namely Qazir Irshad Ahmed. He termed the signatures and stamp as fake and fabricated;
- (iii) The stamp of Sessions Court Account Office differs from one that is affixed upon the letter dated 13.11.2016.
- (iv). The mortgage entry has been removed by stating the Court order dated 26.09.2013 allegedly passed by Additional Sessions Judge-II! Hyderabad. Upon perusal of such Order it shows that in the same direction for seizing the land has been issued and not for removal of the entry;
- (v) The alleged fake letter was issued on 30.11.2016 from the Court, while the entry was removed in the year 2019, after lapse of 3 years, without seeking verification from the concerned Court;
- (vi) The official communication method, used by the Court is either through bailiff or through courier service but no such method was

used or in existence or disclosed by the office of Mukhtiarkar Chambar for receipt of such letter,

- (vii) As per record at Mukhtiarkar Office which has been reported by the present Mukhtiarkar disclosed that a sale transaction taken place in respect of land in question in 2018 and entry was kept up to the year 2019, even after the land is sold out;
 - (viii) The present Mukhtiarkar Taluka Chambar namely Sajjad Ahmed, has also termed the transaction and removal of entry as suspicious on the basis of fake letter and shown responsible for preparing the illegal sale certificate by In-charge Supervising Tapedar Circle Chambar Gul Hyder Lund and countersigning officers namely Mukhtiarkar Ghulam Shabbir Mirjat and Assistant Commissioner Chambar Ali Asghar Shah.
2. No official from the District Court Office found involved in the transaction as all the documents and letters prepared seems to be managed outside the Court.
 3. Applicant may be advised to avail the Civil/Criminal remedies available to him against the Revenue Officers responsible for preparing the fake letter and removing the entry fraudulently.
 4. Secretary Board of Revenue may be required to initiate departmental inquiry against the actions of delinquent officer at Mukhtiarkar Office Chamber, who has also been made responsible in report of present Mukhtiarkar and to do the needful to undone illegal acts committed by delinquents officials in the name of court and file such report in the court of Honourable Additional Sessions Judge-1, Hyderabad that is currently seized with the Sessions Case No.599/1991, after bringing the thing as it was before removing the mortgage entry on the basis of fake fetter dated 30.11.2016.
 5. Secretary Board of Revenue may be advised to communicate all the Revenue Officers not to initiate any action on the basis of any letters communicated to them without official correspondence and if needed verification may be sought from the Court.”
9. From the inquiry report of learned Senior Civil Judge-II, Hyderabad as well as from the inquiry report submitted by Mukhtiarkar (Rev) Chambar during the course of above inquiry, it appears that an illegal sale certificate dated 11.09.2018 was prepared by Gul Hyder Lund Incharge Supervising Tapedar Circle Chambar, issued by Ghulam Shabir Mirjat, the then Mukhtiarkar, Chambar and countersigned by Ali Asghar Shah, Assistant Commissioner, Chambar and on the basis of said Sale Certificate the alleged forged Sale Deed has been prepared.
10. Prima facie, the above inquiry report suggests that the subject land was mortgaged on the basis of order of court of law, the said mortgage entry was removed on the basis of letter which after conducting inquiry was proved to be fake and a fake sale certificate was issued. The appellant being illiterate person denied execution of Sale Deed and obtaining Sale Certificate. The valuable rights of the appellant cannot be denied lightly.

11. Besides above, from perusal of the impugned orders it appears that the courts below have nonsuited the appellant/plaintiff on the ground that he has no cause of action. It may be observed that the term *cause of action* has been expounded in various pronouncements as a bundle of facts which if traversed, a suitor claiming relief is required to prove for obtaining the judgment. Nevertheless, it does not mean that even if one such fact, a constituent of the cause of action is in existence, the claim can succeed. A suitor is required to show that not only a right has been infringed in a manner to entitle him to a relief but also that when he approached the court, the right to seek the relief was in existence¹. Further the assertion made in the plaint is to be seen to determine whether plaint disclosed any cause of action. Lack of proof or weakness of proof in circumstances of the case would not furnish any justification for concluding that there was no cause of action shown in the plaint². It is also well settled law that in case of controversial questions of fact or law, the provision of Order VII, Rule 11 C.P.C., cannot be invoked rather the proper course for the court in such cases is to frame issues on such question and decide the same on merits in the light of the evidence under law³.

12. In the instant case perusal of the plaint shows that the basic contentions of the appellant/plaintiff, particularly with regard to fraud committed by the respondents/defendants, are clearly contained in the plaint. The question of proof would arise only after issues are framed and the opportunity to lead evidence is given to the parties. The plaint is to contain the facts, which it clearly contains. The manner in which the same would be proved is up to the appellant/plaintiff. This is not a case where on a plain reading of the plaints no cause of action exists. In such circumstances, without providing opportunity to the appellant/ plaintiff to prove his pleadings through evidence, it will not be just and proper to reject the plaint.

13. As a result of the above discussion, both the decisions of the courts below are set-aside; the matter is remanded to the trial court for recording evidence of the parties and decide the same on merits.

This IInd Appeal stands disposed of.

JUDGE

Karar_Hussain /PS

¹ Rana Imran v. Fahad Noor Khan [2011 YLR 1473],

² Ghulam Ali Vs. Asmatullah (1990 SCMR 1630)

³ Saleem Malik Vs. Pakistan Cricket Board PCB, (PLD 2008 Supreme Court 650)