

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 C. P. No. D-3495 of 2021

Date	Order with signature of Judge
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DIRECTION

For orders as to maintainability of Petition.

13.09.2021.

Mr. Muhammad Nazim Khokhar, Advocate for the Petitioners.

The Petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution assailing the Order dated 07.04.2021 made by the learned District Judge, Karachi, West dismissing Civil Revision No.44 of 2021 that had been filed by them challenging the earlier Order dated 19.03.2021 made on their Application under Order XVIII Rule 18 CPC (the “**Underlying Application**”) in Civil Suit No.2605 of 2019 (the “**Suit**”).

The backdrop to this Petition is that the Petitioners had filed the Suit for Administration, Partition and Permanent Injunction in respect of a property bearing No.27/10, 5-G, Saeedabad, Baldia Town, Karachi (the “**Suit Property**”) said to have belonged to one Abdul Rahman, who had passed away in the year 1998. The claim was based on the assertion that they made the successors/heirs of one of the legal heirs of Abdul Rahman, namely his son, Sher Muhammad and that some portion of such Property is in wrongful possession of the defendants, being his other sons and daughters or their successor-in-interest. Such claim was resisted by the defendants, with it being stated by the heirs of Defendant No.4 that the Suit Property had in fact belonged to the wife of late Abdul Rahman and after her death all the legal heirs had executed a registered Deed of Relinquishment in favour of their predecessor, namely one Saleh Muhammad on 05.07.2008, which fact has been suppressed.

In this framework, the Underlying Application had been filed on behalf of the Petitioners seeking that a Commissioner be appointed for conducting an inspection of the Suit Property, which was dismissed by the trial Court with the observation that as the defendants’ possession was not denied, there was no reason to undertake such exercise. The relevant extract from the Order dated 19.03.2021 is reproduced herein below:-

“Record reveals that originally suit property was owned by Mst. Hawwa Bai, after her death plaintiff and Defendants No.1 to 4 become absolute owner of the property, Plaintiff’s predecessor

Sher Muhammad during lifetime executed relinquishment deed alongwith other defendants in favour of the Defendant No.4. Therefore, version of Defendant No.4 is that if the execution of relinquishment deed of the year 2008 he is in possession of the suit property. The Plaintiffs have not denied the possession of the Defendant over the suit property. The Defendant No.4 is in possession of property for decades, plaintiff remained silent during such period and filed this suit after 10/15 years. Besides this as per version of plaintiff defendants are co-sharer of the suit property, therefore, at this stage it cannot opined that they are in adverse possession.

In view of above position, plaintiff has failed to satisfy the Court that why possession of the property could be verified when it is admitted position that defendants are also owner of the property and they are retaining the same. Therefore, this application stands dismissed with no order as to costs. ”

Such order was assailed through the aforementioned Civil Revision, which was also dismissed as requiring no interference. On query posed as to what illegality or irregularity afflicted the Orders of the fora below, learned counsel for the Petitioners was unable to advance any satisfactory explanation on that score.

Under the given circumstances, we find no force in the instant Petition, which stands dismissed accordingly alongwith pending applications.

CHIEF JUSTICE

JUDGE

MUBASHIR