

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No. 249/2018

Muhammad Suleman, etc

Versus

Abdul Aziz, etc

Petitioners by: Raja Shahzad Javed, Advocate,
Respondents 1 to 3 by: Mr. Zulfiqar Ali Abbasi, ASC,
Date of Hearing: 05.03.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant civil revision petition, petitioners (Muhammad Suleman and others) impugn Judgment dated 28.04.2018, passed by learned Additional District Judge-VI, Islamabad-East, whereby appeal filed by the respondents against the order dated 15.09.2017 passed by learned Civil Judge was accepted. Vide order dated 15.09.2017, the learned Civil Judge dismissed the application for temporary injunction filed by the respondents under Order XXXIX Rules 1&2 of the Civil Procedure Code (CPC).

2. Facts, essential for the disposal of instant civil revision petition, are that respondents 1 to 3 filed a suit for declaration, mandatory, permanent injunction and separate possession through partition with prayer for cancellation of mutation No.806, dated 21.12.1966, the respondent/plaintiff claimed that the said mutation dated 21.12.1966 is illegal and ineffective upon their rights in as much as their names were incorporated in said mutations. As per the respondents/plaintiffs they were entitled to the estate of one Jalal son of Jewan. In that respect they had filed application before the Revenue Authorities which remained unsuccessful and finally they were advised to approach the Civil Court to challenge the said mutation. Accordingly, they instituted civil suit alongwith an

application for temporary injunction prayer whereof read as under:-

“In the circumstances, it is, therefore, most humbly prayed that respondents No.1 to 9 may be restrained from claiming any right or interest whatsoever over the suit land or transferring/ alienating the same to any other person, or changing the present nature of the suit land by bulldozing or making any sought of construction or to do any other illegal act which creates an invasion over the rights of the petitioner.”

The petitioners/defendants contested the suit as well as the application. Eventually learned Trial Court vide order dated 15.09.2017 rejected the application of respondents/ plaintiffs for temporary injunction. The respondents/ plaintiffs filed an appeal against the order of the learned Trial Court which was allowed by the learned Additional District Judge vide judgment dated 28.04.2018, hence instant civil revision petition.

3. Learned counsel appearing on behalf of petitioners submits that estate under the *//s* devolves from one Jalal son of Jewan; that the propositus of respondents namely Sakhian Bi was not legal heir of the said Jalal son of Jewan; that the said Sakhian bi was daughter of one Faiz alias Fajja with whom her mother namely Danish Bi contracted first marriage; that the mother of Sakhian Bi contracted second marriage with predecessor of petitioners/defendants namely Jalal son of Jewan; that not being the legal heir of Jalal son of Jewan the respondents/ plaintiffs have no right in the suit estate.

Further submits that no substantial material is available on record which could establish that the plaintiffs/respondents have good, *prima facie*, case and that no irreparable loss would accrue to them if their application for temporary injunction is rejected. In this view of the matter, the learned Trial Court came to right

conclusion but the learned Appellate Court, contrary to law has rendered the impugned judgment.

4. Learned counsel for respondents 1 to 3 contends that the plaintiffs have produced different documents including revenue record to prove relationship of Mst.Sakina Bi as daughter of Jalal but the petitioners did not file any document with written statement in order to prove their assertion. Further contends that the order of learned Appellate Court is well reasoned and does not call for any interference.

5. Heard the learned counsel for the parties and perused the record with their able assistance.

6. Record appended with the instant civil revision petition and subsequently placed on record through C.M. No. 225/2020 by the petitioners when examined, shows that a birth certificate which had been produced in evidence by the respondents/plaintiffs as Ex.P8, carries entry regarding date of birth as 21.07.1936 in which a column where name of the child is mentioned as 'Sakhian Bi' is written by crossing the name Doltan Bi, although it is the claim of respondents that same is not Sakhian Bi but is Sakina Bi but even then same had been written by cutting the name of Doltan Bi and thereafter written as Sakhian Bi or Sakina Bi, as the case may be and in the column of father's name, Jalal son of Jewan has been mentioned. This very fact has been alleged in paragraph 3 of the plaint filed by the respondents while present petitioners/defendants in their written reply had expressly and unequivocally denied the said fact in paragraph No.3 of reply to facts. This fact could only be established/ proved through recording of evidence by the respective parties and authenticity of that document i.e. Ex.P8, will be adjudged by the learned Trial Court after evaluating the same on the principles of evaluation of documentary evidence. When material piece of evidence by way of

documentary evidence is produced by one party i.e. the plaintiff in support of his contention, and same is expressly denied by the other party i.e. the defendant, then in my humble view, authenticity, credibility and worth of said document would be subject to final adjudication by the trial Court in terms of allowing or otherwise by way of judgment and decree i.e. perpetual injunction. In that eventuality, temporary injunction could not be granted particularly when the document in question i.e. mutation No. 806, finds support from other revenue record.

