

IN THE HIGH COURT OF SINDH AT KARACHI

HCA NO. 33 of 2014

Present:
Mr. Justice Sajjad Ali Shah.
Mr. Justice Muhammad Junaid Ghaffar.

Abdul Malik ----- Appellant

Versus

Saadullah & others ----- Respondents

Date of hearing: 18.08.2015
Date of judgment: 28.08.2015
Appellant: Through Muhammad Noman Jamali Advocate.
Respondent No.1: Through Mr. Javed Raza Advocate.
Respondent No. 2: Through Mr. Abbad-ul-Husnain Advocate.
Respondent No. 5: Through Mr. Ghulam Mustafa Mahesar AAG.

JUDGMENT

Muhammad Junaid Ghaffar, J. Through instant appeal, the appellant has impugned order dated 10.12.2014, whereby application filed by defendant No. 2 in Suit No 690 of 2009 under Order 7 Rule 11 CPC, has been allowed and plaint has been rejected.

2. Briefly the facts are that the appellant and his two brothers entered into an agreement dated 19.12.1979 with respondent No. 3 for purchase of plot with construction bearing Excise & Taxation No. M II-E-987, situated in Block "C" (old No. 464 and 465-A), Sher Shah Colony, Karachi admeasuring 400 square yards for a total sale consideration of Rs. 60,00,000/- and were handed over possession of the said property. Thereafter they were running a small industry in the name and style of 'M/S Al-Shahab Fabric' on the said property and the brothers, thereafter, privately partitioned the Suit property in two equal portions

each of 200 square yards. The appellant got plot No. M-II-987, whereas, one of the brothers got Plot No. M-II-98. It is the case of the appellant that thereafter somewhere in April 2009 they came to know that the construction on the Suit property was demolished and new construction was in progress and on inquiry they came to know that respondent No. 1 is claiming to be the owner of the Suit property through respondent No.2, who had purchased the same from respondent No. 3. The appellant thereafter filed Suit No 690 of 2009 before a learned Single Judge of this Court, wherein, the defendant No. 2 filed CMA No. 897 of 2010 under Order 7 Rule 11 CPC which has been allowed through the impugned order.

3. Counsel for the appellant submits that the learned Single Judge has failed to appreciate that there were multiple prayers made by the appellant in the Suit and the plaint could not have been rejected in piece meal, only on the ground that relief under Section 42 of the Specific Relief Act is barred. Counsel further submits that the appellant's Suit was also for damages as well as for possession, therefore, merely for the reason that the appellant claimed ownership on the basis of an agreement with respondent No. 3 who had been allotted the said property on the basis of PT-I, the appellant's Suit could not have been decided without recording evidence.

4. Conversely, Counsel for respondent No. 2 has supported the impugned order and has contended that it is a trite law that a still born Suit has to be dismissed at the very initial state, whereas, the plaintiff could not claim any legal character on the basis of an agreement without having any title documents, coupled with the fact that the possession of the Suit property was with respondent No.1 who had raised construction and had also inducted various tenants. Similarly, Counsel for the respondent No.1 has also supported the impugned order and has adopted the arguments of Counsel for respondent No. 2. Learned AAG submits that the land neither belongs to the appellant nor to the private respondents, whereas, the dispute in respect of ownership of subject land

is pending before this Court between the Government of Sindh and Karachi Port Trust.

5. We have heard all the learned Counsel and perused the record. By consent of all, instant appeal is being finally decided at Katcha peshi stage.

6. Perusal of record as well as plaint in the Suit reflects that the appellant in the instant matter had sought various reliefs such as declaration that the appellant is the lawful owner of the Suit property; decree for possession of the Suit plot; seeking directions for respondent No. 4 to cancel the name of respondent No. 1 from its record as owner of the Suit property; damages; mense profit and mandatory injunction, for removal of illegal construction on the said plot and for restraining respondent No. 1 from creating any third party interest in respect of the Suit property. Perusal of the record further reflects that defendant No. 2 through its application under Order 7 Rule 11 CPC has himself stated that the factual position is that the land in question is a disputed land between the two Government Departments vis. KPT and Sindh Government for which they are in litigation before this Court after remand of the matter by the Hon'ble Supreme Court. On perusal of the impugned order it reflects that the only ground which has prevailed upon the learned Single Judge for granting the application under Order 7 Rule 11 CPC is to the effect that since respondent No.3, from whom the appellant had purchased had only possessionary right to the Plot and ownership of the construction but not a marketable title except PT-I, therefore, he could not forward any better title to the appellant by virtue of agreement to Sell, whereas, the land is owned by the Government of Sindh and no lease of entitlement is available on record on the basis of which the appellant could claim any right over the land in question. Though in case of like nature, possession is the main source to prove ownership with the only exception of unlawful dispossession. It appears to us that the learned Single Judge while coming to this conclusion for rejection of plaint has only taken into consideration the prayer of the appellant with regard to a declaration as being owner of the property in question on the

basis of agreement and PT-1 with respondent No.3 and has not taken into consideration the other alternate prayer(s) in the Suit, such as possession, damages, mesne profits as well as cancellation of the title of respondent No. 1. It therefore, follows that while deciding an application under Order 7 Rule 11 CPC, plaint is to be considered in its entirety and totality and not in piecemeal. It is settled law that plaint cannot be rejected in part(s) and if one cause of action or a claim / prayer in that regard is not maintainable, the plaint cannot be rejected. Reference can be made to a judgment of Division Bench Judgment of this Court in the case of *Muhammad Amin Lasania Vs. M/s Ilyas Marine & Associates (Private) Limited (SBLR 2011 Sindh 989)*, wherein at Para 11, the Court has been pleased to observe that, *a plaint cannot be rejected in part. Therefore, even if the main or primary cause of action is barred, and it is only a secondary (and clearly less important) cause of action that is not, the plaint cannot be rejected in respect of that part which relates to the primary cause of action.* It is also important to note that even the respondent do not have any title documents in respect of the property, whereas the Suit land appears to be in dispute as well, therefore, in all fairness the learned trial Court ought to have allowed the appellant to lead evidence in support of its possessory rights and rejection of the plaint in a summary manner as has been done through the impugned, order does not appear to be a correct approach to us.

7. In view of hereinabove facts and circumstances of the instant case, we are of the considered opinion that the impugned order cannot be sustained and is accordingly hereby set aside. The Suit of the appellant is restored and shall be decided by the trial Court on merits in accordance with law after recording evidence. Appeal stands allowed in the above terms.

JUDGE

JUDGE

ARSHAD/