

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
R.A No.61 of 2023

Dated: Order with signature of Judge(s)

1. For Orders on CMA No. 3938 of 2023
2. For Orders on CMA No. 3938 of 2023
3. For Orders on CMA No. 3940 of 2023
4. For hearing of Main Case.

Date of Hearing : 29 May 2023.

Applicant : Pireen Oad and 4 others through Mr. Deedam Gul, Advocate.

Respondent: : Nemo

ORDER

MOHAMMAD ABDUR RAHMAN, J. This application has been maintained by the Applicant under Section 115 of the Code of Civil Procedure, 1908 seeking to revise the Judgment and Decree dated 28 April 2012 passed by the IXth Additional District Judge Karachi (East) in Civil Appeal No.249 of 2022 upholding the Judgment and Decree dated 9 September 2022 passed by the VIIth Senior Civil Judge Karachi (East) in Civil Suit No.1850 of 2020.

2. The Respondent has initiated Civil Suit No.1850 of 2020 before the VIIth Senior Civil Judge Karachi (East) claiming to be the owner of Plot No. B-92, Sector 6-E, Mehran Town, Karachi admeasuring 400 square yards (hereinafter referred to as the "Said Property"). He alleged that the Applicants had illegally encroached on a portion of the Said Property admeasuring 240 square yards and maintained the *lis* for a declaration as to his title and a mandatory injunction seeking the eviction of the Applicants from the portion of the Said Property that they had encroached on.

3. The Applicants were duly served and filed their Written Statements and whereafter the VIIth Senior Civil Judge Karachi (East) framed issues. The Respondents thereafter adduced evidence as to their title but the

Applicants were indolent and failed to cross examine the Respondent or adduce any evidence.

4. The VIIth Senior Civil Judge Karachi (East) thereafter passed a Judgment and Decree on 9 September 2022 decreeing Civil Suit No.1850 of 2020 and ordering for the eviction of the Applicants from the Said Property stating that the Applicant had demonstrated his title to the Said Property and which evidence had gone unrebutted hence the Respondent was entitled to have the suit decreed and ordered the eviction of the Applicants.

5. The Applicants filed Civil Appeal No. 249 of 2022 before the IXth Additional District Judge Karachi (East) who was pleased to dismiss the appeal on 27 April 2023 holding that there was no illegality or infirmity in the Judgment and Decree on 9 September 2022 passed by the VIIth Senior Civil Judge Karachi (East) in Civil Suit No.1850 of 2020 as the Respondent had demonstrated that he was the owner of the Said Property and whereas admittedly the Applicant had not been able to even show a single title document to demonstrate themselves as owners of the Said Property or to indicate their status in the Said Property.

6. Being aggrieved and dissatisfied with the Judgment and Decree dated 28 April 2012 passed by the IXth Additional District Judge Karachi (East) in Civil Appeal No.249 of 2022 upholding the Judgment and Decree dated 9 September 2022 passed by the VIIth Senior Civil Judge Karachi (East) in Civil Suit No.1850 of 2020, the Applicants have maintained this application under Section 115 of the Code of Civil Procedure, 1908 seeking to revise the Judgment and Decree dated 28 April 2012 passed by the IXth Additional District Judge Karachi (East) in Civil Appeal No.249 of 2022 upholding the Judgment and Decree dated 9 September 2022 passed by the VIIth Senior Civil Judge Karachi (East) in Civil Suit No.1850 of 2020.

7. Mr. Deedam Gul entered appearance on behalf of the Applicants and stated that the reason they were unable to appear in this matter before the VIIth Senior Civil Judge Karachi (East) in Civil Suit No.1850 of 2020 was on account of the demise of the mother of the Appellant's Counsel. He pleaded that the matter should be adjudicated on merits and as they had been deprived of the right to cross examine the Applicant let alone adduce evidence, this Court should set aside the Judgment and Decree dated 28 April 2012 passed by the IXth Additional District Judge Karachi (East) in Civil Appeal No.249 of 2022 upholding the Judgment and Decree dated 9 September 2022 passed by the VIIth Senior Civil Judge Karachi (East) in Civil Suit No.1850 of 2020 and remand the matter to the the VIIth Senior Civil Judge Karachi (East).

8. I have heard the Counsel for the Applicant and have perused the record. The Supreme Court of Pakistan has time and again held that where a litigant is prejudiced on account of the negligence of their counsel the matter should be settled as between the litigant and the Counsel and not at the prejudice of the other parties to the *lis*. In the decision reported as **Amanullah Soomro vs. P.I.A. through Managing Director/Chairman and another**¹ it was held that:

“ ... *Indeed Mr. Palejo also urged that litigants should not be penalized for negligence of counsel. While the argument at first sight might be attractive on a moral plain what is overlooked is whether any justification exists for depriving the opposite part of legal rights acquired owing to negligence of the petitioner or counsel retained by him? Indeed the right to recover the amount of wrongful loss caused on account of negligence is always available to a party. The record should that the petitioner himself has made an application to a statutory body regulating the conduct of advocates. In any event we are clearly of the view that undue indulgence granted by courts would only multiply such problems.*”

9. It is apparent that the Applicants counsel despite having purportedly been unable to appear had not forthwith filed an application to set aside the order completing the recording of evidence on behalf of the Respondent or

¹ 2011 SCMR 1341

for that matter to permit the Applicant to adduce evidence. From the record it appears that no such application was ever filed. In addition, and as correctly held in the Judgment and Decree dated 28 April 2012 passed by the IXth Additional District Judge Karachi (East) in Civil Appeal No. 249 of 2022 there is not even an iota of evidence to indicate as to the basis on which the Applicants continue to remain in the Said Property which leads to the assumption that their status is that of trespassers. The Respondent has conversely produced all relevant documents to demonstrate his title to the Said Property and which have remained unrebutted in evidence and in accordance with the decision of the Supreme Court of Pakistan in **Amanullah Soomro vs. P.I.A. through Managing Director/Chairman and another**² the Respondent should not be prejudiced for diligently proceeding in the matter. This Application must therefore fail.

10. For the foregoing reasons there being no illegality or material irregularity in the Judgment and Decree dated 28 April 2012 passed by the IXth Additional District Judge Karachi (East) in Civil Appeal No.249 of 2022 upholding the Judgment and Decree dated 9 September 2022 passed by the VIIth Senior Civil Judge Karachi (East) in Civil Suit No.1850 of 2020 this Application is misconceived and was dismissed by me on 29 May 2023 and these are the reasons for that order.

JUDGE

Karachi dated 28 August 2023

² 2011 SCMR 1341