

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Regular First Appeal No. 143/2020

Syed Fayyaz

Versus

Syed Muhammad Shah, etc

Appellant by: Raja Ahsan Mehmood Satti, Advocate,

Respondent No.1 by: Mr. Awais ul Islam, Advocate,

Respondent No.2 by Ch. Aziz ur Rehman Zia, Advocate,

Date of Decision: 11.08.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant Regular First Appeal, appellant impugns the order & decree dated 04.03.2020, passed by the learned Senior Civil Judge, Islamabad-West, whereby his suit for declaration, permanent and mandatory injunction was decreed in the light of statement of respondent No.1/defendant No.1.

2. The facts, relevant for the disposal of the instant appeal are that the appellant, respondent No.1 and respondents 3 to 7 are sons and daughters of Haider Ali Shah linked with "Sadat Banu Fatima Silsila Alia Kazmia", were permanent residents of Mouza Baikan Syedan (presently Sector F-11/3, Islamabad) and were exclusive owners in possession of their ancestral land consisting of more than 1000-Kanal in the said village. The appellant, the respondent No.1 and *proforma* respondents are also legal heirs of Mst. Chano Bi widow of Ghulam Hussain Shah, who was in possession of property measuring 45-Kanal 18-Marlas in khasra No.165-171 and died issueless. After the death of their predecessors Haider Ali Shah and Chano Bi, properties were devolved upon the appellant and others by way of

inheritance. The respondent No.2-CDA acquired the said properties for establishing of Sector F-11/3, Islamabad except the area of the shrine of Haider Ali Shah comprising some land, which includes graveyard, rooms with boundary wall. The appellant was settled in the UK along with his family and respondent No.1 was authorized to manage the affairs of the ancestral property including suit property/shrine; that on the last visit of appellant, the respondent No.1 did not allow him to enter the shrine and on inquiry, it revealed that respondent No.1 had rented out the rooms to different persons and had been receiving rent of more than Rs.100,000/- per month without the permission of the appellant; the appellant was not paid a single penny out of the compensation/ acquisition amount from the respondent No.2/CDA and thus had been deprived of his legal right which led to filing of the suit for declaration, permanent and mandatory injunction.

3. The respondent No.1 contested the suit by filing written statement wherein he controverted the claim of the appellant. On facts, it was replied that the appellant was compensated against his share of acquired land through one residential plot No.823 in Sector I/10-1 besides agricultural land measuring 12.5 Acre vide permit No.D-005830 in District Jhang. It was further averred that nobody including the appellant was ever restrained to visit the shrine.

4. The respondent No.2-CDA despite availing opportunities failed to file written statement and ultimately their right was closed vide order dated 14.01.2020. On 04.03.2020, the respondent No.1 got recorded statement and the learned trial Court after hearing learned counsel for the parties, decreed the suit vide order and decree dated 04.03.2020, on the

above statement in terms that the appellant was held entitled to visit the suit property/shrine and the respondent No.1 was directed not to restrain the appellant from visiting the shrine/graves of his parents. The appellant feeling aggrieved of the said order and decree, filed the instant regular first appeal.

5. Learned counsel for the appellant contends that the statement made basis to pass the impugned order was only to the extent of application under Order XXXIX Rule 1&2 CPC while the impugned order and decree is silent to the extent of rest of the claim qua compensation of the acquired land and the due share out of the rental amounts, being received by the respondent No.1, therefore, the impugned order and decree are liable to be set-aside.

6. Learned counsel for the respondent No.1 contends that neither any property has been rented out nor there exists any boundary wall around the shrine and the graves; that no gate is installed and there is a space for offering prayers, contiguous to the graves, and that nobody was ever restrained to offer the prayers and to visit the shrine; that they never restrained the appellant in the past nor intend to do so.

7. Learned counsel for the respondent No.2-CDA argued that the land was acquired way back in 1960 and the compensation had already been paid to the land owners including the appellant; some land was left for shrine and graves which is being administered by the respondent No.1 and that no room or any other space had been let on rent, as asserted by the appellant.

8. Heard the learned counsel for the parties and examined the record with their able assistance.

9. Record reveals that on 04.03.2020, respondent No.1 got recorded following statement:-

"بیانی کے کہ جگہ متدعو یہ CDA کی جانب سے acquired شدہ ہے بجز اس مخصوص حصہ کے جس میں من مدعا علیہ کے آباد اجداد کی قبریں ہیں۔ CDA نے من مدعا علیہ کے حق میں تفویض کی ہے جس کا انتظام والصرام میں عرصہ 6 دہائیوں سے میں چلا رہا ہوں جگہ متدعو یہ محض دینی مقصد کے لیے استعمال میں ہے جہاں پر نمازیوں کے لیے ایک مسجد اور دربار بنا ہوا ہے۔ جہاں عوام الناس آکر فیض پاتے ہیں۔ جگہ متدعو یہ کا کوئی بھی کاروباری یا کمرشل استعمال نہ ہے نہ ہی کسی کو کوئی بھی حصہ کرائے پر دیا گیا ہے۔ مدعی پچھلے عرصہ 40, 50 سال سے ولایت میں رہتا ہے جس کو کبھی توفیق نہ ہوئی ہے کہ وہ والدین کی قبر پر آکر دعا کرے۔ اب اگر وہ والدین کی قبر پر دعا کرنا چاہتا ہے تو ہمیں اس پر کوئی اعتراض نہ ہے۔"

10. Record further reveals that the date 04.03.2020 was fixed for arguments on application under Order XXXIX, Rule 1&2 CPC, as argued in support of this appeal but on the same day, the respondent No.1 got recorded above statement and thereafter learned counsel for the plaintiff/appellant asserted that *"that the defendant had admitted in his written statement that he has no objection if the plaintiff visits the shrine/grave of his father etc. therefore, the suit be decreed to this extent as the plaintiff's claim is to this extent."* These facts have duly been mentioned in Para-2 of the impugned order. It was/is not the case of the appellant that the counsel has made the above statement in derogation to his instructions. Therefore, after undergoing the above proceedings, the learned trial Court passed the impugned order.

11. Moreover, not only the respondent No.1 but the respondent No.2-CDA had specifically asserted that there is no boundary wall and a gate with lock and that the compensation of the land acquired way back in 1960 had already been paid to the land owners. To controvert this fact not only by the respondent No.1 but as well as officials respondents-CDA, there is nothing available on record and even appellant could not rebut the same during arguments through any evidence. To counter the objection over visit of the appellant to the

graves and shrine of his ancestors, the respondent No.1 reiterated the same stance today during the arguments with an addition that they will have no objection over visit and stay of the appellant to the graves of his ancestors round the clock, therefore, in such eventuality, particularly in the light of statement of learned counsel for the appellant mentioned in the Para-2 of the impugned order, it cannot be said that the impugned order and decree suffers from any illegality or material irregularity.

12. In view of above, the instant regular first appeal is devoid of merits and accordingly **dismissed**. No order as to costs.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran