

**IN THE COURT OF MISBAH HUSSAIN,
CIVIL JUDGE CLASS-I,
COURT ROOM NO.4,
JHELUM**

CMS No.....92031622
Civil Suit No..... 1/2021
Date of institution.....22.10.2021
Date of decision.....12.07.2022

*Saghar Ahmed s/o Muhammad Sharif r/o Baig Pur tehsil & district
Jhelum*

(Plaintiff)

Versus

1. *Shafqaat Ahmed s/o Abdul Raheem through special attorney Irfan Rasheed s/o Muhammad Rasheed*
2. *Muhammad Khan s/o Khair Ullah, residents of Miana Kotha, tehsil Dina district Jhelum*

(Defendants)

**SUIT FOR DECLARATION ALONGWITH PERMANENT AND
MANDATORY INJUNCTION AND CANCELLATION OF
RENT DEED DATED 12.06.2021.**

Present: *Raja Shahid Mehmood Advocate learned counsel for plaintiff.
Syed Muhammad Baqir Naqvi Advocate learned counsel for
defendants.*

JUDGMENT

Brief facts of the case as per plaint are that the plaintiff filed a suit for declaration and permanent injunction challenging the registered rent deed dated 12.06.2021 on the ground that the defendant have got registered rent deed by mentioning the abuttals of the property belonging to plaintiff, therefore, the same is liable to be cancelled.

2. On the other side, the defendant filed contesting written statement contending therein that the suit is liable to be dismissed under Order VII Rule 11 CPC because plaintiff has no cause of action or locus standi to file this suit. He further contended that originally the property, the subject matter of the disputed rent deed alongwith another property was in the ownership of Muhammad Yaqoob who vide hibba

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dated 170, gifted the property to his daughter Mst. Safoora Bibi, the predecessor of defendant No.1. After the death of Muhammad Yaqoob in 1988, father of the plaintiff namely Muhammad Sharif filed a civil suit challenging the gift deed dated 24.07.1956. Said suit was dismissed by the civil court vide order dated 16.07.2009 and said order was upheld upto August Supreme Court of Pakistan and late Safoora was declared the owner of property No.1 and property No.2 as mentioned in the headnote of the plaint measuring as 9-marlas and second property measuring 4-marlas; that the defendant No.1 rented out this property through registered rent deed dated 12.06.2021 to defendant No.2 being owner and the plaintiff has no concern whatsoever with the property of defendant No.1 and property as mentioned in the registered rent deed. The abuttals as mentioned by the plaintiff regarding this property are altogether different from the property mentioned in the rent deed. Therefore, the plaintiff has no locus standi and cause of action to file this suit and the same is liable to be dismissed.

3. In this suit, after decision of application u/o XXXIX Rule 1 and 2 CPC, learned administrative court framed the following issues:

ISSUES

1. Whether the plaintiff is entitled to get a decree for cancellation of rent deed as prayed for? OPP
2. Whether the plaintiff is entitled to get a decree for declaration and permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable and liable to be rejected? OPD
4. Relief

4. The case was assigned to the court of undersigned where defendant moved two applications, one for dismissal of suit under Order

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VII Rule 11 CPC and second for reframing of issues on the ground that the learned Admin court did not framed all the issues on the objections taken by defendants in their written statement. Said application for framing of issues was accepted and following issues were reframed on 28.05.2022.

Reframed Issues:

- 1) Whether the suit is barred by law and is liable to be dismissed u/o VII Rule 11 CPC? OPD
- 2) Whether the plaintiff is entailed to a decree for declaration, permanent and mandatory injunction regarding the suit properties as prayed for? OPP
- 3) Whether the impugned rent agreement dated 12.06.2021 is liable to be cancelled being based on fraud, mala-fide, concealment of facts, against law and without having possession over the suit properties? OPP
- 4) Whether the suit property was gifted by maternal grandfather of defendant No.1 to his mother vide gift deed No.170 in year 1956 and since then she was owner in possession of the suit property and after her death, the defendant No.1 alongwith his siblings aer owner in possession of the suit property being legal heirs? OPD-1
- 5) Whether father of the plaintiff filed suit challenging gift mutation No.170 dated 24.07.1956 in year 2007 in civil court which was dismissed and its appeals till August Supreme Court of Pakistan were also dismissed? OPD-1
- 6) Whether brother of defendant No.1 permitted the plaintiff to use the suit house to store his luggage and other articles due to rains etc and later plaintiff lingered on to vacate the suit house on which brother of defendant No.1 has filed suit against the plaintiff? OPD-1
- 7) Whether plaintiff has filed suit in hand by concealment of real facts, previous round of litigation and decisions by Civil Court, learned appellate court, Honorable High Court and August

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Supreme Court of Pakistan and as such suit of the plaintiff is liable to be dismissed with special of Rs.50,000,000/- (five crore rupees) cost u/s 35-A of CPC? OPD-1

8) Relief

5. As the defendant has prayed for dismissal of the suit under Order VII Rule 11 CPC in his written statement. As per amendment in CPC, separate application under Order VII Rule 11-A CPC is barred however the defendant can take plea in written statement and court is bound to decide the maintainability at preliminary stage, therefore, the application of defendant under Order VII rule 11 CPS is disposed off however as issue No.1 was reframed on said objection and as per new amendment, this issue was treated as preliminary issue and learned counsels for the parties were directed to advance arguments on this issue.

*Misbah Hossain
Civil Judge 1st Class
Sheikhpur*

Arguments heard and record perused. My findings of preliminary issue are as under:

Preliminary Issue:

Whether the suit is barred by law and is liable to be dismissed u/o VII Rule 11 CPC? OPD


7. Onus to prove this preliminary issue was placed on the shoulders of defendant. The case of the plaintiff is that defendant No.1 has got registered rent deed dated 12.06.2021 fraudulently by mentioning the abuttals of his property in said rent deed. Disputed rent deed is available on the file as produced by the plaintiff alongwith his plaint. Perusal of said rent deed reveals that this rent deed was regarding house No.2 belonging to defendant No.1 namely Shafqaat Ahmed with the following abuttals:

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plaintiff has no locus standi or cause of action to file this suit. Therefore, the suit of the plaintiff being devoid of any cause of action is hereby dismissed and plaint is rejected under Order VII Rule 11 CPC. Decree sheet be prepared. File be consigned to record room after due compilation and completion.

Announced:
18.07.2022.


M. (Misbah Hussain),
Civil Judge Class-I,
Jhelum.

CERTIFICATE

Certified that this judgment consists of six (6) pages, each page has been dictated, read, corrected (where needed) and signed by me.

18.07.2022.


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Jhelum.
Misbah Hussain
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