

3769

191

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE YAHYA AFRIDI

Civil Appeal No. 73-K of 2018

(Against the order dated 13.08.2018
passed by the High Court of Sindh,
Karachi in Civil Revision No. 54 of 2012)

Syed Jamil Ahmad

...Appellant

Versus

Muhammad Salam, etc.

...Respondents

For the appellant:

Mr. Shahab Sarki, ASC
Mr. K. A. Wahab, AOR

Respondents:

Ex-parte.

Date of hearing:

06.01.2022

ORDER

Qazi Faez Isa, J. Learned counsel for the appellant states that on 31 August 1989 the appellant was granted a lease of a 204.06 square yards plot by the Karachi Metropolitan Corporation ('KMC'), however, he should also have been leased an additional 40.56 square yards, but instead it was granted to the respondent No. 1 on 21 May 1985. He states that the Appellate Court had correctly decreed the suit of the appellant but the learned Judge of the High Court set aside the judgment of the Appellate Court and restored the decision of the Trial Court, which had dismissed the suit, primarily on the ground of limitation.

2. It transpires that the appellant had sought the same relief in a suit filed by him in the year 1991 which was dismissed for non-prosecution. The suit, which is the subject matter of this case, was filed in the year 1995 and was dismissed as it was time-barred. Learned counsel was not able to satisfy us that the suit filed seeking a declaration and cancellation of a lease granted in the year 1985 could be filed in the year 1995. The suit was clearly time-barred and the judgments of the Trial Court and of the High Court are correct.

3. Another question arises and one that went to the very maintainability of the suit which was whether the appellant could

Q

claim entitlement to a plot which was not in his possession. The leases granted by the Directorate of *Katchi Abadies* of the KMC to the respondent No. 1 and the appellant are both titled, '*Lease for Plot by Regularization of Unauthorised Possession.*' Persons in unauthorised possession of land (not owned by them) and which formed part of a declared *Katchi Abadie* were granted ownership rights to the land in their possession by the KMC. Admittedly, the appellant was not in possession of the land in respect of which the respondent No. 1 was granted a lease. The appellant contended that the respondent No. 1 was his tenant. Therefore, the respondent No. 1 should not have been granted the said lease. Even if it be assumed that the respondent No. 1 was the appellant's tenant still the appellant could not claim leasehold rights on the basis of the purported tenancy in respect of land situated in a declared *katchi abadie*. The law regularizing *katchi abadies* is meant to accommodate/benefit the landless. The appellant based his claim to the land which admittedly was not owned by him nor was in his possession. Land in *katchi abadies* cannot be used for personal enrichment by somehow acquiring possession of it and then handing over its possession to a purported tenant. It would be against public policy if money is permitted to be made at the expense of the landowner, by exploiting the landless and then claiming ownership rights emanating from having had possession of such land. The appellant had no *legal character* in terms of section 42 of the Specific Relief Act, 1877 and his suit, seeking declaration to ownership of the said plot, in possession of the respondent No.1, was not maintainable.

4. Therefore, for the aforesaid reasons, this appeal is dismissed but with no order as to cost as it has proceeded *ex parte*. Copy of this order be sent to the respondents.

Judge

Judge

Karachi

06.01.2022

Approved for Reporting

Arif