

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

C.P No.D-630 of 2020

[Mst. Mattul vs. Khair Muhammad and others]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:-

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon

1. For orders on office objection(s)
2. For orders on M.A No.2994/2020
3. For hearing of main case

22.09.2020

Mr. Waheed Ahmed Awan, advocate for the petitioner

ABDUL MAALIK GADDI:-J

1to3. Through this petition, petitioner has called into question order dated 13.03.2020, passed by IVth Additional District Judge (MCAC) Shaheed Benazirabad in Civil Revision Application No.38 of 2019, whereby, order dated 16.11.2019 passed by IIIrd Senior Civil Shaheed Benazirabad on the application filed by petitioner herein under Order VI Rule 17 CPC in F.C Suit No.219 of 2016 (New) [Old F.C Suit No.272 of 2014) was maintained.

Brief facts of the case are that petitioner herein Mst. Mattul D/o Darya Khan Rind had filed an F.C Suit No.272 of 2014 (old) [new numbered as F.C Suit No.219 of 2016] for declaration, partition & injunction; when the same suit reached at the stage of final arguments, she has moved an application under Order VI Rule 17 CPC for amendment in the plaint, which, as mentioned noted above, was dismissed by the Trial Court, vide order dated 16.11.2019 and she being aggrieved with and dissatisfied by the said order filed a Revision Application, which too was dismissed vide order dated 13.03.2020, hence this petition.

Though it is well settled principle of law that plaint can be amended at any stage of suit before pronouncement of judgment where it does not change the nature of suit, however, a bare reading of amendments, being sought, reveals that if the same are allowed, the entire suit will be changed. Even otherwise, from the perusal of record so made available before us, it reveals that admittedly the subject suit was filed in the year 2014 and upon service defendant had filed written statement and the alleged registered sale deed, on the basis of which the petitioner is seeking amendments in pleadings, was also attached with the said written statement, however, the petitioner remained mum/silent and did not move any application for amendments in pleadings. Record further shows that

defendant No.4 was examined before the Trial Court on 11.09.2018, who again produced the certified true copy of alleged registered sale deed, yet again petitioner remained mum/silent and when the matter reached to the final arguments, she moved the subject application. Upon being confronted with this fact of the matter that as to why petitioner remained silent for a considerable period despite being knowledge, learned counsel for the petitioner has failed to give any satisfactory answer, which shows that petitioner is only want to linger on the matter.

Even otherwise, in a writ jurisdiction High Court has to see as to whether the subordinate Courts have committed any jurisdictional error, un-condonable in nature or in the exercise of jurisdiction committed legal error causing miscarriage of justice, as Hon'ble Superior Court has consistently held that High Court in its constitutional jurisdiction is not supposed to decide such matter as Court of appeal by making reappraisal of evidence and to form a different opinion form one concurrently held by the Courts below.

We have also perused the impugned orders passed by Courts below and find that both Courts below have dealt with each and every aspect of the matter in view of the applicable laws and there is no illegality or error in the impugned orders, which may call interference by this Court. Accordingly, this petition being meritless stands dismissed in limine alongwith listed application.

JUDGE

JUDGE