

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

C.P No.D-116 of 2014

[Lal Bux versus IInd Additional District Judge, Hyderabad & Others]

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

Present:-

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon

Petitioner: Through Mr. Irfan A. Qureshi advocate
Respondent No.6: Through Mr. Jagdish R. Mullani advocate
Province of Sindh: Mr. Allah Bachayo Soomro, Additional A.G
Date of hearing: 20.08.2020
Date of Decision: 20.08.2020

ORDER

ABDUL MAALIK GADDI, J:- Through this constitutional petition the petitioner Lal Bux has challenged the order dated 18.01.2014, passed by learned IInd Additional District Judge, Hyderabad in Civil Revision Application No.58 of 2013, whereby, he rejected the plaint of petitioner under Order 7 Rule 11 CPC and set aside the order dated 16.09.2013 passed by learned Vth Senior Civil Judge, Hyderabad in F.C Suit No.603 of 2011.

2. Facts of the matter are that petitioner herein filed a First Class Suit No.603 of 2011 for Declaration, Partition, Cancellation of Registered Deed, Mandatory and Permanent Injunction against his father (respondent No.6 herein), according to which there is a joint agricultural land bearing R.S Nos.39(2.00), 40/1-2(3.39), 50/3(2.01), 51/1-2(8.02), 46/2-3(3.34), 97/1-2(3.19), 98/3-4 (8.00), 107/1-4 (2.0), 107/1-2-3-4(12-01), 108/1-2-5-6(9-02), 108/5(1-08), 108/4(1-39), 103/1-2(3-10), 42/1(1-16), 41/1-2(3.23) in Deh Rahuki and S. No.105(8-09), 106(9-11), 110(1-2), 112(2-25) and 113(1-16) in Deh Narajani total area 79-09 acres. It has further been alleged in the plaint that some unconcerned persons tried to get the sale certificate in respect of R.S No.110(1-2) in Deh Narejani out of aforesaid land, hence petitioner herein submitted application before respondent No.4 herein requesting him not to issue sale certificate until the mentioned land is partitioned and finally he filed the subject suit. After service the respondent No.6 herein filed his Written Statement and then issues were

framed by the Trial Court on 21.03.2012. However, during pendency of the suit respondent No.6 herein filed an application under Order 7 Rule 11 CPC for rejection of the plaint, which was dismissed by the Trial Court, vide order dated 16.09.2013 but same was allowed by the Revisional Court vide impugned order dated 18.01.2014, hence this petition.

3. It is argued by the learned counsel for the petitioner that the impugned order dated 18.01.2014 passed by learned Revisional Court is against the law and on facts, as such the same is liable to be set aside; that the suit filed by the petitioner is/was very well maintainable; that revenue authorities could partitioned the land only when application was made jointly by all the shareholders in the land, however, such was not the case, therefore, petitioner has rightly filed the suit before Trial Court; that issues were already framed including the issue of maintainability of suit and jurisdiction of Trial Court; that petitioner and respondent No.6 are son and father to each other and are joint owners of subject property; that serious disputed questions of facts and law are involved in this matter, which are only to be decided after recording of evidence by Trial Court but the learned Revisional Court in a hasty manner rejected the plaint without assigning valid reason. He lastly prayed that this petition may be allowed and the case may be remanded back to Trial Court for decision on merits after recording evidence of parties.

4. Conversely, learned counsel for the respondent No.6 supported the impugned order by arguing that jurisdiction of Civil Court is barred in the matters of partition of the land and in this respect the revenue authorities ought to have been approached; that there is no question of title and also there is no instrument for the time being to be cancelled, therefore, question of declaration and cancellation of documents do not arise. He has referred to the provisions of Section 135 and 172 of the Land Revenue Act and Section 9 of CPC. In support of his arguments he has relied upon the case of MUHAMMAD IBRAHIM and others versus MUHAMMAD ISMAIL and others (2005 SCMR 1335) and QAMAR SULTAN and others versus MST. BIBI SUFAIDAN and others (2012 SCMR 695).

5. We have heard the learned counsel for parties at a considerable length and have also gone through the case papers so made available before us.

