

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No. D-5764 of 2020

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

Fresh case

1. For order on office objection
2. For order on CMA No.24677/2020
3. For hearing of Main Case.

17.11.2021

Mr. Sikandar Khan, advocate for the Petitioners.

YOUSUF ALI SAYEED, J. The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the order dated 15.09.2020 made by the IXth Addl. District & Session Judge (MCAC) Karachi East in Civil Revision No.65 of 2020, dismissing said revision so as to uphold the Order made by the XIth Senior Civil Judge, Karachi East in FC Suit No.508 of 2020 filed by the petitioner, whereby the Plaint had been rejected by the trial Court of its own accord inasmuch as it was found that the suit was not maintainable in view of the earlier rejection of the plaint in Suit No.535 of 2017 previously filed by the petitioner in relation to the same property against the same party.

The scope of controversy and reasons for rejection are succinctly encapsulated in the order of the Revisional Court, the relevant excerpt of which reads as follows;

“2. The brief facts are that applicant had filed a suit for cancellation of documents and permanent injunction under Section 39 of Specific Relief Act, 1877 against the respondents. During the course of preliminary hearing, learned trial court rejected the plaint under Order VII Rule 11 CPC without any application, in exercise of suo-moto powers. Therefore, being dissatisfied with the impugned order, learned counsel for the applicant filed civil revision in hand.

4. I have heard learned counsel for the applicant and perused the impugned order and relevant record. Learned counsel for the applicant argued on the point of maintainability with the contention that suit was filed before the trial court by showing the fresh cause of action on the basis of duplicate documents as the earlier suit was on different subject matter which was dismissed under Order VII Rule 11 CPC. During the course of hearing learned counsel for the applicant mainly relied on memo of revision and case laws 1988 CLC 1207 Karachi and 2004 YLR 577 Lahore.

5. From the perusal of record it appears that admittedly earlier civil suit bearing No. 535/2017 was filed by the applicant over the same property against same parties but the same plaint has already been rejected under Order VII Rule 11 CPC by the concerned court viz. learned VTH Senior Civil Judge Karachi East, on the score that suit was barred by law of limitation. Thereafter being aggrieved applicant preferred appeal bearing No.54/2018 against the impugned order but same was also dismissed vide order dated: 10.10.2019 by the sessions court. Presently, second appeal bearing No. 197/2019 is also pending before Hon'ble High Court of Sindh between the same parties over the same subject matter. The instant suit is filed for cancellation of duplicate sale deed and relevant documents, in order to secure the Limitations. Therefore, I am agreed with the findings of learned trial court that applicant has no cause of action if it be presumed that respondent side obtained duplicate documents, then it would not give any fresh cause of action to the applicants for seeking their cancellation as duplicate document or certified true copy always be issued from their originals record. Therefore, no fresh cause of action accrued to applicant for filing fresh suit on the basis of duplicate documents. However, learned trial court has already given the opportunity to the applicant that if the applicants have any grievance, they must file a suit for cancellation of original documents, from which the duplicate/certified copy was issued. It is pertinent to mention here that IIND appeal is already pending before Hon'ble High Court of Sindh, Karachi for the redressal of grievances of the applicant.”

On query posed, learned counsel conceded that the aforementioned backdrop had been correctly stated by the Revisional Court, and he could not advance any cogent argument to establish how in the wake or the rejection of the Plaint in the Petitioner's Suit for specific performance, a subsequent Suit for cancellation could be maintained by him, and that too for cancellation of duplicates as observed.

As such, the Petition is bereft of force and fails, hence stands dismissed accordingly.

Judge

Chief Justice

TariqAli/PA