

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-43 of 2024

[Malik Aleem Aliv.....Muhammad Yasir Amin Merchant]

Date of Hearing : 12.01.2024
Petitioner through : Mr. Waqar Memon & Mr. Bilal,
Advocates.
Respondents through : *Nemo.*

ORDER

Zulfiqar Ahmad Khan, J:- This petition challenges concurrent findings rendered by learned trial Court dated 22.10.2022 whereby application under Order VII Rule 11 CPC was allowed and plaint was rejected as well as order dated 11.12.2023 rendered by learned Additional District Judge-VII, South, Karachi.

2. The crux of arguments of learned counsel for the petitioner is that the petitioner is owner of property questioned in the matter and that the learned trial Court dismissed the plaint under Order VII Rule 11 CPC which order of the learned trial Court was challenged by filing appeal No.233/2022 which was also dismissed maintaining the order whereby plaint was rejected.

3. Heard and perused the record. It is a matter of record that reasons recorded by the learned trial Court was upheld by learned Appellate Court on the ground that the plaintiff hand handed over the possession of the subject property as well as executed power of attorney in his favour, therefore, seeking declaration by filing suit in respect of subject property is unwarranted. The learned Appellate Court had also observed the similar circumstances of the case at

hand. The remedy of appeal has already been exhausted which is a creation of statute and in absence of any such remedy being provided none can be presumed¹. Once the statutory remedial process has been exhausted, recourse to writ jurisdiction cannot be taken as a matter of right; inter alia as the same prima facie impinges upon the finality granted by statute to the judgment of the last appellate forum. Since, the appellate hierarchy has already been exhausted the only issue that could be looked in by this Court in the exercise of its writ jurisdiction is whether there is any patent illegality apparent from the orders impugned. It is observed that no such illegality could be identified by the petitioner's counsel.

4. It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided², and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law³ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned concurrent findings appear to be well-reasoned and no manifest infirmity is discernable therein or that they could not have been rested upon the rationale relied upon.

¹ Per Ijaz ul Ahsan J in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as PLD 2021 Supreme Court 391.

² Per Ijaz ul Ahsan J in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as PLD 2021 Supreme Court 391.

³ Per Faqir Muhammad Khokhar J. in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323

5. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending applications.

Karachi
Dated: 12.01.2024

JUDGE

Aadil Arab.