

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No.18 of 2015.

Haji Abdul Rasheed Rajput
Vs.
Muhammad Yaqoob & seven (7) others.

Petitioner's by: Mr. Muhammad Nazir Jawad, Advocate.
Respondents by: M/s. Muhammad Ishtiaq Ahmed Raja & Ch. Hafiz
Ullah Yaqoob, Advocates
Date of Decision: 26.02.2015

Aamer Farooq, J.- The facts leading to filing of the instant civil revision are that the petitioner being owner in possession of land measuring six (6) Marlas situated in Khasra No.18525, Khawat No.837/1, Khatooni No.1068/1, Mouza Tarli Kalan, Islamabad (the property) filed a suit for declaration, permanent and mandatory injunction before the Civil Court, Islamabad against the respondents with respect to the property.

2. Respondents No.1 to 4 entered appearance in the suit and recorded their statement that they have no concern with the property, therefore, on the basis of the same, learned Trial Court rejected the plaint under Order VII Rule 11 of Code of Civil Procedure, 1908 (CPC) vide order dated 30.11.2013. The petitioner assailed the referred order in appeal and moved an application for appointment of Local Commission. The appeal filed by the petitioner was dismissed vide order dated 29.10.2014, which has been assailed in the present civil revision.

3. Learned counsel for the petitioner, inter alia, submitted that the courts below have exercised jurisdiction with material irregularity inasmuch as it is an established principle of law that while rejecting plaint only the contents of the plaint are to be seen and if on examination of the

same the cause of action is revealed then provisions of Order VII Rule 11 CPC are not attracted. It was further submitted that respondent No.3 also instituted a suit for declaration and permanent injunction in respect of the property and in the same the learned Court seized of the matter passed a status quo order which is still in field. Learned counsel emphasized that if the application for appointment of Local Commission had been accepted the controversy could have been resolved that whether respondents are raising construction adjacent to the property or not. It was further contended that reliance placed upon judgement titled "Malik Manzoor Elahi Vs. Zulfiqar Ali & two others" reported as **(2007 MLD 2012)** is not applicable in the present case inasmuch as the controversy still remains alive.

4. Learned counsel for respondents No.1 to 4 defended the impugned orders and submitted that there is no jurisdictional error committed by the Courts below and hence the instant civil revision merits dismissal. It was further submitted that respondents No.1 to 4 are not raising construction adjacent to the property, in fact the property of respondents No.1 to 4 is at considerable distance from the suit land. Learned counsel also informed the Court that respondents No.5 to 8 have passed away and the suit was filed against dead persons and, therefore, was not maintainable.

5. The petitioner instituted the suit for redressal of his grievance viz-a-viz the property against the respondents alleging that they are encroaching upon the property which exclusively belongs to him. Instead of contesting the suit respondents No.1 to 4 made a statement that their property is at distance from the suit property and hence no cause of action exists in favour of the petitioner. Reliance was placed on by the courts below at **2007 MLD 2012**, the relevant part of which reads as follows:

"5. Since the defendants-respondents have clearly declared (which has again been reiterated by the learned counsel for the respondents) that the respondents have neither interfered in the suit property nor they intend to do so. Such a bold and unreserved statement should have pacified the plaintiff/petitioner and he can certainly proceed against defendants/respondents if any encroachment in the suit property was ever found.

5-A. In such a situation there does not appear to be any cause of action vested in the plaintiff/petitioner to institute the suit and

***both the Courts have rightly applied the mind to reject the plaint.
The Revision Petition is accordingly dismissed with costs."***

6. The facts and circumstances of the above mentioned case are quite similar to that of the present case, however, in the above mentioned case an application under Order VII Rule 11 CPC was filed for rejection of the plaint which has not been done so far in the instant matter. Under Order VII Rule 11 CPC a court can reject plaint if the same does not disclose a cause of action. In this regard it is an established principle of law that while deciding whether the plaintiff has cause of action in his favour or not contents of the plaint are to be examined only.

7. The courts below have acted with material irregularity in exercise of their jurisdiction while rejecting plaint under ***Order VII Rule 11 CPC*** and dismissing the appeal filed by the petitioner, inasmuch as they departed from the above mentioned principle of law. Despite the statement made by respondents No.1 to 4 that they have no concern with the suit property the petitioner insists that cause in his favour still survives, therefore, the controversy can only be adjudicated by recording evidence in the matter.

8. In view of above, instant civil revision is accepted and the impugned orders dated 30.11.2013 as well as 29.10.2014 are set aside.

Approved For
Reporting

Altaf Malik

(AAMER FAROOQ)
JUDGE