

ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D-5229 of 2022

| Date | Order with signature of Judge |
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FRESH CASE.

1. For orders on CMA No.23464/2022.
2. For orders on CMA No.22343/2022.
3. For orders on CMA No.22344/2022.
4. For hearing of main case.

21.09.2022.

Mr. Muhammad Haroon Shaikh, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order dated 21.07.2022 passed by the learned Additional District & Sessions Judge-IX (MCAC), Karachi, West, dismissing Civil Revision Application No.30/2022 filed by the Petitioner against the Order made by the learned XIVth Senior Civil Judge, Karachi, West on 28.03.2022 in Civil Execution No.21/2021, emanating from Civil Suit No.1827/2020, whereby the Petitioner's Application under Section 12 (2) CPC read with Section 151 CPC for setting aside the Judgment and Decree dated 06.04.2021 was dismissed.

The backdrop to the matter is that the Respondent No.1 apparently filed the aforementioned Suit for Declaration, Cancellation, Possession, Mesne Profit & Permanent Injunction, advancing her claim of ownership to Plot No.R-175, measuring 120 sq. yards in Block-H, in the Project Gulshan-e-Surjani, situated in Surjani, KDA Scheme No.45, Karachi, during the course of which the notice/summons were issued through all prescribed modes and service was held good vide an Order dated 11.01.2021, with the matter then proceeding ex-parte and being decreed on the aforementioned date.

Through, the Application under Section 12 (2) CPC read with Section 151 CPC, that then came to be filed by the Petitioner on 23.09.2021, it was contended that she had not been served and only came to have knowledge of the matter when the Bailiff pasted a notice on the property in pursuance of proceedings in the ensuing Execution. However, a perusal of that Application reflects that no specific allegation of fraud and misrepresentation was advanced, with the trial Court also observing as much while going on to dismiss the same. The operative part of the Order dated 28.03.2022 reads as follows:-

“5.I am of the considered opinion that the essential ingredients of fraud, misrepresentation or want of jurisdiction are missing in the application under section 12 (2) C.P.C., filed by the applicant. In our society currently the tendency of blame each other of fraud is endemic. More often than not fraud in common parlance in our society means the inhabitant of one party’s interest due to the act of another. Consequently, when one alleges fraud here it does not mean that one had done something which is against the principles of morality but that one has done something against the interest of the person who has alleged fraud. Surely, this was not the definition of fraud and misrepresentation that the law makers had in mind when they introduced Section 12 (2) C.P.C. The intention of the legislature in introducing this amendment was to prevent unnecessary litigations arising from concluded legal proceedings. But instead of having the desired effect, I am constrained to observe, this provision has led to an increase in litigations inasmuch as almost every other decree is now being challenged under this provision either directly by one of the parties or through a proxy. Such was obviously not the intention of legislature when this provision was introduced. Indeed the current practice is a mockery of the laudable objectives for which the provision came into effect. There is no doubt that a decree of a Court must have sanctity once it has obtained finality even though such a decree may be ex-parte or a compromise decree and it is only when there is fraud and misrepresentation on the face of record so apparent and manifest that even a person with a rudimentary knowledge of law would be able to observe that such fraud has taken place that the application u/s 12(2) should be allowed to proceed further. In fact, what I wish to emphasize is that this ingredient of the provision must be very strictly construed. The reliance is placed on the case of IZZAT KHAN and others vs. PROVINCE OF SINDH and others, reported in 1999 YLR 1180. The Court cannot act on the wishes and whims of particular party in order to prejudice the right of a person when the decree has been passed in his favour.”

The Petitioner then apparently preferred a Review Application against that Order, which also came to be dismissed on 08.04.2022, with the Petitioner preferring a Civil Revision against such dismissal but withdrawing the same so as to pursue the Revisional proceeding already initiated against the dismissal of the S. 12(2) Application, as underpins the present proceedings.

From a reading of the Order dated 21.07.2022, it transpires that the Revisional Court was also of the view that the Application under Section 12 (2) CPC read with Section 151 CPC did not disclose any particulars of fraud and/or misrepresentation and that merely mentioning such words did not at all suffice for the purpose of setting out a case in that regard. Furthermore, it was observed that the address specified by the Petitioner in the title of her Revision Application was the very address as had been mentioned in the title of the Plaint.

When confronted, learned counsel for the Petitioner was at a loss to advance any cogent argument to explain the deficiency in the underlying Application, and also conceded that the Revisional Court had accurately observed that the address at which the summons had been sent was the same as had been put down by the Petitioner in the title of her Revision Application. However, he nonetheless sought to emphasize that the Petitioner was the widow of one Shaikh Muhammad Shariff, but had been shown in the Plaint as the wife of one Abdullah, and argued that the service was therefore defective and the judgment and decree ought to be set aside.

We do not regard that aspect to be material in the overall context and do not see any force in the submission advanced on that score. Indeed, it is manifest that such point was not even raised in terms of the Application under Section 12 (2) CPC read with Section 151 CPC.

The fora below appear to have been properly considered and addressed the matter, and the Orders so made do not suffer from any illegality or infirmity warranting interference in exercise of the Constitutional Jurisdiction of this Court. That being so, while granting the application for urgency, we accordingly dismiss the Petition *in limine*, along with the other miscellaneous applications.

JUDGE

CHIEF JUSTICE

MUBASHIR