SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Shahid Waheed
Mr. Justice Naeem Akhter Afghan
Mr. Justice Salahuddin Panhwar

C.M.A. No.9923/2024 and 9924/2024 IN C.A.NIL/2024
(On appeal against the order/judgment dated 23.05.2024 passed by the Peshawar High Court, D.I. Khan Bench in C.R. No. 174-D/2017 with C.M No.39-D/2018)

Jamil Ahmed and others *(in both cases)* ...Applicant(s)

Versus

Mst. Zarina Bibi and others *(in both cases)* ...Respondent(s)

For the Applicant(s) : Mr. Muhammad Naveed, ASC

For the Respondent(s) : Nemo

Date of Hearing : 15.10.2025

ORDER

Shahid Waheed, J: – The applicants were not parties to the proceedings in which the order they wish to appeal was made; therefore, they have filed this application to challenge it on appeal. This Court has consistently followed the practice that a person who is not a party to a proceeding may lodge an appeal if they are affected by the judgment, decree, or order of the Court below, provided they obtain leave from this Court. The test to be applied when granting leave to appeal in such cases is whether the person appealing could properly have been a party in the proceedings; if so, they may be granted leave to appeal[1]. This brings us to consider whether this equitable principle can be extended to the applicants. To thoughtfully address this question, it would be conducive to first take into account the circumstances that have led to this application.

2. Apart from unnecessary details, the facts of this case can be divided into two parts. The first part provides the background necessary to understand the facts that the second part

[1] H. M. Saya & Co. v. Wazir Ali Industries Ltd. (PLD 1969 SC 65), Sahib Dad v. Province of Punjab (2009 SCMR 385), Munir Ahmed v. Rawalpindi Medical College and Allied Hospital (2019 SCMR 648) and Kanwar Arif Ali Khan v. Danish Ali (2023 SCMR 233).

presents, which form the basis of the application. However, before relating the facts, it is important to note that this application arises from the suit filed by respondents Nos. 1 to 4 & 6 (who shall be referred to as the plaintiffs for clarity). This suit was against a single defendant, who is respondent No. 5 herein. He shall be referred to as the defendant hereafter. Now, the facts of the first part begin. The predecessor of the plaintiffs, namely Atta Mohammad, and the defendant were real brothers. The plaintiffs claimed that their predecessor, Atta Mohammad, had some grievances against his brother, the defendant, concerning the legacy of their father, Sheikh Fateh Mohammad, and to seek redress, he had instituted a suit. During this suit, a compromise was reached under which the defendant agreed to transfer 164 kanals, 11 marlas of land and a house, alongwith some money, to Atta Mohammad. Pursuant to that compromise agreement, the suit was subsequently withdrawn. Afterwards, Atta Mohammad passed away, and the facts of the second part come to light. The plaintiffs filed a suit against the defendant for specific performance of the compromise agreement. The defendant contested the claim. At that stage, the applicants, who were in possession of the house as tenants, by an agreement dated 22nd of January, 2010, purchased the house from the defendant for a consideration of Rs.550,000/-, of which Rs.250,000/- was paid as earnest money, and the balance was agreed to be payable by 22nd of July, 2010. This agreement to sell was not brought to the notice of the Trial Court. However, upon completion of the trial, the suit was dismissed by judgment dated 29th of March, 2012. The plaintiffs appealed against the judgment of the Trial Court. During the appeal, the plaintiffs and the defendant reached a fresh settlement/compromise, and statements to that effect were recorded. Before any decree was passed based on it, the applicants applied for their impleadment, asserting that they had purchased the house from the defendant by an agreement dated 22nd of January, 2010, and a suit for its specific performance was pending determination in the civil court. The appellate court dismissed the applicants' application, partially accepting the appeal regarding the landed property, while as to the extent of the house, the plaintiffs were ordered to wait until the decision in the applicants' suit was made, with the observation that if their suit

was dismissed, the plaintiffs' suit concerning the house would be considered decreed. The plaintiffs were dissatisfied and sought revision of the appellate decree by applying under Section 115 CPC before the High Court. Once again, the applicants attempted to join the proceedings by filing a miscellaneous application. The High Court, on 23rd of May, 2024, jointly considered the applicants' application and the plaintiff's revision application. After examining the matter, the High Court held that the applicants had purchased the house during the pendency of the suit and, consequently, were subject to the doctrine of *lis pendens*; since they had yet to prove their case independently, a portion of the disputed property (the house) could not be left unresolved pending the decision of their suit. Based on this, the revision was allowed, and the plaintiffs' suit was decreed in accordance with a compromise.

