

2-9/2020

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE SYED MANSOOR ALI SHAH
MR. JUSTICE AMIN-UD-DIN KHAN

CIVIL APPEAL NO.932-L OF 2013

(Against the order dated 11.10.2010, passed by the Lahore High Court,
Multan Bench in Civil Revision No.1120 of 2009)

John Charagh

...Appellant(s)

Versus

**John E. Mariner, Secretary World
Witness (deceased) thr. his wife and
others**

...Respondent(s)

Appellant (s) : In person

For the Respondent (s) : Mr. Ali Sibtain Fazli, ASC

Date of Hearing : 04.03.2020

JUDGMENT

AMIN-UD-DIN KHAN, J.- Vide order dated
27.12.2013, leave was granted by this Court, which is
reproduced herein below:

"We have heard the learned counsel
for the petitioner and learned counsel
representing the caveator.

2. Leave to appeal is granted, *inter alia*,
to consider:-

Firstly, if Section 92 of the CPC
is applicable and consequently, the
consent of the Advocate General,
Punjab is required?

Secondly, as to whether the
principle of *res judicata* applies in this
case?



Thirdly, as to whether the property in contention was held by the Pakistan Mission of Associate Reformed Presbyterian Church (ARP), Sahiwal in the nature of a charitable trust; and if so, its effect?

3. Since the issue involved in this case, *prima facie*, relates to Church property and minorities, the appeal by fixed for hearing within 60 days subject to orders, if any, by Hon'ble the Chief Justice. The appeal may proceed on the existing record with leave to the parties to file additional documents, if any, within 15 days from today."

2. We have heard the Appellant in person as well as the learned counsel for the Respondents and gone through the available record.


3. A Suit for Declaration filed by the Plaintiff/Appellant under Section 42 of the Specific Relief Act, 1877 (Act of 1877), was dismissed being incompetent. An appeal filed there-against before the learned Additional District Judge, Sahiwal, was dismissed vide judgment and decree dated 08.10.2009 and the Civil Petition filed before the learned Lahore High Court was also dismissed vide impugned order dated 22.10.2010.

4. The learned counsel for the Respondents states that there is another development in the matter; after filing of the Suit, subject matter of this appeal, the Suit property, was sold. Some other community members i.e. the Christian Community challenged the sale through a Suit filed before the Civil Court at Sahiwal, which was dismissed vide

PJ

judgment and decree dated 22.06.2013. The said judgment and decree was challenged through RFA No.140 of 2013 before the learned Lahore High Court, Multan Bench, which too was dismissed for non-prosecution on 19.04.2017. The learned counsel for the Respondents further states that neither any application for restoration of the said RFA has been filed till date nor the said order was challenged before this Court. Therefore, as per the learned counsel this appeal has become infructuous. On the other hand, we have heard the Appellant, who appeared in person, and argued the matter.

5. The learned Trial Court non-suited the Appellant along with proforma Respondents No.10 to 12, who were Plaintiffs before the learned Trial Court, on the ground that the Suit was not competent on their behalf. A declaration of ownership of the Suit property was prayed in favour of Defendant No.8. Therefore, the case on behalf of the Appellant was not competent under Section 42 of the Act of 1877. The two learned fora below, i.e. the learned Additional District Judge, Sahiwal, as well as the learned Lahore High Court, Multan Bench, rightly agreed with the findings of the learned Trial Court. The Appellant, who opted to appear in person, is unable to assist this Court on the questions framed by this Court at the time of grant of leave. In the changed circumstances there is no need to decide first two



questions, the 3rd question relates to a factual determination. Even if the answer of the said question, noted in the leave granting order, is decided in the affirmative, a decree for declaration has been sought under Section 42 of the Act of 1877, in favour of Defendant No.8. Therefore, no case for interference has been made out. Even otherwise, Protection of Communal Properties of Minorities Ordinance, 2001 (Ordinance V of 2002) is available for seeking adequate remedy under the law.

6. Consequently, the titled Civil Appeal is dismissed with no order as to cost.

Sd/- Manzoor Ahmad Malik, J
Sd/- Syed Mansoor Ali Shah, J
Sd/- Amin-ud-Din Khan, J

Lahore, the
4th of March, 2020
'NOT APPROVED FOR REPORTING'
Mahtab H. Sheikh/ *

14/3