

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

Constitution Petition No.D-3179 of 2019

Haji Moosa Khan (Late) through Legal Heirs & others

Versus

Nazia Bibi & others

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Date of hearing: 31.10.2023

M/s. Dilawar Hussain Khattana and S. Tanveer Hussain, Advocates for petitioners.

Mr. Muhammad Nazir Tanoli, Advocate for Respondents No.1 to 5.

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J U D G M E N T

Muhammad Shafi Siddiqui, J.- The petitioners have challenged the order of the revisional court on the count that the revisional court exceeds its jurisdiction when the evidence was reappraised and reconsidered.

2. Respondents No.1 to 5 filed a suit under Section-9 of the Specific Relief Act praying for permanent injunction and direction in relation to a property situated at Allahdad Colony, Ittehad Town, Baldia, Karachi. The suit was contested and the witnesses were examined and cross-examined. Two material issues were framed, that is (1) whether plaintiffs/Respondents No.1 to 5 were dispossessed by the defendants No.2 and 3 therein (who are petitioners here) on 23.11.1998, if so to what effect, and (2) what should the decree be. The evidence was recorded and the trial court dismissed the suit. Aggrieved of it, a Revision Application was filed by the Respondents, (maintainability of which was/is not opposed), which was allowed. Aggrieved of it, petitioners have filed this petition.

3. At the very outset, we have enquired as to how this Court could exercise jurisdiction when the statutory or legal remedies have been availed/exhausted, which jurisdiction was vested in them. Learned counsel for petitioners submits that since the evidence was re-appreciated and not seen in its true spirit, this court could always exercise its jurisdiction.

4. We are not satisfied with the response, as the last court to appraise and reappraise a factual controversy with the support of evidence recorded is the revisional /appellate court; we are not the appellate court which could exercise such jurisdiction. Revisional court since exercised the jurisdiction vested in it that includes misreading and non-reading of evidence; it cannot be yet again re-appreciated by invoking the jurisdiction of this court under Article 199 of Constitution of Islamic Republic of Pakistan for the redetermination of facts. No jurisdictional defect was shown.

5. Record reflects that the revisional court while addressing point-1 at typed page-14 of judgment impugned, on cumulative effect of the evidence of Zafar Mehmood, Hafiz Abdul Rasheed, Abdul Jalil, Kifayat Khan and Mst. Najma Bibi, decreed the suit. Hafiz Abdul Rasheed, Abdul Jaleel and Kifayatullah were impartial witnesses, as they were only neighbors and no relationship was disclosed. A suggestion to all the witnesses that they have given false evidence at the instance of Zafar Mehmood, could not turn anything unless the intensity of the accusation that the witnesses were not impartial or have some interest or were being influenced by any of the litigants, is separately established. Such suggestions alone that they have given false evidence could not be materialized in favour of the petitioners as primary burden was discharged by plaintiffs/respondents. It is a cumulative effect of all evidence available on record that is to be seen

and applied. In addition to it, this Court in terms of Article 199 of the Constitution of Islamic Republic of Pakistan cannot assume the jurisdiction which is otherwise not vested, that is reappraisal of evidence, which has been done by the revisional court and that is the last fact finding court. This Court could only intervene had the jurisdiction been exercised which was not vested and/or vested but not exercised.

6. Since the petitioners have raised a limited question as to the exercise of jurisdiction by the revisional court to the extent of reappraisal of evidence, we would not intervene. The petition as such is dismissed along with pending application(s).

Dated: 03.11.2023

JUDGE

JUDGE

Ayaz Gul