

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN, QUETTA

Regular First Appeal 34 of 2021
(CC# 100107405086)

Faizullah
Versus
Senior Member Board of Revenue
Balochistan and others

JUDGMENT

Date of hearing: 02 September 2024 Announced on: 05 September 2024.

Appellant: by M/s Tariq Ali Tahir and Barkhurdar Khan, Advocates .

Respondents: 1, 2, 3, 4 & 6 by Mr. Changaiz Dashti, Asst: Advocate
General and respondent 5 Ms. Shehnaz Rana, Advocate.

GUL HASSAN TAREEN J: - This regular first appeal assails order and decree dated 24 September 2021 passed by the learned Civil Judge-IX Quetta whereby, Civil Suit 110/2019 instituted by the appellant was dismissed.

2. On 04 December 2019, appellant instituted civil suit for declaration, injunction, cancellation, specific performance and consequential relief against the respondents. He pleaded that land bearing survey Nos.156 and 156/1 admeasuring 48610 sq:ft situated at Quarry Road Quetta ('subject property') was leased out to the M/s. The Quetta Distillery (Pvt.) Ltd. ('Q.D.L') vide lease deed dated 25 April 1993 executed between the Deputy Commissioner, Quetta ('respondent 3') on behalf of the Government of Balochistan and the Q.D.L through Adil Rustum Bankwalla for a period of 30 years w.e.f 1 January 1990 on monthly rent of Rs.3000/- as ground rent. Vide agreement dated 31 October 1996, the holding company of the

Q.D.L./lessee, M/s Forbes Forbes Campbell and Company (Pvt.) Ltd ('F.F.C.C') sold out all its shares and fixtures on the subject property to the respondent 5 and handed over possession of the entire Q.D.L to the said vendee. Respondent 5 assumed and took over the entire affairs of the Q.D.L w.e.f. 1 July 1996. The Member Land Utilization, Board of Revenue Balochistan addressed a letter dated 04 October 1992 to the respondent 3, wherein it was mentioned that the subject property was leased out to the Q.D.L on ground rent of Rs.50/- per month in 1943. The respondent 5, while acting as attorney and Managing Director of the Q.D.L, executed a deed of transfer and assignment dated 24 November 2015 with the appellant whereby, it was acknowledged that, the subject property has been transferred to the appellant and he has been placed in possession thereof. Respondent 5 also covenanted that she would apply to the Government of Balochistan for transfer of the assignment through a register lease deed and would render all such assistance as required by the transferor in connection with transfer and assignment of the subject property; as such, valuable rights as lessee were created in favour of the appellant and he came into possession of the subject property as a lawful lessee. Appellant approached to the respondent 5 for performance of her part of contract regarding registration of lease in his favour however, she never refused to perform her such part of obligation. The Senior Member Board of Revenue Balochistan ('respondent 1') vide lease order dated 09 October 2019 has leased out the subject property to the Settlement Office Quetta Region at Quetta and the Directorate of Land Records Balochistan, Quetta for establishment of the offices of said government

organizations for a period of 30 years. Since appellant is in the lawful possession of the subject property and the lease was not determined yet; as such, the property could not have been leased out by the respondent 1 for, in the lease deed dated 25 April 1993, it was agreed upon that the lease of Q.D.L shall be renewable. Appellant approached to the respondent 1 for revocation of lease order dated 09 October 2019, however, he did not pay heed to the appellant's case. In prayer clause, appellant prayed as under:

- i) to declare that the plaintiff is lawful lessee of the property after being transferred by defendant No.5 being transferor in favour of plaintiff;*
- ii) to declare that the plaintiff is in lawful occupation of the property bearing Khasra No.156 and 156/1 measuring 48610 Square Feet situated at Quarry Road Quetta;*
- iii) to declare that the plaintiff is entitled to be dealt with in accordance with law and can not be dispossessed without adopting of course of law and legal formalities [sic];*
- iv) to direct the defendant No.5 to perform all the terms and conditions of deed of transfer and assignment;*
- v) to declare that the lease order No.328-8/LU-2019/1098-105 dated 09.10.2019 is void ab initio and have got no legal effect;*
- vi) to declare that the lease order dated 09.10.2019 has been issued without lawful authority and in violation of law, rules and regulation;*
- vii) to declare that without determination of the lease deed dated 25.04.1993 executed between Quetta Distillery (Pvt.) Ltd and Government of Balochistan, Lease Order dated 09.10.2019 can not be issued;*

- viii) *permanently restrain the defendants not to dispossess the plaintiff by way of permanent and perpetual injunction;*
- ix) *direction be made to the official respondents to renew the Lease Deed in favour of plaintiff and his name be incorporated/registered thereof;*
- x) *any other relief which this Honourable Court deems fit and proper in the circumstances of the case may also be awarded in favour of plaintiff and against the defendants.'*

