

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

R.A.No. 276 of 2011

DATE JUDGE	JUDGMENT WITH SIGNATURE OF
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1. For katcha peshi
2. For hearing of CMA 1147/11

Mr. Abdul Rashid Mughal Advocate for applicant
Mr. Ashfaq Nabi Qazi Asstt: A.G.

Date of hearing: 25.09.2014.

Date of Judgment 29.09.2014.

NAZAR AKBAR, J:- The applicant is aggrieved by the concurrent findings of Senior Civil Judge and District & Sessions Badin whereby both the courts have rejected the plaint under Order VII Rule 11 CPC in F.C. Suit No. 35 of 2010.

2. Briefly stated the applicants have filed F.C. Suit No. 35 of 2010 for permanent injunction against respondents for restraining them from interfering in plot measuring 16500 sq.ft and plot measuring 22500 sq.ft out of survey No. 135 Deh Phanhiyari district Badin. The Respondents 8 to 16 and 18 have filed an application under Order VII Rule 11 CPC which was allowed by the trial court by order dated 18.2.2011 and the said order was maintained by the District Judge Badin while dismissing C.A. No. 35 of 2011. The case of the applicants / plaintiffs is that they have purchased certain plots from the suit land

by agreement of sale. These agreements have not been placed on record with this civil revision application, however, it has been admitted by learned counsel for the applicant that they do not have title documents in their favour but according to him they were in possession of different plots on the basis of agreements of sale and they were subsequently dispossessed from the suit land by the Respondents. However, they have only prayed for permanent injunction against the respondents without showing a proper cause of action against each of the respondent. The wild statement in para-21 was that the cause of action arose about 03 months back when the defendants with the police tried to dispossess the plaintiff from the suit land. They have not filed any proof of possession, therefore, the learned trial Court allowed the application under Order VII Rule 11 CPC by holding that the agreement of sale does not create any title or interest in the suit property in favour of the applicant and therefore there was no denial to their rights. He has further argued that he has moved an application before the trial Court for amendment of plaint under Order VI rule 17 CPC and the learned trial Court has not disposed of the said application. The said application has been filed with the revision application and in para 21-A and 22-B of the said application it has been averred by the applicants that they have filed an application under Section 22-A & B Cr.P.C. and at the same time they have filed a complaint under **Section 3 and 4 of Illegal Dispossession, Act, 2005** before the court of District Judge Badin. The complaint of applicant under Illegal Dispossession Act, 2005 has been dismissed and a

revision is pending before this Court against dismissal. This clearly suggests that the applicants have failed to establish their possession over the suit land even at the time of filing of the suit for mere permanent injunction against Respondents. It is interesting to note that in the application for amendment of plaint the plaintiffs have not disclosed the date and circumstances of their possession from the suit premises. This fact further goes to the root of the claim of Respondents that the applicant was never in possession as they have not shown any date and time of dispossession. In view of above facts, the order of trial Court rejecting the plaint as not maintainable since the applicants were not having any title documents and the possession of the disputed premises by relying on PLD 1988 Karachi 433. The appellate Court endorsed the view of the trial Court as no plausible explanation was given by the applicants that they were not in possession. They can maintain a suit for mere permanent injunction in respect of the property which is not even owned by them. The contention of the learned counsel for the applicant that the trial Court should have decided the application under Order VI Rule 17 CPC has no force since in the application itself the plaintiff had not shown the date, time and manner of dispossession from the suit premises. The plaint is also silent with regard to the physical possession of the applicants on the suit land. The learned appellate Court while endorsing the judgment of rejection of plaint has also relied upon 2010 CLC 1043.

3. The learned counsel for the applicant has also contended that the appellate court judgment is not in line with the requirement of order

XLI Rule 31 CPC and therefore the same is liable to be set aside and the case may be remanded to the trial Court. In support of his contention he has relied upon the following case law.

1. Fazlur Rahman v. Muhammad Sadiq (PLD 2011 Peshawar 7)
2. Allahyar and others v. Jiand and others (2010 CLC 1931)
3. Juman Khan v. Mst. Shamim and 3 others (1992 CLC 1022)

4. None of the citations are relevant in the facts of the case in hand. The trial Court has dismissed the suit on law point and issues were framed even by the trial Court and therefore, the appellate Court was also not required to frame issues while examining the only point that whether the plaint was maintainable or not. There was only one point in issue and the findings of the appellate court on the single point i.e. the provision under Order VII Rule 11 CPC were rightly applied by the learned trial Court or not has been discussed in detail in the impugned judgment. Therefore substantial compliance of Order XLI Rule 31 CPC has been made and the single point has decided against the applicants with cogent reason supported by case law.

5. In view of the above facts and discussion this revision application is dismissed along with pending application.

JUDGE

K.H.M