

Order Sheet  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

Before:-  
Mr. Justice Nadeem Akhtar  
Mr. Justice Adnan-ul-Karim Memon

**CP No. D- 2342 of 2019**  
(Mst. Naseeban V/s Province of Sindh and others)

Date of hearing  
& decision: 27.11.2019

Faqir Rehmatullah Hisbani, advocate for petitioner  
Mr. Allah Bachayo Soomro, Addl.A.G.

**ORDER**

**ADNAN-UL-KARIM MEMON J**, - The instant Constitution Petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has been filed by the Petitioner, seeking direction to respondents 2 and 3 to issue Sale Certificate, to the extent of her share in the agricultural land situated in Survey Nos. 4, 5 and 6 and others admeasuring 107-07 acres Deh Hot Wassan.

2. Petitioner has premised her case that she owns agricultural lands situated in Hote Wassan, Taluka Jam Nawaz Ali District Sanghar with other co-sharers and such entries i.e. 32, 108 & 109 are already made in the revenue record. Petitioner claims to be a parda-nashin lady as such her lands are being looked after by her husband (Attorney). Petitioner has averred that she moved an application to respondent No.3 / Mukhtiarkar (Revenue) Taluka Jam Nawaz Ali for issuance of sale certificate to the extent of her share in the aforesaid property but he blatantly refused on the ground that subject property is under possession of one Muhammad Ali and his brothers since 30/35 years. She being aggrieved by and dissatisfied with the inaction on the part of Mukhtiarkar concerned has filed the instant petition.

3. Mr. Allah Bachayo Soomro, Addl.A.G has referred to the comments filed by Mukhtiarkar Jam Nawaz Ali and contends that that subject agricultural land bearing Survey Nos. 4, 5 and 6 and others admeasuring 107-07 acres Deh Hot Wassan is under possession of one Muhammad Ali and his brothers since 30/35 years; they are taking crop of the said agricultural land and paying dhal and abyana etc; that the factual controversy cannot be resolved in writ jurisdiction; hence instant petition is not maintainable. He emphasized that the

petitioner has to approach the Revenue authorities for the aforesaid purpose and not this Court.

4. We have heard the parties at length and perused the material available on record.

5. Article 199 of the Constitution, inter alia, provides that the High Court may exercise its powers thereunder only "*if it is satisfied that no other adequate remedy is provided by law*". It is well-settled that if there is any other adequate remedy available to the aggrieved person, he must avail and exhaust such remedy before invoking the Constitutional jurisdiction of High Court, whether such remedy suits him or not. In our view, the doctrine of exhaustion of remedies envisaged in Article 199 prevents unnecessary litigation before the High Court.

6. When a statutory forum is created by law for redressal of grievance in a revenue statute, writ jurisdiction cannot be entertained ignoring the statutory dispensation, as this Court is not a statutory forum of appeal in revenue hierarchy.

7. Case of the petitioner appears to be wholly misconceived and the instant petition is not maintainable on the grounds that prima-facie the petitioner has approached this Court for issuance of sale certificate in its writ jurisdiction without first exhausting the remedy provided to her by law and also in the presence of a dispute with regard to the possession amongst co-sharers, for which Mukhtiarkar concerned has to take decision in accordance with law, either allowing or rejecting the application within a reasonable time. Needless to say that Constitutional jurisdiction of this Court cannot be invoked if any adequate remedy is available and the same is not availed / exhausted by the petitioner. Moreover, while exercising powers under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, this Court cannot travel into any factual controversy. Though learned counsel for the petitioner has tried to explain that petitioner is owner / co-sharer in the subject property and all the documents attached with the petition are genuine, this could only be done after making extensive enquiry and investigation with regard to her assertion and the documents furnished by her. In view of the above, learned counsel has failed to satisfy that how the instant petition is maintainable under Article 199 of the Constitution.

8. Before parting with this case, we cannot resist ourselves in observing that because of cases like this, which on the face of it is not maintainable, precious time of this court is consumed which could have been conveniently utilized in hearing and deciding genuine cases / disputes pending disposal.

Therefore, office is directed not to entertain such petitions for issuance of sale certificate wherein (a) petitioner has not approached the competent forum in accordance with law ; (b) petitioner's application for such purpose is pending before the competent forum ; and / or, (c) any factual controversy with regard to the subject land and/or co-sharer is involved, or any litigation in respect thereof is sub-judice before any forum.

9. This petition thus is found to be misconceived and not maintainable and is accordingly dismissed along with the pending application(s). However, petitioner will be at liberty to avail and exhaust their remedy, if any, as provided under the law.

JUDGE

JUDGE

Karar\_hussain/PS\*