

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Civil Revision No. S - 07 of 2012

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| Date | Order with signature of Judge |
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Hearing of cases

1. For orders on Office objection at Flag 'A'
1. For hearing of CMA No.514/2021 (1 Rule 10)
2. For hearing of CMA No.542/2019 (Fast track)
3. For hearing of main case

29.08.2022

Mr. Sikander Ali Junejo, Advocate for the Applicant
Mr. Abdul Rasheed Kalwar, Advocate for respondent No.3
Mr. Ahmed Ali Shahani, Assistant Advocate General, along with
Ashraf Ali Pitafi, Mukhtiarkar, Taluka Daharki

ORDER

ZAFAR AHMED RAJPUT, J.- The respondent No.3 herein maintained Civil Suit No.129/1984 against the respondents 1 and 2 (*Chairman, Town Committee Daharki & Town Officer, Town Committee, Daharki, respectively*) for declaration and injunction in respect of agricultural land bearing R.S. No. 55, admeasuring 5-18 acres, situated in Deh & Taluka Daharki, which was decreed in his favour by the Court of Senior Civil Judge, Ghotki, vide Judgment and Decree dated 31.03.1991 and 04.04.1991, respectively. Against that, the respondent No.1 preferred Civil Appeal No.41/1991, which was also dismissed by the IV-Addl. District Judge, Mirpur Mathelo, vide judgment and decree dated 29.03.1992.

2. Subsequently, the respondent No.3 preferred C.P No. D-522/1999 against the official respondents including Mukhtiarkar, Daharki in respect of suit land challenging the act of respondents establishing a school in the suit land. It was pointed out in the objections filed by the official respondents that notice under section 6 of the Land Acquisition Act, 1894 was given. The said Petition was disposed of by a Division Bench of this Court, vide order dated 16.12.2003, by observing that the proceedings under Section 4 of the said Act

was not properly and legally initiated and that the prerequisite of a gazette notification was not followed and adopted. Afterwards, on 12.03.2009, the Mukhtiarkar Taluka Daharki, Deputy District Officer, (Revenue) Daharki and District Officer, (Revenue) Ghotki @ Mirpur Mathelo filed an application under Section 12(2), C.P.C. impugning the aforesaid Judgment and Decree, dated 31.03.1991 and 04.04.1991, which was dismissed by the said trial Court, vide order dated 21.11.2009, which order the said applicants did not impugn in any further proceedings before any forum; hence, the same have attained finality.

3. Earlier to said application under Section 12(2), C.P.C., filed by Mukhtiarkar Taluka Daharki and others, the present applicant also filed an application under Section 12(2), C.P.C., in June, 2008 before the Appellate Court i.e. IV-Additional District Judge, Mirpur Mathelo in aforesaid Civil Appeal No.41/1991 for setting aside aforesaid Judgment and Decree on the ground that the same were obtained by the respondents in collusion with each other by misrepresentation and fraud. The said application was dismissed by the Appellate Court, vide order dated 21.12.2011. It is against that order that the instant revision application has been preferred by the applicant.

4. I have heard the learned counsel for the parties as well as learned A.A.G., Sindh and perused the material available on record.

5. At the very outset, learned counsel for the applicant has failed to point out any illegality or infirmity in the impugned order requiring any interfering by this Court in its revisional jurisdiction. He has been unable to make out a case of obtaining aforesaid decree by committing any fraud or misrepresentation. The grounds agitated by the applicant are related to the claims of the parties in suit and/or the Revenue Department which have finally

been adjudicated between them, but the applicant by moving application under Section 12(2), C.P.C wanted to reopen the same.

6. No doubt, under section 12 (2), C.P.C., an aggrieved person without filing a separate suit can impugn the decree on the ground of fraud, misrepresentation or want of jurisdiction by simply filing an application under the said section. To file such an application, the aggrieved person needs not be a party in the suit and he has the right to challenge the same if he is aggrieved or is adversely affected by the judgment, decree or order as observed by the Apex Court in the case of Khawaja Muhammad Yousuf vs. Federal Government through Secretary Ministry of Kashmir Affairs and Northern Areas and others (1999 SCMR 1516). In the instant case, the applicant has failed to establish his *locus standi* to maintain such application, as neither is he an aggrieved person nor he is affected by the aforesaid Judgment and Decree. So far the contention of learned counsel for the applicant that the suit land is meant for public purpose is concerned, that point has already been deliberated and concluded by a Division Bench of this Court in C.P No. D-522/1999.

8. For the foregoing facts and reasons, this Civil Revision Application being devoid of any legal and factual merits is dismissed accordingly, along with pending applications, with no order as to costs.

Judge

ABBROHI