

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi

Civil Petition No.290-K of 2024

(On appeal from the Judgment dated
22.01.2024 passed by the High Court of
Sindh, Circuit Court Hyderabad in IInd
Appeal No.39/2023)

Ahmed Ali Talpur

...Petitioner(s)

Versus

Sub-Registrar Latifabad, Hyderabad and
others

...Respondent(s)

For the Petitioner(s) : Mr. Naeem Suleman, ASC

For Respondent No.4 : Mr. Rafiq Ahmed Kalwar, ASC
Mr. Ghulam Rasool Mangi, AOR
a/w Respondent No.4.

For Respondents No.1-3 : Mr. Hakim Ali Shaikh, AAG.

Date of Hearing : 24.12.2024

Judgment

Muhammad Ali Mazhar, J.- This Civil Petition for leave to appeal is directed against the Judgment dated 22.01.2024 passed by the High Court of Sindh, Circuit Court Hyderabad, whereby the Second Appeal No.39/2023 filed by the petitioner was dismissed.

2. The ephemeral facts of the case are that the petitioner filed F.C. Suit No.327/2023 in the Court of IVth Senior Civil Judge, Hyderabad, seeking a declaration, cancellation, mandatory and permanent injunction against the respondent No. 4 (the petitioner's real father), alleging that Bungalow No. A-26, Unit No. 3, Shah Latifabad, Hyderabad, was gifted to him by respondent No. 4 *vide* a declaration of oral gift dated 08.10.2007. In the aforementioned lawsuit,

the petitioner entreated for a declaration of ownership of the suit property by dint of the allotment order dated 20.11.2007 and a decree for the cancellation of the lease deed dated 06.02.2023 in favour of defendant No. 4. The petitioner also sought directions against defendants No. 1 and 2 (official respondents) to register the lease deed in his favour. Additionally, he sought a decree for permanent injunction restraining the respondents/defendants from transferring, alienating, creating any third-party interests, or dispossessing him from the suit property.

3. After receiving summons, respondent No. 4 filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") for the rejection of the plaint on the grounds that the suit is not maintainable; the Court lacked jurisdiction to try the suit; the suit was barred under Sections 42 and 54 of the Specific Relief Act, 1877 ("SRA"); the plaintiff had no *locus standi* to file the suit; the suit was undervalued, and the plaint was insufficiently stamped. Furthermore, it was contended that the plaintiff had no cause of action to file the suit as he lacked any registered document in his favour, therefore the suit, devoid of any legal character was liable to be dismissed, and that the suit was bad for misjoinder and non-joinder of necessary parties. Lastly, it was claimed that the plaintiff approached the Court with unclean hands and *male fide* intentions to drag the defendants into unnecessary litigation.

4. The learned Senior Civil Judge, Hyderabad, *vide* Order dated 28.02.2023, rejected the plaint. Being aggrieved, the petitioner challenged the rejection order before the VIIIth Additional & District Judge, Hyderabad, but his appeal was dismissed. Subsequently, the petitioner filed a Second Appeal in the High Court, which was also dismissed by means of the impugned judgment.

5. The learned counsel for the petitioner argued that various triable issues were raised in the plaint, but the Trial Court, the Appellate Court, and even the High Court in the Second

Appeal failed to consider the basic condition that, before rejecting the plaint, only the averments made in the plaint should be examined. He highlighted several documents to assert the petitioner's legal character, which, according to him, justified the filing of the suit. He contended that the controversy and cause of action pleaded in the suit could not be resolved without allowing evidence from the parties. He reiterated that the property in question was gifted by respondent No. 4 to the petitioner and was subsequently mutated/allotted in his favour but later cancelled without notice, after which the property was leased out in favour of respondent No. 4. He asserted that these relevant facts were ignored by all the courts below.

