

IN THE HIGH COURT OF SINDH AT KARACHI

C P D – 5436 of 2015

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Mst. Hamida and another
vs.
Mst. Rukhsana Begum and Others

For the Petitioner: Mr. M. Waseemuddin A. Sheikh
Advocate

Date of Hearing: 17.12.2018

Date of Announcement: 17.12.2018

JUDGMENT

Agha Faisal, J: Present petition was filed assailing the judgment and decree, dated 14.05.2004 and 31.05.2004 respectively, delivered by the Court of the learned VIIth Senior Civil Judge, Karachi East (“**Judgment and Decree**”) or in the alternative seeking the setting aside of the order dated 20.11.2011 passed by the learned VIIth Senior Civil Judges, Karachi East (“**12(2) Order**”) and the order dated 29.07.2015 rendered by the learned Additional District Judge, Karachi East (“**Revisional Order**”).

2. Mr. M. Waseemuddin A. Sheikh, Learned counsel for the petitioner submitted that the entire dispute was with respect to property being House No.B-269, Malir Colony, Karachi (“**Subject Property**”). Per learned counsel the said property had been acquired by the petitioner No.2 by virtue of the instrument of gift dated 4th September, 1990. It was next contended that the property was subsequently conveyed by the said petitioner to Hassan Khan S/o Shah Nawaz Khan (“**Hassan Khan**”), inter alia, vide Sale Agreement dated 13.01.1997 and General Power of Attorney dated 06.03.1997. Learned counsel sought to argue

that by virtue of the Judgment and Decree unmerited rights have been recognized with respect to the Subject Property and the same could not be permitted to perpetuate.

3. At this juncture we considered it appropriate to put a direct question to the learned counsel whether the petitioners remained entitled to any rights with respect to the Subject Property. Learned counsel answered the said query in negative and submitted that the said Subject Property had already been conveyed to Hassan Khan for consideration back in the year 1997. The next question put to the learned counsel for the petitioner was to delineate the petitioners' locus standi to maintain the present petition; to which question the learned counsel responded that the legal heirs of deceased Hassan Khan had already challenged the Judgment and Decree and orders passed thereafter before the forum of appropriate jurisdiction, however, the petitioner had moved the present petition to afford supplementary protection to the purported rights of the legal heirs of Hassan Khan.

4. We have noted that the petitioners have admitted that they have no right in the Subject Property and we have also observed that there are no proceedings pursuant to the Judgment and Decree initiated or pending against the present petitioners. While parties to the Judgment and Decree, legal heirs thereof, and/or any person aggrieved remained competent to challenge the order that they are aggrieved by, the right in such respect does not subsist in favour of the petitioners herein. In the present facts and circumstances it is apparent that the petitioners are not aggrieved persons within the definition permissible under the law.

5. It appears that no appeal was preferred against the Judgment and Decree. We have perused the 12(2) Order and find that it is an

exhaustive treatise rendered after framing of issues in such regard. The Revisional Order also appears to have covered all aspects presented there before. Learned counsel for the petitioner has been unable to point out any infirmity with respect to the 12(2) Order or the Revisional Order.

6. It is trite law that the concurrent findings coupled with a preponderance claim supported by evidence may not be ordinarily interfered with by a Court in exercise of its Constitutional jurisdiction. It is also within the contemplation of this Court that the exercise of Constitutional jurisdiction does not generally entail reappraisal of evidence. Reliance in this regard is placed upon the judgments of the superior Courts reported as 1997 SCMR 1139, 2000 SCMR 431, 2004 SCMR 877 and 2002 CLC 1295.

7. The judgment, decree and orders under consideration appear to have considered each aspect of the lis in detail and reasoned findings have been rendered thereupon. The learned counsel for the petitioner has failed to point out any infirmity in the impugned judgment, decree and orders which could precipitate the interference of this Court in the exercise of its Constitutional jurisdiction. In view of the foregoing we are of the considered opinion that the present petition is devoid of merits and hence the same was dismissed vide our short order dated 17.12.2018. These are the reasons for our aforesaid short order.

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Dated 18th December 2018.