

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

R.A. No. 33 of 2007

Date of Hearing : 15.09.2015

Date of decision ; 07.10.2015

Applicant : Muhammad Younis
Through Mr. Anwar Jamal, Advocate

Respondents : Nemo for respondents.

ORDER

NAZARAKBAR, J.- The applicant through this Civil Revision has challenged the Judgment and decree dated 06.12.2006 and 08.12.2006 in Civil Appeal No. 05 of 1999 filed by respondent No.1 whereby IInd Additional District Judge, Mirpurkhas has allowed the appeal and set aside the decree passed by 1st Senior Civil Judge Mirpurkhas in F.C. Suit No.104/1991 filed by the applicant.

2. The facts in nutshell are that the applicant filed suit for possession and compensation of Rs.18000/-against the respondents. Case of the applicant was that plot No.P-81/1/A admeasuring 1157 Sq. Ft situated at junction of Khan Road & Ring Road, Hameedpura Colony, No.1, Mirpurkhas (hereinafter the suit plot) was an evacuee property and it was surrendered/transferred to Akhtar Aziz son of Abdul Latif by public auction. The said Akhtar Aziz after obtaining PTD sold out the said suit plot to Muhammad Yaseen son of Muhammad Hussain by registered sale deed dated **10.05.1982** for consideration of Rs.20,000/-. The respondent/defendant No.1 established Octroi post on a portion of the suit plot. The applicant/plaintiff approached respondent No.1 to vacate the same and advanced several proposals but respondent No.1 did not accept the same. Therefore, the said Muhammad Yaseen filed civil suit in 1979 against respondent No.1 which was later on withdrawn on the assurance of respondent No.1 to shift his octroi post to

some other place. Respondent No.1 could not solve the matter, meanwhile Muhammad Yaseen died. The applicant claiming himself to be son of deceased Muhammad Yaseen, also approached the respondents for shifting of the octroi post but they failed to do so. Therefore, he filed a fresh F.C. Suit No.104 of 1991 before the learned trial court claiming possession as well as compensation.

3. The respondent/defendant No.1 in his written statement denied the ownership of the applicant over the suit plot. He pleaded that the octroi post does not fall within the limits of plaintiff's plot. Respondent No.1 further stated since there was no force in the claim of deceased Muhammad Yaseen, therefore, applicant's father had withdrawn his suit and the present suit is not maintainable.

4. The trial court from the pleadings of the parties framed the following issues:-

1. Whether the plaintiff is owner of the plot having an area of 1157 Sq. Ft situated on the junction of Ring Road and Khan Road, Mirpurkhas.
2. Whether a portion of plaintiff's plot is in possession of the Municipality Mirpurkhas, where Khan Naka (Octroi post) is situated?
3. Whether the plaintiff had withdrawn his previous suit on the assurance of defendant No.1?
4. Whether the plaintiff is entitled for Rs.500/- per month for the last three years from the date of institution of this suit till he gets vacant possession of the suit plot?
5. Whether the plaintiff has any cause of action?
6. Whether the suit is not properly valued?
7. Whether the suit is not maintainable under the law?
8. Whether the suit is barred under the law?
9. What should the decree be?

5. The applicant/plaintiff Muhammad Younus examined himself at Ex.32 and produced photocopy of Rent Agreement/sale deed at Ex.33, photostat

copy of letter of settlement department at Ex.34, and photostat copy of sketch at Ex.35 and then closed his side. The respondent/defendant No.1 examined Muhammad Ibrahim at Ex.44, who produced copy of map at Ex.46, and closed his side.

7. The learned Trial Court after hearing the parties, decreed the suit of applicant and such decree was assailed by the respondents in Civil Appeal No. 05 of 1999. The learned Appellate Court after hearing learned counsel for the parties and perusal of evidence allowed the appeal of the respondents/defendants and dismissed the suit of the applicant.

