

DEFENCE HOUSING AUTHORITY, LAHORE through Secretary---Appellant

versus

Lt.-Col.(R) RIAZ AKHTAR and 7 others---Respondents

R.F.A. No.631 of 2010, decided on 19th March, 2012.

NASIR SAEED SHEIKH, J.---A suit for possession with recovery of mesne profit was instituted by the respondents Nos.1 to 7 before the learned Civil Judge Lahore originally against Lahore Cantt. Cooperative Housing Society Lahore Cantt. The present appellant subsequently succeeded to the erstwhile housing society. The respondent No.8 was also impleaded as defendant No.2 in the suit vide order dated 24-3-2003 passed by the learned Civil Judge Lahore in the matter. Originally the Lahore Cantt. Cooperative Housing Society Lahore Cantt. contested the suit by submitting a written statement.

2. The learned Civil Judge Lahore framed the following issues arising out of the pleadings of the parties:--

ISSUES

- (1) Whether the suit is incompetent in its present form? OPD
- (2) Whether the suit is barred by time? OPD
- (3) Whether the suit is based upon misconceived facts? If so, its effect? OPD
- (4) Whether the suit is bad for non-joinder of necessary parties and is not maintainable? OPD
- (5) Whether the suit is barred by principle of acquiescence, estoppel, Laches and waiver? OPD
- (6) Whether the suit is bad for mis-joinder of causes of action? OPD
- (7) Whether the plaint has not been verified in accordance with law? If so, its effect?OPD
- (8) Whether the defendant has no right, title or interest in the suit property and the plaintiffs are entitled to possession and mesne profit to the tune of amounts sought for in the suit? OPP
- (9) Whether the sale-deed in favour of the defendant is based upon fraud, misrepresentation, void ab initio and nullity in the eyes of law and the same merits cancellation? OPP
- (9A) Whether the suit-land forms part and parcel of the defendant's housing scheme developed and converted into plots by the defendant many years ago after spending substantial amount, if so, its effect? OPD
- (9B) Whether the proceedings taken,, and orders passed adversely affecting the defendant and its transferors of plots without impleading them as a party or affording them any opportunity of hearing being without jurisdiction, are binding on them? OPD
- (9C) Whether allotment orders passed by the Settlement authorities in favour of the predecessor-in-interest of the plaintiffs after the appeal of the Evacuee Property and Displaced Persons Laws Repeal Act, 1975 were void ab initio, non-existent and without jurisdiction? Whether subsequent orders made and transactions entered into on basis of such void orders conferred any right in and title to the plaintiffs? OPD

- (9D) Whether the defendant bona fide purchased the suit-land from the ostensible owners for valuable consideration after taking reasonable care and caution and whether sale transaction in its favour is protected under S.41 of the Transfer of Property Act, 1882? OPD
- (9E) Whether the claim of the plaintiffs as against the defendant is false and vexatious to their knowledge, if so, its effects? OPD
- (9F) Whether the defendant is in illegal and unauthorized occupation of the suit-land if so whether plaintiffs are entitled to its possession and mesne profits as claimed in the suit? OPP
- (9G) Whether the sale-deed in favour of the defendant registered with the Sub-Registrar Lahore Cantt, on 19-7-1976 is illegal, fraudulent and fictitious and conferred no right, title or interest in the suit-land? OPP
- (9H) Whether the defendant No.2 is the bona fide purchaser allottee of the suit plot and also raised a construction over there? OPD-2
- (10) Relief.

3. The parties produced their respective evidence. The learned Civil Judge Lahore vide judgment and decree dated 10.3.2010 decreed the suit in favour of the plaintiffs/respondents.

4. The present appellant who was the defendant No.1 has preferred the instant Regular First Appeal against the judgment and decree dated 10-3-2010.

5. At the very outset the learned counsel for the appellant has raised an objection that in the instant suit a vital issue No.4 was framed by the learned Civil Judge for deciding the non-maintainability of the suit for non-joinder of necessary parties. It is contended by the learned counsel for the appellant that the appellant-society produced documents Exh.D-2 and D-3 whereby a list of allottees/transferees of the subject plots subject-matter of the instant proceedings were produced before the learned Civil Judge. It is contended that the respective allottees/transferees enumerated in the list Exhs. D2 and D3 are in possession of their respective allotted plots. It is thus argued that the suit was decided by the learned Civil Judge without impleading the necessary parties who are enumerated in the list Exhs.D2 and D3 who are not only in possession of their respective allotted plots but have also raised construction since long as well.

6. The learned counsel for the respondents could not controvert this factual as well as legal position.

7. Arguments have been heard.

8. The appellant society produced documents Exh.D2 and D3 before learned Civil Judge enumerating the allottees/ transferees of the subject plots and those persons have also raised construction at the spot in the form of houses. The P.W.1 Ali Hussain who appeared as the sole witness for proving the case on behalf of the plaintiffs admitted in his evidence that the constructed houses of those numerous persons exist at the spot and they have not been impleaded in the civil suit. Without dilating upon any other point the impugned judgment and decree dated 10-3-2010 passed by the learned Civil Judge Lahore is set aside on the sole ground that the suit has been decided by the learned Civil Judge without impleading the necessary parties as enumerated in the lists Exs.D2 and D3 and that too without affording any reason for this default. The impugned judgment and decree certainly affects those persons more than the present appellant DHA, Lahore.

9. The suit shall be deemed to be pending before the learned Senior Civil Judge

Lahore who shall implead the necessary parties in this matter including the persons enumerated in the documents Exh.D2 and D3 produced during the trial and after allowing all the persons concerned to submit written statement and opportunity to contest the suit the learned Senior Civil Judge Lahore shall decide the whole matter afresh in accordance with law by recording his findings on all the issues. The instant R.F.A. accordingly stands disposed of with no orders as to costs.

K.M.Z./D-3/L

Case remanded.