

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1518 of 2005

Plaintiffs	Pir Ghulam Mustafa Sarhandi through Mr. Mushtaq Ahmed Chandio, advocate
Defendant No.1	Kh. Abdul Awwal
Defendant No.2	Muhammad Sharif
Defendant No.3	Ardal Khan Mehsood
Defendant No.4	Haji Noor Khan Mehsood
Defendant No.5	Waris Khan Mehsood
Defendant No.6	The Agriculture Development Bank of Pakistan
Defendant No.7	The Province of Sindh
Defendant No.8	The Nazim City District Government, Karachi
Defendant No.9	The Deputy District Officer
Defendant No.10	The Mukhtiarkar (Revenue)
Defendant No.11	The Town Police Officer
Defendant No.12	The S.H.O P.S Pakistan Bazar, Organi Town 11 ½ Karachi
Defendant No.13	The Incharge Police Chowki, Tori Bangash, P.S Pakistan Bazar, Organi Town 11½ Karachi
Date of hearing	25.11.2014

JUDGMENT

NAZAR AKBAR, J., The Plaintiff through this suit has sought the relief of declaration of ownership of Plot No.13 situated in Orangi Poultry Estate, Deh Orangi Karachi, West, admeasuring 04 acres and other consequential reliefs against the Defendants.

2. Briefly stated the facts of the case are that the plaintiff is allottee of four acres of land for the business of poultry farm vide allotment letter dated 09.2.1983 for 30 years as per annexure-A to the plaint. However, sometime in November 2005 he has abandoned the poultry business due to losses.

3. The Plaintiff came to the know that the boundary wall raised by him on the suit plot has been demolished by the private Defendants and therefore, he filed suit for declaration of ownership as well as recovery of possession and damages. After service Defendant No.1 filed separate written statement and Defendants No.3, 4 & 5 also filed written statement. Defendants No.6, 7, 10, 11, 12 & 13 have also filed their written statement. The Plaintiff has not been able to obtain interim orders in his favour since 2005. The suit was initially filed against the Defendants No.1 to 6 and Defendant No.7 to 13 were added at the request of the Plaintiff to implead them through CMA No.3278/2008, which was allowed on 21.4.2009. However, no relief even after impleading new Defendants has been claimed against them except that the official Defendants No.7 to 13 may be directed to remove debris of boundary wall and hand over possession of suit plot to the Plaintiff. On 27.4.2010, eight issues were framed by this Court and evidence was completed through Commissioner on 1.11.2010.

4. I have heard the learned counsel for the parties and perused the record.

5. By consent of the parties the only issue argued by them is that whether the suit has become infructuous in view of the fact that a 30 years lease of the suit plot has expired during the pendency of the suit. Whether declaration of ownership can be entertained and tried when the Plaintiff subsequent to filing of the suit has lost valid title to the suit property to claim possession? This is an issue which hits the maintainability of the suit, in the changed circumstances of the suit.

6. I have heard the learned counsel and gone through record. It is an admitted position that the lease for 30 years granted to the Plaintiff expired on 7.2.2013 and no efforts has been made by the Plaintiff to get the lease renewed. The Plaintiff himself admitted that he has not been able to run the business of poultry farm due to losses suffered by him. On inquiry from his counsel he conceded that Plaintiff has not even applied for renewal of lease or extension of lease. Similarly it is not the case of the Plaintiff that he is entitled for the extension of lease or renewal of lease. Only claim in the plaint was that private Defendants have demolished boundary wall of the premises, therefore, he has claimed possession and damages.

7. Learned counsel for Defendants has relied on **2007 SLJ 432** (Yousuf ..Vs.. K.P.T) wherein it has been held that no status quo ante can be granted after expiry of the lease and plaint was also rejected under Order VII Rule 11 CPC. In view of the fact that the Plaintiff has neither applied for renewal of lease nor he is interested in renewal of lease and even otherwise, if he so desires, he should have filed fresh suit as this is fresh cause of action and he cannot continue with the present suit, therefore, by default the prayer clause-I whereby he seeks declaration of lawful ownership and raise construction on the suit plot has become infructuous. Similarly he is not entitled to the possession in the absence of lawful right to be in possession since he is not entitled to hold possession after expiry of lease hold rights. I have gone through the evidence and the Plaintiff had even unable to identify from whom

possession would be recovered and handed over to him. The perusal of amendment in the plaint shows that nobody is in possession and only debris of the broken wall and poultry sheds are lying there. Therefore, he has impleaded official Defendants No.7 to 13 for removal of encroachment from the suit plot in 2009. Learned counsel for the Plaintiff has not been able to meet the arguments of the official Defendants that irrespective of the fact that he was a lawful owner or not, he is not entitled to hold and possess the suit property after expiry of lease and without seeking and getting the lease renewed. Issues No.2, 3, 4, 5 & 6 have become redundant in the present situation and changed circumstances of the Plaintiff. Even conduct of the Plaintiff is such that he has not amended the plaint to bring it in conformity with the changed circumstances, which shows that with the passage of time he has lost interest in the suit plot. He has lost interest not only in suit property but also in the damage since neither he proposed to frame issue of damages nor he led any evidence to quantify the amount of damages, if any, caused to him. Be that as it may, suit is no more maintainable in absence of any right of the Plaintiff to be allowed to enjoy possession of the suit plot after expiry of lease.

The suit was dismissed as not maintainable by short order dated 25.11.2014 and these are the reasons for the same.

Karachi

Dated:_____

JUDGE