8. I have heard learned counsel for the applicant and perused the record. The respondents are exparte.

9. Learned counsel for the applicant has contended that the suit has been rightly decreed in favour of the applicant on the basis of sale deed produced by him in evidence. He further contended that the written statement was not lawfully filed, therefore, the appellate Court should have dismissed the appeal, as the suit was even otherwise liable to be decreed in terms of Order VIII Rule 10 C.P.C. The provisions of Order XXI Rule 1(3) C.P.C. has been wrongly applied in this case, by the appellate Court, as the suit filed by the applicant/plaintiff after the death of his father was on a different cause of action.

10. The perusal of the record and the impugned judgment shows that the applicant/plaintiff has not produced the original sale deed and only a photostat copy of the same was produced and in the cross-examination it has come on the record that there was a correction of plot number on the photostat copy without showing any signature on the correction. It is also evident from the record that except the applicant/plaintiff himself he has not produced any other witness of the conveyance deed. The applicant/plaintiff himself was not a seller nor witness to the sale deed. Not only that, the applicant/plaintiff has filed the suit before obtaining any succession certificate to show that he was entitled to inherit the suit plot alongwith other legal heirs of deceased Muhammad Yaseen, if any. The applicant/plaintiff without disclosing the

legal heirs of deceased Muhammad Yaseen, had no right/locus standi to sue the respondents in his own right.

11. The learned appellate Court has rightly observed that the applicant/plaintiff had the same cause of action which has accrued to his father even prior to formal purchase of the suit plot. If we accept that the earlier suit was withdrawn on the assurance of the respondents, as claimed by the applicant, the question remains that what has prevented the applicant/plaintiff from placing on record a copy of the plaint and the application for withdrawal of the said suit. Admittedly, the cause of action of the applicant/plaintiff as mentioned in the plaint was one and the same that the octroi post was available on the suit plot and his father had sought recovery of possession of that portion from Municipal Committee and the Municipal Committee had promised to settle the issue and therefore the suit had been withdrawn. The same cause of action has been shown by the applicant/plaintiff in the capacity of son of the earlier plaintiff by saying that the octroi post was on the suit plot and the respondent Municipal Committee had refused to vacate the same. Therefore, merely because a sale deed was registered subsequently the cause of action could not be said to have accrued subsequently. The counsel for the applicant has not been able to distinguish the case law referred by Appellate Court i.e. **1993 C L C 1478** on the same proposition. The applicant/plaintiff has failed to even disclose the date of withdrawal of the said suit. In these circumstances, the plea of fresh cause of action on the ground of registration of sale deed subsequent to filing of the earlier suit has lost its value.

12. I am surprised that while examining the Court file I have found copy of NIC issued by NADRA bearing NIC No.44103-0313309-5 and old NIC No.47599205116 showing address of suit plot. However, this NIC does not bear the name of plaintiff. In the entire R&Ps I have not found any other NIC. The NIC available is in the name of one **Muhammad Hanif Chowhan** son of Muhammad Yaseen Chowhan. The suit has been filed by Muhammad Younis and the photostat copy of N.I.C. does not show his name. This startling fact which I have just noticed is enough to appreciate that the applicant/plaintiff has wilfully avoided to disclose the names of other legal heirs, as may be he is entirely different man and had no relation with deceased Muhammad Yaseen, whose copy of sale deed is available with him. At least, the applicant/plaintiff

Muhammad Younis, who has filed this revision, has not been able to prove his identity as son of deceased Muhammad Yaseen in whose name he carries a photostat copy of deed of conveyance.

13. The applicant/plaintiff's name on the record is different than on the N.I.C. available on the record. He has failed to produce the original sale deed allegedly executed in favour of his father and more important is that throughout the pleadings the applicant/plaintiff has not disclosed that how much portion from suit plot was in occupation of respondent on which the octroi post of the Municipal Committee exist. The existence of Municipal Octroi Post is there for the 45 years and there is no proof of the fact that the octroi post was on the evacuee land.

14. The upshot of the above discussion is that the suit has been wrongly decreed by the trial Court. The pleadings of the applicant/plaintiff suffer from legal infirmities and lacunas and therefore, the First Appellate Court has rightly set aside the decree. Consequently, this revision application is dismissed with no order as to costs.

JUDGE