

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.248 of 2021
Syed Saqlain Hussain Shah
Versus

Muhammad Ramzan and another

Date of Hearing: 30.01.2023
Petitioner by: Syed Adil Safdar Gardezi, Advocate.
Respondents by: Ch. M. Nasir, Advocate for respondent No.1.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Syed Saqlain Hussain Shah, impugns the order dated 21.12.2020 passed by the Court of the learned Civil Judge, Islamabad, dismissing his application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (“C.P.C.”) seeking the rejection of the plaint in the suit for permanent injunction filed by respondent No.1, Muhammad Ramzan.

2. Respondent No.1 had filed a civil suit on 30.11.2018 praying for a permanent injunction to restrain the petitioner from interfering with respondent No.1’s possession over land measuring 7 *Marlas* in *Khewat* No.1, *Khatooni* No.1, *Khasra* No.197 situated in Mouza Majhoohan Dakhli Alipur, Tehsil and District, Islamabad (“the suit property”).

3. On 16.04.2019, the petitioner appeared before the learned Civil Court and recorded his statement on oath that he has no concern with any land in *Khasra* No.197. Furthermore, it was stated that he has neither interfered with respondent No.1’s possession nor does he intend to interfere with respondent No.1’s possession over the suit property.

4. On 25.06.2019, the petitioner filed an application under Order VII, Rule 11 C.P.C. praying therein that plaint in the suit to be rejected. In the said application as well it is pleaded *inter alia* that the petitioner has no concern whatsoever with the suit property. Vide order dated 21.12.2020, learned Civil Court dismissed the said application by holding that the plaint had disclosed a cause of action to the effect that the petitioner was interfering with possession of the land owned by respondent No.1. The said order has been assailed by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the petitioner is not the owner of the suit property; that the petitioner stands by the statement made before the learned Civil Court on 16.04.2019 that he has no intention to interfere with respondent No.1's possession over the suit property; and that after the said statement was recorded, the learned Trial Court should have decreed the suit instituted by respondent No.1.

6. Learned counsel for the petitioner further submitted that the pleadings in respondent No.1's suit would reveal that he had earlier filed two suits in which the petitioner had not been impleaded as a defendant; that after the suit titled "Muhammad Ramzan Vs. Anwar Hussain" was dismissed by the learned Civil Court vide judgment and decree dated 20.05.2016, respondent No.1 had filed an appeal and was able to obtain a status *quo* order on 21.07.2016; that thereafter, respondent No.1 filed a contempt petition against the petitioner which was dismissed vide order dated 28.10.2017; and that after the dismissal of the said petition, respondent No.1, on 30.11.2018, filed a civil suit only to harass the petitioner. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

7. On the other hand, learned counsel for respondent No.1 submitted that the petitioner was indeed interfering with respondent No.1's possession over the suit property; that a plaint can be rejected only if upon the bare perusal of the plaint, it does not disclose any cause of action; and that the impugned order dated 21.12.2020 does not suffer from any legal infirmity. In making his submissions, learned counsel for respondent No.1 placed reliance on the judgment dated 21.02.2022 passed by the Hon'ble Peshawar High Court in writ petition No.4304-P/2021. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 4 above and need not be recapitulated.

9. Respondent No.1's prayer in his civil suit was restricted to seeking an injunction against the petitioner from interfering with respondent No.1's possession over the suit property. After the learned Civil Court recorded the petitioner's statement on oath to the effect that he had no concern with *Khasra* No.197 in which the suit property is situated and that he had no intention of interfering with respondent No.1's possession over the suit property, there was no impediment before the learned Civil Court in decreeing the suit. It goes without saying that such a decree would bind only the petitioner and not any other person who is not a party in the suit. Order XV, Rule 1 C.P.C. provides that where at the first hearing of the suit, it appears that the parties are not at issue on any question of law or fact, the Court may at once pronounce the judgment. Given the statement of the petitioner recorded by the learned Civil Court on 16.04.2019, the parties were not in issue that the petitioner has no concern with property in *Khasra* No.197. They were also in unison that respondent No.1's possession over the suit property shall not be interfered with by the petitioner.

10. In this view of the above, the instant writ petition is allowed; and the impugned order dated 21.12.2020 is set-aside. The matter is remanded to the learned Civil Court for appropriate orders bearing in mind the prayer sought by respondent No.1 in his civil suit as well as the petitioner's statement recorded on 16.04.2019. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 02.02.2023.

JUDGE