6. The learned counsel for respondent No. 4, who had already filed a caveat, while waiving notice, argued that the pleas taken in the plaint by the petitioner were mutually destructive. On one hand, it was alleged that the property was gifted by the father, while on the other hand, documents were attached to the civil petition suggesting that the petitioner had purchased the property. He further argued that the signatures of respondent No. 4 on the gift deed were forged and manipulated by the petitioner to unlawfully acquire the property of his father and deprive his sisters of their shares. He further argued that, although the property had been transferred fraudulently in favour of the petitioner, it was subsequently cancelled on 09.01.2023. As of now, the property stands leased in the name of respondent No. 4 as its exclusive owner.

7. The learned A.A.G., representing respondents No. 1 to 3, argued that the question of whether the gift was genuine or forged could not be summarily decided and required evidence from both parties.

8. Heard the arguments. The constituents or components of Order VII Rule 11, CPC, require proper appreciation and cannot be decided in a slipshod or perfunctory manner. It is an age-old, well-settled legal exposition that, before ordering

the rejection of a plaint, the Court must first discharge its onerous duty of examining whether the plaint discloses a cause of action; whether the relief claimed is undervalued, and if so, whether the plaintiff, on being required by the Court to correct the valuation within a fixed time, has failed to do so; whether the relief is properly valued but the plaint is written upon an insufficiently stamped paper, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a fixed time, has failed to do so; and whether the suit appears, from the statement in the plaint, to be barred by any law.

9. In the application for rejection of plaint, the initial plea was that the suit was barred under Section 42 of the SRA, which provides that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief. The expression "legal character" as used in Section 42 is equivalent to legal status, and legal status is a legal right. According to Salmond's Jurisprudence, there are four distinct kinds of 'right': (1) rights (in the strict sense); (2) liberties; (3) powers; and (4) immunities. Under Section 42 of the SRA, the word 'right' is used in a wider sense and the two expressions "right as to any property" and "right to any property" have the same connotation without any adverse repercussions. Lord Cottonham said, in Taylor v. Salmon, that "it is the duty of a court of equity to adapt its practice and course of proceedings, as far as possible, to the existing state of society and to apply its jurisdiction to all those new cases, which from the progress daily made in the affairs of men, must continually arise and not from too strict an adherence to forms and rules established under very different circumstances, decline to administer justice and to enforce rights for which there is no other remedy" (1838) 4 Myln and Cr 134 [Ref: C. M. Row, Law of Injunctions, 8th

Edition]. In the United States, both in the Federal and Uniform laws, the word "right" alone is used, so that a party may obtain a declaration as to any legal right which, of course, means a justiciable right [Ref: Cf. Ashwender v. Teinessee Valley Authority, 297 U.S. 288, p. 325; L. Ed. 688 (1936), p. 699]. In keeping with Cf. 62 Harvard Law Review at pp. 875-76 [Ref: Anand & Iyer's Commentary on Specific Relief Act, 11th Edition, Page 927], the word 'right' has been interpreted to include 'liability' as well. This interpretation allows actions to be entertained against the Government and other public bodies to determine their liability, duty, or power. 'Right' also includes immunity, such as the inapplicability of a statute to the plaintiff. Since the word 'right' is not confined to proprietary rights, courts have encountered no difficulty in making declarations regarding contractual rights, the right to practice a profession, or similar matters. [Ref: judgment authored by one of us in the case of Al-Tamash Medical Society through Secretary v. Dr. Anwar Ye Bin Ju (2017 MLD 785)]

10. No doubt, the spirit of Order VII Rule 11, CPC, accentuates that an incompetent suit should be laid to rest at the earliest moment so that no further time is wasted over an issue that is bound to collapse or is not permitted by law. The general philosophy is that ineffectual and unproductive lawsuits should be buried at the beginning to save the precious time of the court, which can be better utilized in addressing serious and genuine litigation. However, this principle does not grant a license to invoke this provision in every lawsuit merely to prolong or drag the proceedings. Simultaneously, courts should not permit such trickeries aimed at delay. When deciding an application under this provision, a meaningful reading of the plaint is required by the court as a staunch duty to reach a just conclusion about whether rejection is warranted within the stipulations and preconditions laid out in the Rule. If the lawsuit, on its face, is incompetent, not due to any formal, technical, or curable defect but because of an express or implied embargo