7. The respondents previously filed an application for the correction of said mutation, subject matter of instant suit, to the Additional Deputy Commissioner (Revenue). Said application was allowed vide order dated 17.06.2014 but afterwards the Commissioner (Revenue) through an order dated 04.05.2016, on an appeal filed by the present petitioners, set aside the said order and observed that the respondents could not produce any documentary evidence to show that Mst. Sakina Bi was the daughter of Jalal son of Jewan and thereafter respondents were advised to approach the Civil Court for final adjudication of the matter.

8. The controversy at hand revolves around the disputed questions of facts, which may or may not be interlinked and connected. Nevertheless, a conclusive determination in this regard is entirely dependent upon oral as well as documentary evidence, to be produced by the parties. At this juncture, the petitioners who are in possession of the property and are enjoying the same since long, to create/put any clog in such a way that their right to exercise longstanding right is intervened, that, too, through a court order, does not seem to be reasoned and just.

9. The material available on record inclusive of documents exhibited so far in the Trial Court, *prima facie*,

shows that petitioners/defendants are entitled to free and lawful usufruct of the suit property. Obviously, all their actions would be subject to final outcome of the main suit. The petitioners specifically objected upon the maintainability of the suit on the ground that impugned mutation was attested in the year 1966 and had been challenged in the year 2013, while said Sakina Bi did not challenge the said entry in her life time. The learned Appellate Court in impugned order dated 28.04.2018 observed that limitation is not a bar to */is* regarding inheritance and decided the matter in favour of the respondents. In my humble view, limitation is a mixed question of law and facts as such this was the prerogative of the learned Trial Court to decide the same after recording of evidence. Since, in the pleadings there is a controversy in that respect, after the learned Additional District Judge has decided the same then nothing was left for the Trial Court to adjudicate upon regarding said subject matter. In that the learned Appellate Court acted illegally because peculiar facts of the case had to be looked into for deciding the same. The result might or might not be the same, but in both the eventualities fact remains that the jurisdiction of the Trial Court had been exercised by the Appellate Court which was not vested in it, because law requires that things should be done in a manner in which law requires to be done and not otherwise.

10. All the above questions would be decided by the learned Trial Court after recording of evidence on the issues already framed and in the light of pleadings of the parties. However, for grant of temporary injunction three established ingredients must coexist i.e. *prima facie* case, irreparable loss to the plaintiff if injunction is not granted and balance of convenience. At present, petitioners/defendants are in possession of the disputed land/

property since decades and detailed inquiry/evidence is required to finally adjudicate upon the */is*, resultantly the right, if any, is existent in favour of the respondents/plaintiffs that depends upon final outcome of the main suit. It appears that present petitioners/defendants would suffer irreparable loss if injunction as prayed for by the respondents/plaintiff is allowed.

11. To elaborate the concept of convenience, I am guided by the two recent judgments of the Sindh High Court jurisdiction reported as *Al-Tamash Medical Society through Secretary vs Dr. Anwar Bin Ye Ju and 9 others (2019 CLC Karachi 1) & M/s Rashid Silk Mills and 29 others vs Federation of Pakistan and others (2019 PLD Sindh 189)*, wherein it is held that balance of convenience in fact means balance of inconvenience and it is the duty of the Court to balance the said inconvenience i.e. if an injunction is granted but suit is ultimately decided against the plaintiffs and if injunction is not granted but suit is decided in favour of the plaintiff, the Court is required to weigh mischief of both the parties. It is for the plaintiff to prove that inconvenience caused to the plaintiff would be greater than to defendant if injunction is not granted. When above principle is applied in the case at hand then it appears that inconvenience cause to the defendant would be greater if injunction is allowed, then to the plaintiff i.e. greater damage would be caused to the defendant by granting injunction. When these two elements are nonexistent and for grant of temporary injunction that three have to coexist, so application for temporary injunction allowed by the learned ADJ is infact exercise of jurisdiction illegally.

12. The case at hand appears to be for the purposes of adjudication of application under Order XXXIX Rules 1&2 CPC for restoration of order passed by the learned Trial Court vide order dated 15.09.2017. In this view of the

matter, the order of the learned Appellate Court, impugned herein, is not legally sustainable, therefore, is interfered with by allowing the instant civil revision petition, impugned order dated 28.04.2018 passed by the learned Additional District Judge-VI Islamabad-East is set-aside while that of the learned Trial Court dated 15.09.2017 is restored. Consequently, application under Order XXXIX Rules 1&2 CPC filed by the respondents/ plaintiffs is dismissed.

13. However, before parting with this order, it is clarified that the observations made hereinabove are tentative in nature and the learned Civil Judge shall not be influenced by any such observation and may decide the case in accordance with law after examining the evidence produced by the parties.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail

Announced in open Court on 14.04.2020.

JUDGE

Approved for reporting.