

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

Intra Court Appeal No.202/2011

Manzoor Ahmed and others

versus

Soan Garden Housing Society, Islamabad and others.

Appellants by: Mian Abdul Razzaq, Advocate

Respondent No.1 by: Abdul Wahid Qureshi, Advocate

Date of Hearing: 03.03.2021.

MOHSIN AKHTAR KAYANI, J: Through the instant appeal, the appellants have assailed the order dated 05.10.2011, passed by learned Single Judge in Chambers through C.M No. 233-S/2011 in C.S No. 27/2009, whereby application under Order XXXIX Rules 1 & 2 read with Section 151 CPC for temporary injunction has been dismissed.

2. Brief facts referred in the instant appeal are that the appellants are owners of suit land situated in Mouza Sihala (Bhinder), Islamabad; that the appellants were also claiming that they are in possession of the suit land being owner of the same; that respondents have forcibly and illegally encroached upon the suit land and deployed the bulldozers for leveling of the suit land for the purpose of developing the housing scheme; that respondents are not the owners of property in question and they are interfering into the lawful possession of the appellants.

3. Learned counsel for the appellants contends that the respondents have no claim whatsoever upon the suit land and they under the garb of some agreements tried to encroach upon the suit land without any lawful justification.

4. Conversely, learned counsel for respondent No.1/Soan Garden Housing Society, Islamabad contends that the appellants have entered into agreement to sell with respondent No.2 namely Arshad Mehmood alongwith possession, same was handed over to the respondent No.1 through a contract, as a result

whereof, they have started development work on the suit land, whereby appellants have opted to file the suit, however, they are estopped by their own words and conduct to bring this suit, especially when the appellants have received part payment out of total consideration.

5. No one has put appearance on behalf of respondent No.2, who remained un-served due to incorrect address as per the order dated 24.01.2012, even no fresh address of respondent No.2 is available, therefore, at this stage, matter requires early adjudication as the instant appeal is pending since, 2011 at the stage of decision on the application under Order XXXIX Rule 1 & 2 CPC. The suit has not yet been proceeded further, hence there is no requirement to further adjourned the matter due to unconscionable delay already happened in this case.

6. Arguments heard and record perused.

7. Perusal of record reveals that the appellants have filed suit for Declaration, Recovery of Possession, Recovery of Money, Permanent and Mandatory Injunction qua the suit land, which has already been taken over by respondent No.1 under the garb of some agreements allegedly executed between respondent No.2 with the appellants. The written statement filed by respondent No.2 also reveals that some agreements were executed between the parties against sale consideration, which was partly paid. Even the Local Commission was also appointed, who has submitted his report in compliance of order dated 21.03.2010, which reveals recent construction has been made all over the suit land and he has seen the recent digging, number of concretes sewerage pipelines lying over the place and other construction material and in this backdrop certain photographs have also been appended with the report, which are available on record.

8. On the other hand, written statement filed by defendant No.2 reveals that the appellants No. 1 & 2 have received certain payment of Rs. 2 Crore as

part payment of consideration and they have failed to perform their part of agreement. It has also been alleged that appellant No.3 has also entered into agreement through his Son Saghir Mahmood with respondent No.2, likewise the other appellants have also been referred. However, it appears that the agreements have not yet been complied with and still its terms have not been fulfilled in legal perspective, however, appellants have denied the other agreements. The respondents under the garb of alleged agreements have encroached upon the property in question, as such the appellants are claiming the restraining order against the respondents for further construction of the property, but on the other hand, the authenticity of the agreements relied upon by the respondents, is yet to be determined after recording of evidence, some of the amounts have been received by the appellants. In this scenario, order passed by learned Judge in Chambers is considered to be within four corners of law, especially when pro and contra evidence is required for the purpose of adjudication of disputed facts.

9. The record prima facie reflects that if injunction is granted qua the suit land, the irreparable loss would be caused to the respondents, as such the order impugned is within four corners of law, no illegality has been observed. Even otherwise, instant appeal is pending from the last 10 years, hence, no adverse effect has been caused to the claim of the appellant.

10. We have also called the report from the office, which reveals that the record of civil suit is appended with this case from the last 10 years, as such matter has not yet been concluded, which has now to be entrusted to learned Civil Court after the enhancement of pecuniary jurisdiction and amendment in the Islamabad High Court Act, 2010.

11. For what has been dismissed above, instant appeal is meritless and same is hereby DISMISSED.

12. Before parting with this judgment, office is directed to transmit the record to learned District and Sessions Judge (East), who shall further entrust the same to some Civil Court with the direction to conclude the matter within period of Ten (10) months under intimation to this Court.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on _____

JUDGE

JUDGE

RAMZAN