imposed by law, it should not be allowed to encumber legal proceedings further. However, the law does not permit piecemeal rejection. If even one prayer in the plaint is found to be maintainable, the plaint cannot be rejected in parts. What is essentially required is for the plaintiff to demonstrate not only that a right has been infringed in a manner entitling them to relief but also that, at the time of approaching the Court, the right to seek that relief was subsisting. A dearth or weakness of proof in the circumstances of the case does not justify the conclusion that no cause of action is disclosed in the plaint. For the rejection of a plaint, the Court cannot consider pleas raised by the defendants at that stage, as those are merely contentions unsupported by any evidence on record. Nonetheless, if some material apart from the plaint is available on record and admitted by the plaintiff, the Court may take it into consideration. However, in the case of mixed questions of law and fact, the correct approach is to allow the suit to proceed to the written statement and discovery phases, determining the *lis* either by framing preliminary issues or through a regular trial with equal opportunities for both parties.

11. Another important aspect cannot be overlooked that whenever an application under Order VII Rule 11, CPC, is filed, it must distinctly articulate how and on what grounds the plaint is liable to be rejected, rather than making sweeping or trivial allegations to waste the court's valuable time or drag and delay the proceedings. It is well-established principle that for substantial questions of facts or law, the provisions of Order VII Rule 11, CPC, cannot be invoked. The proper course is to frame issues and decide them on merits in light of the evidence. The court is duty-bound to ensure substantial justice between the parties and not render them remediless. The power conferred under Order VII Rule 11, CPC, is drastic in nature, allowing the termination of lawsuits. Therefore, the Court must be confident that rejection is justified under the enumerated conditions. The

letter of the law does not envisage a particular stage at which the other side may object that the plaint is genuinely hit by Order VII Rule 11, CPC. Nor does the Rule explicitly state whether such an application may be filed before or after the filing of the written statement. However, in our view, the essence of the Rule demonstrates, in its literal vision, that its application is independent and does not require waiting for the filing of the written statement. Even the court may reject the plaint on its own motion as a sense of duty if it is found to be genuinely hit by any of the disability or infirmity provided in the clauses of Order VII Rule 11, CPC. However, before rejecting the plaint in its prudence and judiciousness, the court must provide the plaintiff with the right of audience. If the plaint is rejected, then under Rule 12, the Judge is bound to record an order to that effect, stating the reasons for such order.

12. In the case at hand, the bone of contention is whether the father has gifted the property in question to his son or whether the gift deed is based on fraud, with forged or manipulated signatures. The learned Trial Court rejected the plaint solely on the notion that the petitioner/plaintiff relied on an unregistered gift deed, while respondent No. 4 possesses a registered lease deed for the same property. Hence, the petitioner/plaintiff was deemed to have no legal standing to file the lawsuit. We completely disagree with the findings recorded by the Trial Court, at least for the purposes of rejecting the plaint. Numerous documents are available on record, and based on the same alleged unregistered gift deed, the property was transferred to the petitioner on 20.11.2007. However, it was cancelled *vide* a letter dated 09.01.2023 issued by the Director of Land, Hyderabad Municipal Corporation, and communicated to respondent No. 4 without prior notice. Evidently, this cancellation was based on respondent No. 4's application, in which he alleged that his disobedient son (the petitioner) secured the allotment through fabrication and sought its cancellation to restore the property to him (the father).

Conversely, the petitioner detailed all relevant facts in the plaint, including those in paragraphs 8, 9, and 19, to establish the cause of action. The father may have a strong case if fraud was indeed committed by the son, and if the gift deed and related transfer proceedings were based on fraud and misrepresentation. However, such a controversy cannot be decided summarily without framing proper issues and allowing the parties to present evidence. The controversy involved does not support the conclusion that the petitioner approached the Court without cause of action or that the plaint is barred by any law under Order VII Rule 11, CPC. Furthermore, whether the petitioner/plaintiff approached the Court with clean or unclean hands is irrelevant for rejecting the plaint when triable issues are discernible for proper adjudication. Summary rejection would unjustly render the parties remediless.

