

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A NO.86 OF 2014

**PRESENT: MR. JUSTICE NADEEM AKHTAR, &
MR. JUSTICE MUHAMMAD IQBAL KALHORO**

Appellant : Syed Ali Hussain,
through Mr. Khurshed Ahmed Qureshi,
advocate.

Respondents : Yaqoob Shahbaz & others,

Date of hearing : 10.02.2015.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J: The appellant has impugned an order dated 10.3.2014 passed by learned Single Judge of this Court in Suit No. 1508 of 2011, filed for Declaration, Cancellation and Permanent Injunction. In terms whereof the Respondents' application under Order VII Rule 10 CPC was allowed and the plaint was returned to the appellant to present the same before the Court having jurisdiction.

2. The relevant facts in brief for the disposal of the instant appeal are that the appellant filed the above Suit against the respondents seeking following reliefs.

- (i) Declaration that the so-called Housing Scheme under the name of Al-Muntazar Garden at Main Super Highway District Jamshoro as announced by the defendants No.1 and 2 never exist, having no titled area and SITE at Land, without approved plan and NOC for sale from the Sehwan Development Authority at Jamshoro and the same is fake and bogus project as per record of Revenue Authorities.

- (ii) Declaration that the act of the defendants No.1 and 2 for providing alternate plots to the plaintiff's customers/allottees in Al-Qaim City at Main Super Highway Jamshoro in lieu of their booked plots in Al-Qaim City through fraudulent temptations/propaganda and attraction of offering booking of new plots against adjustment of entire paid up amounts in Al-Qaim City in so-called and bogus Housing Scheme named as "Al-Muntazar Garden" is illegal, unauthorized a game of playing fraud by them against the innocent customers.
- (iii) Restrain permanently the defendants No.1 and 2, their agents, workers, representatives from making any false propaganda through any manner misrepresentation by creating harassment/apprehensions panic threats among the plaintiff's customers/allottees under the business style and name of Al-Qaim Associates & Developers having resemblance with Al-Qaim City through offering alternate plots in lieu of their booked plots in Al-Qaim City against alleged offer of adjustment of entire paid up amounts in Al-Qaim City from total cost of new plot in their bogus project Al-Muntazar Garden.
- (iv) Restrain the defendants No.1 and 2 their agents, dealers, representatives from making dummy booking in fake and bogus housing project named Al-Muntazar Garden at Main Super Highway Jamshoro by passing order directing the Nazir of this Honourable Court for sealing of their booking offices of all Muntazar Garden in the large interest of general public.
- (v) Issue mandatory injunction directing the defendants No.3 and 4 to take necessary legal action against the defendants No.1 and 2 as well as all other local agencies/authorities involved in sale of plots in bogus / fake housing project of Al-Muntazar Garden.
- (vi) Issue mandatory injunction directing the defendants No.1 and 2 to deposit/deliver the entire files of all the alternate plots booked to the plaintiff's customers/allottees in Al-Qaim City in lieu of their plots which they booked in their fake project

Al-Muntazar Garden against alleged adjustment of paid up amounts, in the custody of Nazir of this Honorable Court.

- (vii) Direct the defendants No.1 and 2 to refund all the amounts to the allottees of alternate plots in their bogus project Al-Muntazar Garden which they fraudulently collected from them posing as owner of the said project.
- (viii) To cancel the allotments and as well as declare that all such booking as made to the plaintiff's customers/allottees in Al-Qaim City in lieu of their lots by providing alternate plots in Al-Muntazar Garden which is illegal, void and not enforceable by law.
- (ix) Any other relief(s) which this Honourable Court deems fit and proper under the special circumstances of this case may also be awarded.
- (x) Cost of the suit may also be awarded.

3. During pendency of the above suit, the respondents filed an application under order 7 Rule 10 CPC being CMA 2168/2012 on the grounds *inter alia*, that suit property was situated at Super Highway within the limits of District Jamshoro, which did not come within the jurisdiction exercised by this Court on original side in civil matters. The appellant contested the application. However, the learned single Judge after examining the contents of plaint and reliefs sought in prayers concluded that the projects of the appellant were situated within the jurisdiction of District Jamshoro that fell outside of territorial jurisdiction exercised by this Court resultantly returned the plaint to appellant for presentation before the Court having territorial jurisdiction.

4. The instant appeal came up for hearing before us firstly on 16.1.2015 when after examining the prayers of the suit filed by

the appellant we put the learned counsel for appellant on notice to satisfy us on the maintainability of the appeal, keeping in mind the location of subject land which admittedly was within the limits of District Jamshoro. On 10.02.2015, learned counsel for the appellant addressed the Court on the above point. His main contention was that offices of appellant and respondent No.2 were situated in Karachi and respondents were booking the plots in the project of appellant at Karachi, thus this Court was competent to hear the suit on its original side. He next contended that the suit of the plaintiff was not hit by the provisions provided under section 16 of CPC, and the learned single Judge fell in error by inferring that this Court had no territorial jurisdiction to entertain the suit without considering the facts of the plaint.

5. We heard the learned counsel and went through the material available on record including the relevant provisions of CPC that regulate institution of suits. Place of suing starts from section 15 CPC, according to which every suit shall be instituted in the Court of lowest grade competent to try it. Further detail regarding place of suing begins from section 17 to section 20 CPC. Section 16 CPC enumerates several reliefs in respect of which the Suit can be filed in the Court within the local limits of whose jurisdiction the property is situate.

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