

## IN THE HIGH COURT OF SINDH AT KARACHI

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

C.P. No.D-6707 of 2019

Muhammad Khan  
Versus  
Muhammad Younus & others

Date of Hearing: 06.12.2023  
Petitioner: Through Mr. M. Rahib Lakho Advocate.  
Respondents: None present.

### **J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- Subject matter of this petition is order on application under Order XII Rule 6 CPC filed by plaintiff (respondent No.1 in this petition) in suit for specific performance. Such application was dismissed by trial Court vide order dated 27.08.2018 however in revision it was allowed and the suit was decreed in terms of admission via impugned order dated 11.09.2019.

2. We have heard learned counsel appearing for petitioner and perused material available on record whereas no one is pursuing the matter on behalf of respondents. Even the contesting party i.e. respondent No.1 and/or his legal heirs chose to remain absent, despite service of notice followed by intimation notices.

3. A perusal of impugned order clearly reveals that the revisional Court has not taken into consideration entire material placed on record and even has not provided a legal and/or legitimate cause and not minutely gone through the ingredients of Order XII Rule 6 CPC while allowing such application. The operative part of the impugned order is

reproduced below to show such a negligence and slackness on the part of the revisional Court:

*“I have considered the submission of learned counsels and gone through the case file. The perusal of record shows that the defendant No.1 has entered into agreement of sale with the appellant. The perusal of written statement filed by the respondent No.1 shows that the respondent No.1 admitted the claim of appellant. Therefore in my humble view that learned trial Court has passed impugned order illegally and as such the same is hereby set aside and the suit of the appellant is hereby decreed as prayed subject to prove of ownership of respondent No.1 in respect of suit property. There will be no order as costs. The appeal disposed of accordingly.”*

4. The revisional Court has only relied upon the agreement dated 15.08.2013 entered into between plaintiff and defendant No.1 and the admission in respect thereto in the written statement. The revisional Court has not taken into account the written statement filed by defendant No.4 (petitioner) in which title documents in respect of the subject property are filed. Indeed, it is an admitted position that originally the subject property was owned by defendant No.1 and from record it appears that prior to agreement dated 15.08.2013, he (defendant No.1) had already entered into an agreement with defendant No.4 (petitioner) on 22.04.2011 followed by registered sale deed dated 19.12.2013. In the intervening period (22.04.2011 and 9.12.2013) defendant No.1 entered into an agreement with plaintiff as well i.e. on 15.08.2013. Thus, admission of defendant No.1 in terms of his statement in written statement on 20.11.2017 is of no value as he had already executed registered document in favour of defendant No.4 in respect of the subject property much before such admission. He (defendant No.1) had no title when the order was passed.

5. In the above circumstances, though we cannot comment much on merits of the case vis-à-vis the title documents, as it is an interlocutory stage and a detailed deliberation might cause prejudice to either of the

parties at the time of trial/evidence, but what prima facie appears is that the petitioner in terms of registered document, executed by defendant No.1 in his (petitioner's) favour, is the owner of the property hence the admission of defendant No.1 in respect of the property cannot be put in the frame of Order XII Rule 6 CPC.

6. Upshot of the above discussion is that the revisional Court has failed to appreciate the record placed before it and in a very cursory and reckless manner has passed the impugned order. The petition as such is allowed, impugned order is set aside and the application under order XII Rule 6 is dismissed thereby maintaining the order of the trial Court.

**Judge**

**Judge**