13. The parties are bound by their pleadings, and any plea not raised initially cannot be introduced subsequently. The entire framework of the lawsuit was based on the plea of gift, not purchase, and no such plea was incorporated in the plaint. The plaintiff cannot substantiate or prove a case beyond the scope of their pleadings. Any evidence brought on record outside the purview of the pleadings can be ignored by the Court.

14. The learned counsel for respondent No. 4 emphasized that the rejection of the plaint has attained concurrent findings. However, we have no reluctance in holding that if the concurrent findings recorded by the lower fora are found to be in violation of the law or based on a flagrant and obvious defect floating on the surface of the record, such concurrent findings cannot be treated as so sacrosanct or sanctified that they cannot be upset or reversed, come what may. In this case, the Trial Court's order was not properly vetted by the Appellate Court and even by the High Court in the Second Appeal, which affirmed the rejection of the plaint without addressing the averments in the plaint, where the finest question of law under Section 100, CPC, of whether

the plaint was rightly rejected in the presence of triable issues, was ignored. Both the Appellate Courts approved the rejection without appreciating the core controversy between the father and son as set out in the plaint. The purpose of the remedy of appeals is to ensure that the court below has decided the *lis* in accordance with the law and without any error. Where glaring errors, non-reading or misreading of evidence, or any legal and jurisdictional issues arise, the stumbling block of the doctrine of concurrent findings cannot shield flawed and erroneous decisions from correction.

15. The order passed by the Trial Court for the rejection of plaint, affirmed by the first Appellate Court, and then affirmed by the High Court in Second Appeal, deserves to be quashed and set aside. While we were at the verge of setting aside the aforesaid order/judgments and remanding the matter back to the Trial Court for decision on merits, the learned counsel for the parties agreed on some mutual terms for the disposal of this Civil Petition as set down in the succeeding paragraph.

16. As a result of the above discussion, this Civil Petition is converted into an appeal and allowed in the following terms:

(i) The Order passed by the IVth Senior Civil Judge, Hyderabad, in F.C. Suit No. 327/2023, dated 28.02.2023, the judgment passed by VIIIth Additional & District Judge, Hyderabad, in Civil Appeal No. 61/2023, dated 15.05.2023, and the judgment passed by the Sindh High Court in Second Appeal No. 39/2023 dated 22.04.2024, are all set aside.

(ii) Respondent No. 4 will file a written statement in the Trial Court within a period of three weeks with an advance copy to the petitioner/plaintiff.

(iii) The main controversy is in relation to the factum and execution of the gift deed by the father in favour of his son. Therefore, immediately upon the filing of the written statement, the Trial Court shall frame the preliminary issue regarding the authenticity of the gift deed, specifically whether it was executed by respondent No. 4 in favour of the petitioner of his own free will and volition, or if it

is a forged, manipulated, or fabricated document intended to unlawfully usurp the property through unfair means.

(iv) To nip it in the bud, the Trial Court shall record evidence on the preliminary issue, which is sufficient to resolve the entire controversy between the father and son. If so required, any party may file an application to send the gift deed to a handwriting expert or for forensic testing. If deemed necessary, the Trial Court may pass appropriate orders in this regard.

(v) The Trial Court, after recording the evidence of the petitioner and respondent No. 4, as well as the evidence of any other official(s)/person(s) summoned according to the list of witnesses submitted by the parties, shall decide the suit on merits within a period of four months positively, on the basis of the one and only issue, conceded by the parties, to be framed as the preliminary issue, which in fact goes to the root of the case for the proper settlement of the controversy.

(vi) The Trial Court shall not grant any unnecessary/undue adjournments to the parties and shall also make every effort to decide the pending suit within the stipulated period. A compliance report shall also be submitted accordingly.

Judge

Judge

Karachi
24.12.2024
Khalid
Approved for Reporting