3. On service of summons, respondents 1 to 4 submitted contesting written statement. The respondent 5 submitted conceding written statement. On such pleadings, the learned Trial Judge framed following issues:

- '1. *Whether the land bearing Khasra No.156 and 156/1, measuring 48610 sq.ft situated at Quarry Road, Quetta was leased out to Quetta Distillery (Pvt.) Ltd vide Lease Deed dated 25.04.1993 and the Deputy Commissioner, Quetta as a Lessor was pleaded to transfer the lease land to Lessee M/s Quetta Distillery (Pvt) Ltd for a period of 30 years w.e.f. 01.01.1990?*
- 2. *Whether the Defendant No.5 through a valid Lease Agreement obtained the possession of Quetta Distillery (Pvt) Ltd from M/s Forbes Forbes Campbell and Company (Pvt) Ltd and thereafter, the Defendant No.5 being Attorney and M.D of M/s Quetta Distillery (Pvt) Ltd executed a valid Deed of Transfer and Assignment with Plaintiff on 23.11.2015 regarding Plot bearing Khasra No.156 and 156/1, measuring 48610 sq.ft situated at Quarry Road, Quetta?*
- 3. *Whether the suit land bearing Khasra No.156 and 156/1, measuring 48610 sq.ft situated at Quarry Road, Quetta has been allotted by Defendant No.1 to*

Defendant No.6 vide Lease Order dated 09.10.2019 in violation of Transfer of Property Act?

4. *Whether the Plaintiff has no locus standi to file the instant suit, no cause of action has accrued to him against the defendants and his suit is liable to be dismissed being not maintainable under the law?*
5. *Whether the plaintiff is entitled for the relief claimed for?*
6. *Relief?'*

4. After framing issues, the learned Trial Judge heard the parties on the issue No.4 and vide order and decree assailed in the instant appeal dismissed the suit and held that appellant had no locus standi to institute the suit.

5. Mr. Tariq Ali Tahir, learned counsel for the appellant states that that appellant is the legal lessee and in possession of the leased property/subject property on the strength of a deed of transfer and assignment dated 24 November 2015; as such, he had locus standi to institute the suit. He states that since appellant stepped into the shoes of lessee (respondent 5), therefore, he is lessee of the subject property and it was mentioned in the lease deed dated 25 April 1993 that the lease shall be renewable, however, instead of renewing it, the respondent 1 illegally leased out the subject property to the Settlement Office Quetta in violation of the said term of the lease deed. He states that appellant was not afforded an opportunity to substantiate his claim by producing evidence, as such, he was condemned unheard.

6. Mr. Changaiz Dashti, learned A.A.G supported the impugned judgment and decree whereas, Ms. Shehnaz Rana, Advocate,

representing respondent 5, supported appellant's learned counsel arguments.

7. Heard. Record gone through.

8. Following point for determination is framed:

'Whether respondent No.5 was the lessee/sub-lessee of the subject property; and that the appellant had locus standi to institute suit on the strength of deed of transfer and assignment dated 24 November 2015 executed between him and the respondent 5?'

Point for determination, the decision thereon and reasons for the decision:

9. Perusal of *jamabandi* reveals that the subject property was recorded on the name of the then Central Government. In the column of superstructure M/s Forbes Forbes Campbell and Company Ltd. was incorporated. In the seventh column of *jamabandi*, the name of Quetta Distillery Ltd was incorporated as tenant. Vide mutation No.229 dated 17 October 1995, the subject property was transferred on the name of the Government of Balochistan. The Government of Balochistan was/is the recorded owner of the subject property. Appellant has pleaded that the subject property was leased out to the Q.D.L by the Government of Balochistan through Deputy Commissioner, Quetta vide lease deed dated 25 April 1993.

10. I have gone through the lease deed dated 25 April 1993. Perusal of it reveals that the Deputy Commissioner, Quetta was not authorized by the Board of Revenue Balochistan, Quetta to lease out the subject property to the Q.D.L. As such, the Deputy Commissioner,

Quetta, without approval in advance by the Board of Revenue, Government of Balochistan, was not authorized to lease out the subject property of the Government of Balochistan. The lease deed does not state any such approval of the Government of Balochistan, therefore, the same has no legal effect. Under section 107, the Transfer of Property Act, 1882 (the 'Act, 1882') '*a lease of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only be a registered instrument*'. Under section 4 second paragraph, the Act, 1882, section 107 shall be read as supplement to the Registration Act, 1908. Section 17 (1) (d), the Act 1908 mandates for registration of the lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent. This unregistered lease deed was not a title document and is considered to be invalid. Appellant has also relied upon an agreement for the sale of movable properties dated 31 October 1996. The said agreement was executed between the F.F.C.C and Abadan F. Abadan and others through attorney, the respondent No.5. The Q.D.L was a subsidiary company of F.F.C.C. The F.F.C.C as the holding company of the Q.D.L sold out its entire share holding in the Q.D.L to the respondent 5 alongwith all assets, fixtures, fittings, machinery, equipments, raw materials etc., in exchange for a price of Rs.25,000,000/-. Vide said agreement, the F.F.C.C had not transferred any leasehold rights of the subject property to the respondent 5.

