

IN THE HIGH COURT OF SINDH,
Bench at Sukkur

Civil Revision Application No. S- 08 of 2012

Date of hearing	Order with signature of Judge
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Hearing of Case

1. For hearing of CMA 551/2019
2. For hearing of Main Case.

28-11-2022

Mr. Muhammad Zubair Malik, Advocate for the Applicant.
Mr. Sarfraz A. Akhund, Advocate for the respondents No.3&4.
Mr. Ali Raza Baloch, Assistant Advocate General Sindh.

1. By means of this application, respondents No.3 & 4 (Irshad Ali s/o Sikandar A li and Mst. Lal Khatoon w/o Sikandar Ali respectively) seek striking off their names as parties from this Civil Revision on the ground that during Civil Appeal, the applicant settled a dispute with them and withdrew her case / Civil Appeal vide order dated 04.11.2011, passed by the appellate Court.

Learned counsel appearing on behalf of respondents No.3 & 4 in his arguments has reiterated the same grounds for allowing this application and further added that the learned appellate Court even in its impugned judgment has recorded this fact.

On the other hand, learned counsel for the applicant by referring to the point framed by the learned appellate Court in Civil Appeal No. 24 of 2008 as "**Whether plaintiff is entitled for restoration of the said plot encroached upon by the respondent No.5 as well as respondents No.3 & 4?**" states that since the appellate Court dismissed the aforementioned Civil Appeal filed by the applicant entirely ignoring that the appellant (applicant herein) and said respondents have already settled their dispute

outside the Court, necessity has arisen that they be added as party / respondents in this Civil Revision.

Heard learned counsel for the parties and perused the material available on record.

It is an admitted position that during pendency of aforementioned Civil Appeal, the applicant and respondents No.3 & 4 entered into a settlement by moving an application, which was allowed by learned appellate Court vide order dated 04.10.2011; consequently, Civil Appeal stood withdrawn against the said respondents. So far point for determination framed by learned appellate Court, mentioned above, is concerned, it is only with regard to reference of the subject plot that the same was allegedly encroached upon by the respondent No.5 as well as respondents No.3 & 4, however, the fact that the Civil Appeal stood dismissed as withdrawn has been recorded by learned appellate Court in its impugned judgment in the following terms:

“It is pertinent to mention here that appellant did not want to proceed against respondents No.3 & 4, and withdrew her claim against them, therefore, appeal is partly dismissed as withdrawn against respondents No.3 & 4, vide order dated 4.10.2011. So, claim of the appellant remains against respondent No.5”.

In view of the above, the application in hand is allowed. It is also a matter of record that on 23.11.2020, the then learned counsel appearing on behalf of the applicant apprised the fact that the respondent No.2 has expired and sought time for filing list of legal heirs of respondent No.2. Hence, learned counsel for the applicant was directed to file amended title by bringing the names of legal heirs of respondent No.2 on record. Hence, learned counsel for the applicant is again directed to file amended title by

striking off the names of respondents No.3 & 4 and adding legal heirs of respondent No.2.

It also appears that still the respondent No.5 has not been served with notice, hence after receiving the amended title, office shall issue notices to the legal heirs of respondent No.2 as well as to respondent No.5 for the next date of hearing through first three modes.

2. Adjourned to **23.01.2023**.

J U D G E

Ahmad