

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD  
C.P.No.D-1603 of 2019

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For orders on MA-5924/19
3. For hearing of main case.

**07.11.2019.**

Mr. Muhammad Sulleman Unar, advocate for  
petitioner.  
M/s Aamir Ali Memon and Ghulam Shabbir Babar,  
advocates  
Mr. Muhammad Ismail Bhutto, A.A.G.  
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The facts in brief necessary for disposal of instant constitutional petition are that a suit for declaration, partition of the bungalow No.6/142 Defence Thandi Sarak, the suit property and Distribution of belongings of late Haji Abdul Hadi Memon and injunction was filed by the respondent No.1 against the petitioner and others. It was decreed by learned trial Court and such decree was followed by filing of an Execution Application, it was allowed. In the meanwhile, the petitioner by filing an application u/s 12(2) C.P.C sought for setting aside of such decree mainly for the reason that she was not served properly in the above said suit. It was dismissed on 26.02.2019 by learned trial Court and such dismissal was maintained by Revisonal Court on 09.05.2019, such orders of learned trial and Revisional Courts are impugned by the petitioner

before this Court by way of instant petition to be declared illegal with direction to learned trial Court not to execute the decree.

2. It is contended by learned counsel for the petitioner that the father of the petitioner was having the property other than the one, which is subject matter of the decree, the decree holder by not asking for the distribution of the entire property of his father has committed wrong, which could only be made right by this Court by setting aside the impugned orders of learned trial and Revisional Courts with direction to learned trial Court to proceed with the case afresh by calling upon the decree holder to make disclosure of entire property of his father in his suit for purpose of its distribution. In support of his contention he has relied upon case of ***Ghazi Qaiser Pervaiz and another vs Ghazi Faisal Pervaiz and another (2000 CLC Karachi 519)*** and ***Ghulam Rasool and another vs Muhammad Khalid and 2 others (2006 YLR Lahore 2289)***.

3. Learned counsel for the respondent No.1 and learned A.A.G by supporting the impugned orders have sought for dismissal of the instant petition while respondent No.2 to 4 have recorded no objection of, the impugned orders are set aside.

4. We have considered the above arguments and perused the record.

5. The petitioner was party in main suit, which she failed to contest. Consequently, the such suit was decreed, such decree was followed by filing of Execution Application. It has also been allowed.

In that situation, the decree holder could not be denied fruit of decree only for the reason that he has not disclosed entire property in his suit, which was to be inherited by him and other legal heirs of his late father. If, for the sake of arguments, it is believed that the late father of the petitioner was having the property other than the one, which is subject matter of the instant litigation, then the petitioner or anyone else who claims to be entitled such inheritance can ask for partition and separate possession of such property by having a recourse of law by filing their individual suits. In these circumstances, learned trial and Revisional Courts were right to dismiss application u/s 12(2) CPC of the petitioner by way of impugned orders, which could not be said to be illegal or unlawful to be interfered with by this Court.

6. The case law, which is relied upon by learned counsel for the petitioner is on distinguishable facts and circumstances, as in none of case law so relied upon, the decree was set aside by having recourse u/s 12(2) CPC.

7. The instant petition is dismissed accordingly.

JUDGE

JUDGE