11. Appellant had also relied upon an unregistered deed of transfer and assignment dated 24 November 2015 executed between the respondent 5 and the appellant whereby, the respondent 5 had

transferred leasehold rights to the appellant. The respondent 5 had merely purchased the assets, fixtures etc. of the Q.D.L through the F.F.C.C vide agreement for sale of movable properties dated 31 October 1996. As such, the respondent 5 was not owner of the leasehold rights of the F.F.C.C or the Q.D.L and in possession of the subject property as lessee of the Government of Balochistan. Since respondent 5 was not the lease holder of the subject property, therefore, she could not have transferred the leasehold rights of the subject property to the appellant. A vendor/transferor cannot pass on to vendee/transferee anything better than he himself had, therefore, it is transferee who has to apply maximum care before going for a transaction. Title of a transferee is dependent upon the strength or weakness of the title of his transferor. Transferee has to sail, swim and sink with transferor and to pursue him for any loss suffered. The maxim on which the principle is based is '*nemo dat quod non-habet*', i.e, '*no one can transfer better title than he himself has*'. Respondent 5 did not have any title of lessee of the subject property, therefore, she could not have transferred leasehold rights to the appellant. Appellant cannot claim that he is the lessee/sub-lessee of the subject property. The transferor of appellant ('respondent 5') was not lessee/sub-lessee of the subject property. Likewise, the transferor of respondent 5 namely F.F.C.C had not transferred its leasehold rights (if any) in the subject property to the respondent 5, as such, the deed of transfer and assignment executed between the appellant and the respondent 5 whereby, respondent had professed for transfer of the leasehold rights on the name of appellant, is void. Respondent 5 had no right and or

interest in the subject property as lessee, therefore, the assignment deed has no legal value and the same had not conferred any right or interest on the appellant within the meaning of section 42, the Specific Relief Act, 1877. Thus, the possession of appellant on the subject property is of illegal occupant and of trespasser.

12. The deed of transfer and assignment dated 24 November 2015 is without consideration. Through such deed, the respondent 5 had neither sold out nor mortgaged nor exchanged nor gifted etc. the subject property to the appellant. Under section 25, the Contract Act, 1872, *'an agreement made without consideration is void'*. The assignment deed does not fall within the ambit of any one of the exceptions provided in sub-sections 1, 2 and 3 of section 25. The assignment deed does not state any stipulation with regard to the amount of consideration paid or promised or part paid and part promised by the appellant to the respondent 5. The deed of transfer and assignment was not enforceable in a suit for specific performance instituted by the appellant, therefore, the learned Trial Judge has rightly held that plaintiff has no locus standi to institute the suit, therefore, findings of the learned Trial Judge on the issue No.4, do not call for interference by this Court.

13. Apart from what has been discussed and observed hereinabove, the subject property was leased out for thirty years to the F.F.C.C through the Q.D.L w.e.f 01 January 1990. The lease deed was expired on 31 December 2019. It was mentioned in the lease deed that the lease shall be renewable after completion of the above term, however, as hereinabove discussed, the lease was not executed by the

Deputy Commissioner, Quetta with the approval of the Board of Revenue, Government of Balochistan, Quetta, as such, this clause has no legal effect. A document which requires compulsory registration is not admissible for want of registration to prove the terms of the lease. The term of the unregistered lease deed dated 25 April 1993 with regard to the renewable of the lease cannot be relied upon to claim or enforce. Even otherwise, the so called lease deed expired on 31 December 2019 and the appellant instituted suit on 04 December 2019 and succeeded to prolong his illegal possession on the subject property. The respondent No.1 has leased out the subject property to the Settlement Office, Quetta Region at Quetta and, the Directorate Land Records Balochistan, Quetta vide lease order dated 09 October 2019 for a period of thirty years. On expiration of the pleaded lease period, the Q.D.L was bound to handover the possession of the subject property to the Government of Balochistan under section 108 (B) (m), the Act, 1882.

For the foregoing reasons, no case is made out for interference with the impugned order and decree of the Trial Court. The appeal is dismissed. No order as to costs. Decree sheet be drawn.

Announced in open Court.
Dated: 05 September, 2024

Judge

Judge