

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Writ Petition No. 3719/2012
Ch. Javed Iqbal and 2 others
Versus
Wajid Ali and 4 others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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17.08.2020	Mr. Khurram Mehmood Qureshi, Advocate for the petitioners. Barrister Talha Ilyas Sheikh, Advocate for respondents No.2 & 3.	
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Through the instant writ petition, petitioner brings into question orders dated 13.01.2011 and 18.06.2012 passed by the learned Executing Court and the learned Appellate Court, whereby execution petition was dismissed concurrently.

2. Precisely, facts relevant for the disposal of instant writ petition are that petitioners filed a suit for declaration, permanent and mandatory injunction with the averments that they are owners in possession of land, well described in the plaint; the respondents 1&2 constructed a factory on plot No.28-E and also obtained another plot from respondent No.3; that the respondents 1&2 encroached upon their land which necessitated the suit.

3. The suit was filed on 28.07.2007, wherein on 31.07.2007, the learned trial court issued ad-interim injunction which was assailed by the respondents and in appeal, the matter was disposed of on the basis of compromise vide order dated 03.08.2007, whereby the respondents committed to construct the dam and not to interfere in possession of the petitioners.

Subsequently, the suit was withdrawn by the petitioners. On 03.03.2008, petitioners filed contempt petition for violation of order dated 03.08.2007 but the same was subsequently withdrawn on 19.12.2009. The petitioners on 06.09.2010, filed an execution petition for the execution of order dated 03.08.2007 on the basis of which compromise was effected between the parties and the respondents had undertaken not to interfere into possession of the petitioners. The learned executing court, after hearing the parties dismissed the execution petition vide order dated 13.01.2011. The petitioners then preferred an appeal which also met the same fate, hence the instant writ petition.

4. Learned counsel appearing on behalf of the petitioner states that under the provisions of Order XXI Rule 32 CPC, execution petition is competent; that the matter was decided once for all on the basis of compromise; that the respondent is not owner of any share in the land owned and possessed by the petitioners, therefore, the findings of the two learned courts below regarding the suit for partition is maintainable, is against the record. Learned counsel placed reliance upon case laws reported as 2011 SCMR 1361, 1995 SCMR 766, PLD 1982 Lahore 459, 2011 MLD 1982, 1991 SCMR 1311 and 2003 CLC 1318.

5. On being questioned, learned counsel apprised that the main suit, offshoot of which is the order dated 03.08.2007, sought to be implemented through an execution petition, has subsequently been withdrawn by the petitioners.

6. Learned counsel for the respondents contends that under Order XXI Rule 32 CPC, execution is competent only where a decree was passed which is not the present case; that the petitioner No.1 claims to have ownership of 13-Kanals 13-Marlas land while actually he is not owner of single inch of land and it was Shamlat land and that petitioners No.2 & 3 were owners of only 10-Marlas each.

7. Arguments heard, record perused.

8. Record reveals that on 28.07.2007, petitioners filed a suit for declaration, permanent and mandatory injunction along with an application under Order XXXIX Rules 1&2 CPC wherein on 31.07.2007, the learned trial court issued ad-interim injunction to the effect that the parties shall maintain status quo. The respondents assailed the said order through an appeal. In response to notice, petitioner entered appearance and got recorded following statement:-

"بیان کیا ہے کہ اپیلانٹ کے بند بنانے پر کوئی اعتراض نہ ہے بشرطیکہ اپیلانٹ یا اسکے کونسل عدالت میں بیان دیں کہ بند تعمیر کرنے کے بعد ان کا بند سے کوئی تعلق نہ ہوگا اور اسکی نسبت وہ کوئی خرچہ و ملکیت کا دعوٰی نہ کریں گے مزید بند کے کھرب جانب فیکٹری اپیلانٹ ہماری ملکیتی اراضی ہے جسکی نسبت حکم اتنا ہی بھی ملا ہے اپیلانٹ بیان دے کہ اسکا اپنی لیز شدہ یا ملکیتی جگہ کے علاوہ بقیہ جگہ جانب دریا کوئی تعلق نہ ہے اور وہ اس جگہ پر کوئی تجاوز نہ کریں گے۔"

In response, learned counsel for the respondents got recorded following statement:-

"بیان کیا ہے کہ بیان رسپانڈنٹ نمبر او کونسل سن لیا ہے۔ درست تسلیم ہے۔ ہم بند پر کوئی ملکیت و کاسٹ کلیم نہ کریں گے۔ اپنی ملکیتی و لیز شدہ رقبہ کے علاوہ کسی جگہ پر کوئی تجاوز و تعمیر نہ کریں گے۔"

After the recording of above statements, the appeal was disposed of by way of following order on that very date i.e. 03.08.2007:-

"بروے بیانات فریقین و کونسل اپیل ہذا منظور کی جاتی ہے اور لپلانٹ کو بند تعمیر کرنے کی اجازت دی جاتی ہے۔ تاہم بروے بیان کونسل لپلانٹ وہ بند کی بابت کوئی ملکیت و اخراجات کا کلیم نہ کریں گے۔ مزید لپلانٹ اپنے بیان کے مطابق اپنی ملکیتی و لیز شدہ جگہ کے علاوہ دیگر جگہ پر مداخلت، تجاوز یا تعمیر نہ کرے گا اور فریقین اپنے بیانات کے پابند رہیں گے۔ مذکورہ observation کی روشنی میں اپیل ہذا کو نپٹایا جاتا ہے۔ خرچہ بزمہ فریقین۔"

9. As is evident from the order *ibid* that the appeal, assailing ad-interim injunction was disposed of on the statements of the parties and there was no final conclusion of the proceedings, even on application under Order XXXIX Rules 1&2 CPC.

10. Record further reveals that the application under Order XXXIX Rule 1&2 CPC was thereafter dismissed by the learned trial Court on 30.07.2008 while appeal against the said order, filed by the petitioners also met the same fate vide order dated 27.08.2008. Subsequently, the petitioners withdrew the main suit.

11. On 06.09.2010, petitioners filed execution petition for execution of order dated 03.08.2007, passed by the learned ADJ in appeal assailing ad-interim order of the learned trial court. The said execution petition was dismissed vide order dated 13.01.2011 and the revision petition met the same fate vide order dated 18.06.2012.

12. As mentioned above, it is obvious that the order, sought to be implemented, was passed in an appeal assailing an ad-interim injunction and the proceedings subsequent thereto include dismissal of application under Order XXXIX Rule 1&2 CPC, dismissal of appeal against the said order besides withdrawal of the suit. Thus, it was not the final decision and declaration qua

determination of any right in favour of the petitioners. It is worth mentioning that the application wherein ad-interim injunction was issued, was finally decided against the petitioners and the said order was affirmed by the appellate Court.

13. It is also a matter of record that petitioners claim ownership of the suit land which is shamlat land wherein petitioner No.2 owns only 10-Marlas while the respondents claim to have proprietary rights under lawful title documents and claims to have constructed a concrete wall alongside the river bank to protect their own factory while the petitioners have no concern with that land.

14. Moreover, Order XXI Rule 32 CPC provides remedy in case of a decree of injunction while the order dated 03.08.2007 was neither a decree nor a final order, whereby the entire proceedings including that of the main suit were given an end.

15. The case law relied upon by learned counsel do not extend any help to the petitioners due to having distinct facts and circumstances.

16. In the above backdrop, the orders of the two learned courts are well reasoned and do not suffer from any illegality or material irregularity. Consequently, the instant writ petition fails and accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE