

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

R.F.A. No.1118/2010

Amina Welfare Trust (Regd.) through its Executor Trustee
Versus
Ashfaq Ahmad Qureshi etc.

JUDGMENT

Date of Hearing:	27.10.2015.
Appellant by:	Mr. Zahid Aziz Bhutta, Advocate.
Respondent No.1 by:	M/s Syed Kazim Bukhari & Muhammad Zahid Sadiq, Advocates.

CH. MUHAMMAD IQBAL, J:- Through this R.F.A., the appellant has challenged the order & decree dated 18.02.2010 whereby plaint of the suit for possession, filed by the appellant, was rejected under Order VII Rule 11 of CPC by the learned Civil Judge Ist Class, Lahore.

2. Brief facts of the case are that the appellant filed a suit for possession of House No.173/A-1, Ahmad Block, New Garden Town, Lahore against respondent No.1 as well as Public at large. On 2.9.2003, power of attorney on behalf of respondent No.1 was filed and despite availing numerous opportunities, he failed to file his written statement whereupon his right of defence was struck off vide order dated 12.2.2004. Thereafter, on 17.7.2006, respondent No.1 filed an application under Order VII Rule 11 CPC on the ground that the suit property is not a trust property as Clause-5 of Deed of Trust excludes it from the classification of trust properties; and that

the suit property is his inherited property, which was owned by his mother. The said application was dismissed by the learned trial Court vide order dated 1.3.2007 by observing that despite availing several opportunities, respondent No.1 did not file the written statement, therefore, his right to file the same was struck off vide order dated 12.2.2004, which has not been challenged by him, as such, without challenging the said order, he cannot file the application under Order VII Rule 11 CPC; and that the question raised in the application requires evidence. Respondent No.1 challenged the order dated 1.3.2007 by filing the Revision Petition No.30/2007 before the learned Addl. District Judge, Lahore, which was accepted and as a consequence thereof, the order dated 1.3.2007 was set aside and the case was remanded back to the learned trial Court for deciding the application under Order VII Rule 11 CPC afresh after hearing the parties vide judgment dated 12.9.2008. Thereafter, on 29.4.2009, respondent No.1 filed second application under Order VII Rule 11 CPC for rejection of the plaint on the ground that the appellant is a trust and it has filed the suit without obtaining permission from the Advocate General, as such, the suit is barred under Section 92 CPC, which was accepted by the learned trial Court vide order and decree dated 18.2.2010 and consequently plaint of the suit for possession, filed by the appellant, was rejected under Order VII Rule 11 of CPC vide order dated 18.2.2010. Hence, this appeal.

3. Learned counsel for the appellant submits that the impugned order and decree is against the law and facts of the case; that the learned trial Court without recording the evidence of the parties, non-suited the appellant/plaintiff by rejecting the plaint under Order VII Rule 11 CPC in hasty and summary manner by observing that the suit is barred under Section 92 CPC as the same was filed without prior permission of the Advocate General whereas in fact the same was not required because the appellant is the owner of the suit property which has illegally been occupied by respondent No.1, as such, the impugned order and decree is not sustainable in the eye of law and is liable to be set aside. In support of his contention, he has placed reliance on the cases of Abdur Rahim & Others Vs. Syed Abu Mahomed Barkat Ali Shah & Others(**AIR 1928 Privy Council 16**) and Bachint Singh & Another Vs. Ganpat Rai & Others (**AIR 1937 Lahore 660**).

4. On the other hand, the learned counsels for respondent No.1 have supported the impugned order & decree dated 18.02.2010 on the ground that without obtaining prior permission under Section 92 CPC from the Advocate General the appellant had filed the suit, therefore the same was not maintainable; and that the appellant had no cause of action to file the suit because under Clause-5 of the Trust Deed, the suit property has been excluded from the ownership of the appellant, as such, learned trial Court has rightly rejected the plaint of the appellant.

5. Heard. Record perused.
6. The questions/issues, which requires resolution by this Court, are that

- 1) Whether prior permission of the Advocate General under Section 92 CPC was required to the appellant to file the suit in hand; and
- 2) Whether the suit property is not a trust property.

For reply of first question, Section 92 of the Civil Procedure Code, 1908, is very much relevant and for the facility of ready reference, the same is reproduced as under: -

“Public charities. — (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Provincial Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree--

- (a) removing any trust;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other reliefs as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.”

From the plain reading of the above provisions of law, it is crystal clear that these provisions of law deals with the internal management/affairs/disputes of the Trust as well as breach of trust and in that eventuality, the suit can only be filed with the consent of the Advocate General. The object of Section 92 CPC is to regulate the institution of the suits for the relief enumerated in the said Section so that the trust and the rights of the public in such trusts are safeguarded and if the reliefs mentioned in the said Section are not claimed, then the suit can be filed without the consent of Advocate General. In other words, to file a suit under Section 92 CPC, the following conditions must be fulfilled: -

- i) There must exist a trust for a public purpose of a charitable or religious nature;
- ii) The plaint must either allege that there is a breach of trust or that the directions of the Court are necessary for the administration of the trust;
- iii) The suit must be a representative one on behalf of the public and not for the assertion of the personal rights of the plaintiffs
- iv) The relief claimed must be one of the reliefs enumerated in Section 92 CPC.

Putting these conditions in juxtaposition to the present case, it appears that the suit in hand was filed by the Trust itself in a private capacity against respondent No.1, who allegedly has occupied the suit property of the Trust illegally, and not for the reliefs mentioned in Section 92 CPC. So, it was not necessary for the appellant to obtain prior consent of the Advocate General under Section 92 CPC for filing the suit in hand. The

learned trial Court has misconstrued the provisions of law and erroneously held that the suit is barred under Section 92 CPC and illegally & without any lawful jurisdiction rejected the plaint under Order VII Rule 11 CPC. In this regard, reliance is placed on the cases of “Fakir Shah and others VS Mehtab Shah Pir Bukhari Masjid Committee and others” (PLD 1989 SC 283), “Miskin VS Additional District Judge, Mansehra and 32 others” (2003 SCMR 121), “Khadim Hussain and 3 others VS Ata Muhammad and 7 others” (PLD 1967 Lahore 915), “Syed Arif Ali Vs Syed Firdous Ali and others” (2002 MLD 908 Karachi), “Jamia Masjid Muhammadia and Madrassa Faizia VS Shamsheer Khan and others” (2003 CLC 682 Karachi), and “Ghulam Yahya through Attorney and Legal Representative VS Ali Muhammad Jamal Maternity Homes” (PLD 2005 Karachi 240).

7. Now coming to the second issue vis-a-vis whether the suit property is the trust property or not, it is submitted that admittedly the appellant is a Trust created under the Trust Act, 1882, by the Chairperson (Late) Begum Amina Ghani Ghuman, which was registered with Sub-Registrar, Lahore on 13.09.2001 and the following properties are mentioned in the Deed of Trust:-

- “1. Amina Welfare Trust Head-Office 173/A-1, Ahmed Block Garden Town, Lahore.
2. Amina Welfare Complex including land and constructed building with shops equipped with furniture and fixture and dispensary situated at corner of Aman Abad Pasroor Road Pul Aik Sialkot.

3. Any of the properties which were so executed in trust deed registered on 05-06-1970 which survive after the demise of my late husband (trustee) and declared in the said trust deed including:
4. Bank A/C in the name of the Trust and
5. Any other further business done by the Trustee and properties referred at No.2 to 5 etc.”

From the bare reading of the above portion of the Deed Trust, it is very much clear that the suit property is included in the Trust Deed because its Head Office is established there inasmuch as Clause-5 of the Trust Deed deals with the business done by the Trustee and the properties referred at Sr. No.2 to 5 etc. Even otherwise, after the words “Any other further business done by the Trustee and properties referred at No.2 to 5 etc.”, mentioned in clause-5, the words “hereinafter referred as Trust Property” are written/printed, which connote to all the properties mentioned above, as such, the property mentioned at Sr. No.1 is also the trust property. Even otherwise, the issue in the suit in hand was that whether respondent No.1 is in illegal possession of the same or not, as such, the learned trial Court has illegally and erroneously declared that the suit property is not the property of the trust.

Moreover, in the first application, respondent No.1 alleged that the suit property is not a trust property rather it is his inherited property whereas in the second application, he alleged that the plaintiff is a trust, as such, the suit filed by it is hit by the provisions of Section 92 CPC. These stances of respondent No.1 are contradictory with each other.

8. It will not be out of place to mention here that earlier respondent No.1 also filed an application under Order VII Rule 11 CPC for rejection of the plaint by raising an objection that the suit property is not the trust property. The learned trial Court dismissed the said application vide order dated 1.3.2007 by observing that despite availing several opportunities, respondent No.1 did not file the written statement, therefore, his right to file the same was struck off vide order dated 12.2.2004, which has not been challenged by him, as such, without challenging the said order, he cannot file the application under Order VII Rule 11 CPC; and that the question raised in the application requires evidence. Respondent No.1 had challenged the said order by filing the revision petition before the learned Addl. District Judge, Lahore, who accepted the same vide judgment dated 12.9.2008 but the said judgment is coram-non-judice because of the reason that under Section 18 of the Civil Courts Ordinance, 1962, the District Judge has the pecuniary jurisdiction to hear the appeal against the order or decree upto the value of Rs.25,00,000/- whereas the appellant in paragraph No.8 of the plaint has assessed the value of the suit for the purposes of Court fee and jurisdiction as Rs.1,30,00,000/-, as such, the Addl. District Judge had no jurisdiction to decide the revision petition. In this regard, reliance is placed on the case of “Muhammad Ayub and 4 others VS Dr. Obaid Ullah and 6 others” (1999 SCMR 394).

9. In view of the above, the instant appeal is accepted, the impugned order and decree dated 18.2.2010 passed by the learned Civil Judge, Lahore is hereby set aside and as a consequence of the same, the application under Order VII Rule 11 CPC is dismissed and the suit filed by the appellant/plaintiff will be deemed to be pending before the learned trial Court who is directed to decide the same afresh strictly on merits and in accordance with law.

10. The parties are directed to appear before the learned District Judge, Lahore, on 1.12.2015, who will entrust the main suit to a competent Court of law for further proceedings.

(Shahid Bilal Hassan)
Judge

(Ch. Muhammad Iqbal)
Judge

Naeem

Announced in open Court on _____.

Approved for reporting.

Judge

Judge