

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No. 240 of 2021

Applicant : Qaiser Shafiullah son of Muhammad Shafiullah,
Through Dr. Anis-ur-Rehman Siddiqui, Advocate who is called
absent today

Respondents : Mst. Saima Ahsan and others through
Nemo.

Date of Hearing & Order: 22.09.2023

ORDER

ARSHAD HUSSAIN KHAN, J.-Through instant revision application, the applicant has assailed the judgment and decree dated 24.08.2021 passed by learned 8th Additional District Judge, Hyderabad in Civil Appeal No. 118 of 2019, whereby the learned Judge while dismissing the appeal maintained the order dated 24.04.2019 passed by the trial court rejecting plaint under Order VII Rule 11 CPC in F.C Suit No. 950 of 2018.

2. None present for applicant and no intimation is received. The record reflects that after filing this Civil Revision Application in the year 2021 neither the applicant nor his counsel turned up to proceed or pursue this Revision Application, therefore, I have gone through the record as available before me.

3. From the perusal of record, it appears that the applicant through this revision application under Section 115 CPC has attempted to re-open the case, inter-alia on the ground that the impugned judgment passed by the courts below are illegal, void, malafide, and liable to be set aside; that learned trial court while passing the impugned judgment failed to consider that while dismissing the plaint the defence plea could not be appreciated and considered and this fact has also been overlooked by the learned appellate court; that learned trial court committed illegality while dismissing the plaint and disposed of the case summarily. He lastly prayed for allowing the instant Revision Application.

4. The provision of section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a Court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when the Court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. Mere fact that its decision is erroneous in law

does not amount to illegal or irregular exercise of jurisdiction. For the applicant to succeed under Section 115, C.P.C, he has to show that there is some material defect in procedure or disregard of some rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine the matter and erroneous action of a Court in exercise of such jurisdiction. It is settled Principal of law that erroneous conclusion of law or fact can be corrected in appeal and not by way of revision, which primarily deals with the question of jurisdiction of a Court i.e. whether a Court has exercised the jurisdiction not vested in it or has not exercised the jurisdiction vested in it or has exercised the jurisdiction vested in it illegally or material irregularity.

5. No any illegality and infirmity has been shown in the application to call for interference in the impugned decisions by this Court. It is well settled that if no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two Courts below are not to be interfered in revisional jurisdiction, unless extra ordinary circumstances are demonstrated by the applicant. It is also trite law that a revisional Court does not sit in reappraisal of evidence and it distinguishable from the Court of appellate jurisdiction¹.

6. The upshot of the above discussion is that there appears no illegality, irregularity or jurisdictional error in the concurrent findings of the Courts below warranting interference of this Court. Hence, this Revision Application is found to be meritless and is accordingly dismissed along with pending application(s).

JUDGE

Ahmed/Pa,

¹ ***Abdul Hakeem v. Habibullah and 11 others* [1997 SCMR 1139], *Anwar Zaman and 5 others v. Bahadur Sher and others* [2000 SCMR 431] and *Abdullah and others v. Fateh Muhammad and others* [2002 CLC 1295].**