3. Now, we apply the test onto the facts stated above to find whether the applicants, who wish to lodge the appeal, could properly have been parties to the proceedings in which the impugned order was made. It is pellucid that the applicants, who were already in possession of the house as tenants, on 22nd of January, 2010, purchased the house from the defendant during the pendency of the ongoing civil suit and without seeking leave of the Court as required by Section 52 of the Transfer of Property Act, 1882. The principle, applicable to such a situation, is that when an application for joinder based on transfer pendente lite is made, the transferee should ordinarily be allowed to join as a party to enable him to effectively protect his interest[2]. However, this is not an absolute rule; a request for joinder may be declined where the action of alienation does not appear to be bona fide, indicating an intent to defraud or an attempt to undermine the legal process. It is admitted that, in this case, neither the defendant obtained the authority or order of the Court for the alienation of the property, nor did the applicants, upon the agreement, apply to the Trial Court for permission to join the suit. This alienation obviously was hit by the doctrine of lis pendens. Both the applicants and the defendant kept the sale entirely secret until the suit was dismissed, which suggests deliberate concealment. The reason for this secrecy

[2] Sajjad Hussain v. State (1997 SCMR 174) and Fazal Karim v. Muhammad Afzal (PLD 2003 SC 818).

is evident from a condition included in the agreement dated 22nd of January, 2010. This condition states that if the house is no longer owned by the defendant due to a claim by any third-party, he will be liable to return the money received. This clause clearly indicates that the applicants were aware that the court was examining the plaintiffs' claim regarding ownership of the house, and further, that if the plaintiffs' claim proves successful, they could recover the money paid from the defendant. Given this context, the applicants could not be regarded as bona fide purchasers, as they were aware of an ongoing legal dispute and acted to possibly frustrate its resolution. Nonetheless, when the plaintiffs filed an appeal after their suit was dismissed, and during that period, they settled with the defendant, the applicants took further action by first filing a suit against the defendant on 14th of July 2016, seeking a decree for specific performance of the agreement dated 22nd of January 2010. Four days later, on 18th of July 2016, they applied to become parties in the appellate court. This sequence of actions appeared to be a calculated attempt to prolong the litigation process and thereby affect or delay the rights of the plaintiffs. The applicants had not disclosed any valid reason which prevented them from joining the proceedings at the trial stage. When they did not consider it appropriate to join the trial to assert their rights, they could not be permitted to join the appeal proceedings without providing any explanation or justification. Additionally, it is important to note an additional point which further disqualifies the applicants from raising any substantive grievance. The applicants' claim was based on the agreement to sell regarding the house and the suit for its specific performance. The recitals of the agreement indicate that the applicants purchased the house for Rs.550,000, with Rs.250,000 paid as earnest money, and the remaining amount due by 22nd of July 2010. It is undisputed that the balance was not paid by the specified date, and the suit for specific performance was filed only on 14th of July 2016. This delay of over six years indicates that, under Article 113 of the Limitation Act, 1908, the suit was time-barred. As a result, this late-filed suit did not confer any legal right on the applicants, as transferees pending litigation, to be regarded as either necessary

or proper parties to the revision proceedings. Consequently, they do not meet the criteria for obtaining leave to appeal.

4. Given that the applicants have no standing to file an appeal against the judgment dated 23rd of May, 2024 of the High Court, we will propose an order to dismiss CMA No.9923 of 2024, and with that, the second application i.e. CMA No.9924 of 2024 becomes redundant.

5. As a result, these two applications lack merit and are therefore dismissed.

Judge

Judge

Judge

Islamabad,
15.10.2025
Approved For Reporting
Irfan Aslam/-