

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

C.P. No. D — 807 of 2011.

DATE	ORDER WITH SIGNATURE OF JUDGE[s]
	Present. Mr. Justice Muhammad Shafi Siddiqui. Mr. Justice Irshad Ali Shah.
Date of Hearing:	07.04.2022.
Date of Order:	22.04.2022.

M/s Muhammad Yousuf Leghari and Noor Ahmed Memon Advocates for the petitioners No.30 to 32.

None present for respondents No.5 to 7.

Mr. Safdar Hussain Leghari Associate of Mr. Muhammad Arshad S. Pathan, Advocate for the respondents No.8 & 9.

M/s Arbab Ali Hakro and Abdul Ghafoor Hakro, Advocate for the respondents No.10 and 11.

Mr. Allah Bachayo Soomro Additional Advocate General Sindh.

MUHAMMAD SHAFI SIDDIQUI, J.- Primary question, while the suit was decided by compromise vide order and decree dated 31.01.2001 and 2.2.2001 which after it being set-aside under section 12(2) CPC vide order dated 14.1.2003, followed by a judgment and decree 19.03.2009 and 24.03.2009 respectively was whether parties had legal rights over the property or that such rights were alienated to some individuals before conclusive decree was passed on 24.3.2009. The present petitioners filed application under section 12(2) CPC which was dismissed vide order dated 31.7.2010 which was maintained by revisional court vide its Judgment dated 2.4.2011. During the period between first judgment / decree when it was set-aside and subsequent judgment / decree, a portion of property was alienated to petitioners vide registered sale deeds attached with application under section 12(2) CPC without knowledge of pendency of litigation as claimed. Now since ownership rights were alienated, can there be a judgment and decree of 19.03.2009 and 24.03.2009, of the same property between those who claims co-ownership, and those who on the strength of some title (gift), alienated the property to these applicants. Certainly, the title of property cannot be adjudged in the shape of subsequent judgment / decree in absence of applicant / petitioners while one of the party concealed these facts from the court when impugned judgment and decree of 19.3.2009 /

24.3.2009 was passed when a substantial portion of property has already been alienated vide sale deeds.

It would be difficult, rather impossible, to enforce the rights arising out of the sale deeds against all co-owners or vendor, as the share now being derived by the vendor of the sale deeds under the decree in dispute is much less than what vendor alienated cumulatively through sale deeds and the vendor purposely kept quiet during the trial when the impugned judgment and decree was passed by the court below. Vendors being owners of the particular land got it demarcated / partitioned by the revenue which was then followed by sale deeds.

There cannot be an independent claim before civil court on the strength of a sale deed alone, as the decree would come in the way of such declaration. It has to be brushed aside before rights under sale deed could be enforced or otherwise. Yes before passing of impugned judgment / decree a suit could have been filed and / or proceedings could have been tried together but not when a decree stands in the way of a title of vendor of a registered instrument i.e. sale deeds. Not letting the court know about execution of sale deed by one of the party in respect of property being adjudicated, amounts to misrepresentation and fraud with court as it could have been a collusive silence by vendor of sale deeds who kept quiet in the suit proceedings.

We therefore deem it appropriate to set-aside the judgments of two courts below dated 31.07.2010 and 02.04.2011 of Senior Civil Judge and Additional District Judge respectively and remand the case to frame issues on the application, record evidence and then pass a speaking order on it.

Petition is disposed of accordingly.

JUDGE

JUDGE

A.