JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No. 316 of 2022

Muhammad Nasim

Versus

Estate Office, etc.

Date of Hearing	:	15.06.2022
Appellant by	:	Malik Nasir Abbas Awan, Advocates.
Respondent by	:	Syed Nazar Hussain Shah, AAG. Tanveer Haider, Estate Director.

ARBAB MUHAMMAD TAHIR, J. Through the instant appeal, appellant impugns judgment and decree dated 30.5.2022, passed by the learned Civil Judge 1st Class, Islamabad-West, whereby his suit for declaration, permanent and mandatory injunction was dismissed.

2- The case set-up by the appellant in the subject suit was to the effect that while serving as Ward Boy BS-14 in the Pakistan Institute of Medical Sciences Islamabad/respondent No.3, allotted Quarter No. 58/5, Cat-V, Sector I-9/4, Islamabad by the respondent No.1-Estate Office vide letter dated 02.1.2013, possession of the same had been with him since January, 20013 and he while apprehending cancellation of said allotment by the respondent No.1, as per past practice, he was constrained to file the suit.

3- The respondents 1&2 in their written statement controverted the stance of the appellant by contending that suit accommodation was sublet by the appellant; it was got vacated from unauthorized occupant as there were directions by the Hon'ble Apex Court in HRC Case No. 20746/2018 to get vacate the official accommodations from unauthorized occupants; that after taking back the possession, suit

accommodation was allotted to senior most Federal Government Servant as per General Waiting List pursuant to judgment dated 19.10.2011 passed in CP No. 1498/2011 and also handed over its possession to the allottee but the appellant again took over its possession forcibly and then filed the suit to give legal cover to his illegal act.

4- The learned Trial Court, out of the pleadings of the parties, framed necessary issues and then recorded evidence of the parties. The appellant himself appeared as PW-1, tendered affidavit Ex.P1 while copies of service card and allotment letter were also tendered in documentary evidence as Ex.P2 and P3 respectively. From the side of respondents 1&2, Assistant Director, Estate Office appeared as DW-1. In documentary evidence, spot inquiry report Ex.D-1, details of allotee Ex.D-2, copy of cancellation letter Ex.D3 and copy of allotment letter of Abdul Majeed Ex.D-4 were tendered. The learned Trial Court, after hearing the parties, dismissed the suit vide impugned judgment and decree, hence being impugned though the instant appeal.

5- Learned counsel for the appellant argued that cross-examination of DW-1 fully corroborates the contention of the appellant as the witness admitted that neither he was part of any inquiry team nor prepared inquiry report and that there is a proper mechanism for cancellation of allotment and the same was not followed in case of the appellant. Learned counsel further argued that the allegation of sublet was not substantiated by the respondents and that the judgment, being based upon incorrect premises is liable to be set aside.

6- On the other hand, learned AAG repelled the above submissions by arguing that appellant had sublet the suit accommodation to third person due to which his allotment was cancelled for which proper procedure was adopted and that the appellant in order to make out a case has improved his stance by deviating from his pleadings which has been noted in the impugned judgment, therefore, appeal is liable to be dismissed.

7- Heard, record examined.

8- It was the stance of the learned counsel for the appellant that as the respondents have failed to discharge onus to prove the facts regarding rightful cancellation of allotment and trespass by the appellant, therefore, the suit had to be decreed as appellant/plaintiff successfully discharged onus put to him under Issue No.01.

9- To answer the question ibid, reliance is placed upon latest judgment of the Hon'ble Apex Court **dated 02.02.2022**, in the case of **Nasir Ali v. Muhammad Asghar (CP No. 3958 of 2019**) wherein the Hon'ble Apex Court has graciously held that:-

> "According to the Article 117 of the Qanun-e-Shahadat Order, 1984, if any person desires a court to give judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and burden of proof lies on him. The terminology and turn of phrase "burden of proof" entails the burden of substantiating a case. The meaning of "onus probandi" is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him. The burden of proof for the deceitful transaction rests normally on the person who impeaches it. In a suit for declaration alleging that the sale was fictitious, the onus is on the plaintiff to prove the same. **Where the evidence of plaintiff was self-contradictory and not confidence inspiring then he must fail and where the case is doubtful, the decision must be given in favour of defendant rather than the plaintiff. It is a well settled exposition of law that the plaintiff must succeed on the strength of his own case rather than the weakness of the defendant**. The lawsuits are determined on preponderance or weighing the scale of probabilities in which Court has to see which party has succeeded to prove his case and discharged the onus of proof which can be scrutinized as a whole together with the contradictions, discrepancies or dearth of proof. It is the burdensome duty of the Court to detach the truth from the falsehood and endeavor should be made in terms of the well-known metaphor, "separate the grain from the chaff" which connotes and obligates the Court to scrutinize and evaluate the evidence recorded in the lis judiciously and cautiously in order to stand apart the falsehood from the truth and judge the quality and not the quantity of evidence.
> [**Emphasis added]**

10- The principle ibid guides to observe that the plaintiff must succeed on the strength of his own case rather than the weakness of the defendant and where evidence of the plaintiff is self-contradictory and not confidence inspiring then he must fail and that where the case is

doubtful, the decision must be given in favour of defendant rather than the plaintiff.

11- In case of the appellant, he had in his stance in plaint that he filed the suit apprehending cancellation of allotment by the respondents while in affidavit Ex.P-1, he improved his version in terms that in March, 2013 he had been away to his native town for a month due to Covid-19 and in his absence, respondents allotted suit accommodation to someone else. It is also established from his statement that at the time of spot inspection, one Mushtaq had been found in occupation of the suit accommodation because as per appellant's statement he was informed about the action by the father of one Nauman and on being questioned, the appellant disclosed his name as Mushtaq. It was the same person in whose possession, the subject quarter was found at the time of inquiry/spot inspection by the officials of respondents. The appellant thus failed to discharge burden of proof lay upon him under Issue No.01 that he was entitled to decree for declaration and permanent injunction as prayed for and under the principle when a person on whom burden of proof lies fails, will lose.

12- In view of above, the impugned judgment and decree dated 30.05.2022 is well reasoned, in accordance with evidence and law on the subject and are not open to any exception. Consequently, instant appeal fails and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on ____.06.2020

JUDGE

//Kamran//