6. It is an admitted fact that present petitioner has filed a suit for Declaration, Partition, Cancellation of registered Deed, Mandatory and Permanent Injunction with the following prayers:-

- a) *It be declared that the joint property of plaintiff and defendant No.5 may be partitioned under the legal parameters of Land Revenue and till that time, no sale certificate is to be issued in favour of any party.*
- b) *It may be further declare that, in a joint property, no sale certificate is to be issued by the defendants and after objection over the application of issuing sale certificate, if the sale certificate would issue by the defendants, the same may be declared as null & void and on the basis if any registry would execute by the defendant No.5, the same also be declared as illegal, unlawful, void and ab-initio.*
- c) *That, it may also be further declare that the defendant No.5 become a bad ridden, seriously ill, and no registry could be executed on death bad, if the same is executed, which is illegal and contrary to law.*
- d) *That, it may also be issued a mandatory, injunction thereby restraining the defendants, their surveillance, their agents, subordinates and any person/functionary act on behalf of them, the mandatory injunction must be issued immediately in favor of the plaintiff to avoid any multiplicity of complications.*
- e) *That, it may also be issued a permanent injunction in favor of the plaintiff and thereby restraining the defendants, their surveillance, their agents, subordinates and any person / functionary act on behalf of them, the permanent injunction in the shape of the decree be issued in favor of the plaintiff.*
- f) *Any other relief be deemed fit and proper be granted in favor of plaintiff.*
- g) *Cost of the suit be saddle upon the defendants.*

7. We have also gone through the contents of the plaint with the able assistance of learned counsel for the parties and came to the conclusion that in order to reject a plaint, same must be shown to be barred under some law on the basis of averments made in the plaint; Court at that stage would be neither entitled to look into the pleas raised by defendant nor could examine the merits of allegations made in the plaint. It is settled position of law that every allegation made in the plaint has to be accepted as correct while rejecting the plaint under Order 7 Rule 11 CPC; fact that plaintiff might not ultimately succeed in establishing the allegations in the plaint could not be a ground for rejecting the plaint under Order 7 Rule 11 CPC.

8. As observed above, in this matter written statement of respondent No.6 [Jan Muhammad Jehejo] is on record, issues were already framed and the matter was fixed for evidence, but the learned Revisional Court, despite involvement of serious disputed questions of the facts in the matter, has rejected the plaint of the petitioner without assigning any valid reason. During course of arguments we have specifically asked the question from learned counsel for respondent No.6 to point out any averment of the plaint, which appears to be hit/barred by any law, but he has no satisfactory answer with him, however he submitted that subject matter of the suit pertains to partition of land jointly owned by parties and in this respect revenue authorities ought to have been approached. We are not impressed with this argument, for the reasons, that jurisdiction of Civil Court under Section 9 of CPC is very much clear that Civil Court has the jurisdiction to try any suit which comes within the ambit of Section 9 CPC with respect to any official act by the defendants. The maxim *ubi jus ibi remedium* (where there is right, there is remedy) is a fundamental principle of law that any person having right has a corresponding remedy to institute suits in the Court of law unless the jurisdiction of the Court is barred by virtue of the provisions of this Section, Civil Courts are granted general jurisdiction to try all suits of a civil nature in respect of the enforcement of civil rights unless their jurisdiction is either expressly or impliedly barred. The term jurisdiction refers to the legal authority to administer justice in accordance with the means provided by law and subject to the limitations imposed by law. Besides even if where the jurisdiction of the Civil Court is barred and conferred upon Special Tribunals, the Civil Courts being Courts of ultimate jurisdiction will have the jurisdiction to examine the acts of such forums to see whether their acts are in accordance with law or are illegal or even malafide

9. It is also noted that Revisional Court without any specific finding and discussion the summarized the points given in the order of the Trial Court has passed the impugned order and did not consider the material dispute in between the parties in respect of the possession and ownership due to private settlement and just roamed over the findings, that a Civil Court shall not exercise jurisdiction over any claim for partition of an estate or holding, or any question connected with or arising out of proceedings of partition not being a question as to title in any of the property of which partition is sought.

10. After going through the pleadings of the parties it appears that serious disputed questions of facts are involved in this matter in respect of ownership to the extent of their share and with regard to documents cancellation and Trial Court has also already framed the issues in this regard. It is also noted that suit was filed in the year 2011 and almost nine years have been passed. Under these circumstances we do not concur with the order passed by learned Revisional Court for the reasons given above. Consequently the impugned order dated 18.01.2014 passed by learned Revisional Court in Civil Revision Application No.58 of 2013 appears to be suffering from material illegalities and irregularities and has been made in excess or failure to exercise jurisdiction, as such we set aside the same and maintain the order dated 16.09.2013 passed by learned Vth Senior Civil Judge Hyderabad and remand the case to Trial Court. The Suit is deemed to be pending before Trial Court at the stage where it was stopped and parties are directed through their counsel to appear before the Trial Court on 05.09.2020 for proceeding the matter. The Trial Court is directed to decide the subject Suit in accordance with law within four months after receipt a copy of this order without granting any unnecessary adjournment to either of the party. The case laws cited by learned counsel for the respondent No.6 have been perused and considered by us, but did not find applicable to the facts and circumstances of the present case.

Instant petition stands allowed in above terms. However, miscellaneous application, if any, in this petition, is dismissed.

JUDGE

JUDGE