

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D-1510 of 2023

Date	Order with signature of Judge
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FRESH CASE.

1. For orders on Misc. No.7498/2023.
2. For orders on Misc. No.7499/2023.
3. For orders on Misc. No.7500/2023.
4. For hearing of main case.

27.03.2023.

Mr. Sikandar Khan, 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 23.02.2023 made by the learned IX Additional District Judge, Karachi, West (MCAC), dismissing Civil Revision Application No.104/2022 filed by the Petitioner against the earlier dismissal of his application under Section 12 (2) CPC in Civil Suit No.11/2018, vide Order dated 02.11.2022 made by the learned Senior Civil Judge-XIII, Karachi, West.

2. The backdrop to the matter is that the Petitioner was the Defendant No.1 to the Suit and contested the same, which culminated in the judgment dated 26.04.2021, whereby the said Suit was decreed in favour of the Plaintiffs No.1 to 3 (i.e. the Respondents Nos.1 to 3), with the Nazir being appointed as Administrator to verify the ownership of the suit property, bearing House No.A-1-15/10, Sector-E, Qasba Colony, Manghopir Road, Karachi, measuring 200 square yards, and a preliminary decree being prepared. The Petitioner did not file any Appeal, however later resorted to the application under Section 12 (2) CPC, presented on 10.09.2022.

3. Whilst that Application seeks that the judgment dated 26.04.2021 be set aside, it transpires that the grievance espoused by the Petitioner relates to subsequent steps taken by the Nazir whereby the verification of the ownership was obtained, with it being contended by the Petitioner that such steps were manipulated, as the property in question stands in the name of the original allottee, Aijaz Muhammad, rather than the deceased, Mirza Abdul Hafeez Baig.

4. A perusal of the Order dated 02.11.2022 reflects that this aspect has been duly considered with the relevant excerpt thereof reading as follows:-

“6. Applicant / defendant No.1 has preferred present application mainly on the ground that as per report dated: 01.07.2021 suit property was existing in the name of Mr. Aijaz Muhammad S/O Awan Muhammad, there is no available source of documents available how same was transferred in the name of deceased Mistari Abdul Hafeez Baig S/O Aziz Baig vide letter dated: 19.02.1985. Applicant/defendant No.1 has also alleged that verification letter dated: 28.07.2022 is a manipulated document. Record reveals that on 04.07.2022 advocate for plaintiff filed objections to the verification report dated: 01.07.2021 and annexed copy of transfer order dated: 19.02.1985 and challan dated: 12.02.1985. Vide order dated: 04.07.2022 verification of documents was called from KDA. Assistant Director Land Management / QTS KDA vide report dated: 28.07.2022 verified that residential Plot No. A-15/10 Sector A/1 measuring 200 Square Yards stand transferred in favour of Mistari Abdul Hafeez Baig S/O Aziz Baig vide Transfer Order No.2416 dated 19.02.1985. Such report of failure verified the ownership of deceased pertains to suit property. Moreover, during cross examination defendant No.1 has admitted that suit property viz. H.No.A-1, 15/10, Sector E, Qasba Colony, Manghopir Road, Karachi was property of late Abdul Hafeez Baig. Under the circumstances, the grounds denying the ownership of deceased pertains to suit property by the applicant/defendant No.1 are not sustainable.”

5. In view thereof, the Application under Section 12 (2) CPC was found to be devoid of merit and was dismissed, with the Revisional Court concurring with that assessment whilst observing that:-

“I have perused the contents of written statement of applicant (Defendant No.1) and it reveals that he admitted in para No.3 of written statement that suit property is belonged to deceased Mirza Abdul Hafeez Baig and he also admitted same fact in Para No.5 of affidavit in evidence. This shows that the applicant has not disputed ownership of the suit property and he raised plea that he had purchased share of his late brother Abdul Salam (father of respondent No.1 to 3) from inherited property of his father Mirza Abdul Hafeez Baig through sale agreement dated; 10.11.2015 and learned trial court rightly observed that he could not prove same that during his evidence.

Recourse chosen by the applicant cannot be approved for obvious reason that the applicant has shown callous approach and indolence though ought to have shown diligence and pragmatic attitude, who on the other hand, deliberate failed to bring on record sufficient and cogent material substantiating plea of fraud and misrepresentation. Applicant and even his counsel in arguments could not controvert the legal position with regard to the onus of proving the pleas of fraud and misrepresentation. Mere mentioning the words fraud and misrepresentation would not itself be sufficient to hold that applicant/defendant No.1 has made out a case within four corners of provision of sub section 2 of section 12 CPC.”

6. Under the given circumstances, the Orders appear to be properly reasoned and do not reflect any illegality. Indeed, on query posed to learned counsel as to what error or infirmity afflicted those Orders, no cogent response was forthcoming.

7. That being so, we see no cause for interference under the Constitutional Jurisdiction of this Court. As such, while granting the application for urgency, we hereby dismiss the Petition *in limine*, along with the other miscellaneous applications.

JUDGE

CHIEF JUSTICE

MUBASHIR