ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Civil Revision Application No. **S-122** of **2019**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
13.01.2020	

1. For orders on C.M.A. No. 03/2020 (Urgency Application)
2. For orders on C.M.A. No. 475/2019 (Exemption Application)
3. For orders on C.M.A. No. 476/2019 (U/O 41, rule 5, C.P.C.)
4. For orders on C.M.A. No. 477/2019 (U/O 41, rule 27(b), C.P.C.)
5. For hearing of main case

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Mr. Zafar Khalil Ahmed Jakhrani, Advocate for the applicants

1. The matter is already fixed on 30.01.2020. Learned counsel for the applicants while placing on record through statement a copy of the Amended Execution Application contents that the respondent Nos. 1 to 4/ decree holders are bent upon to proceed with the execution application, hence urgency has arisen to take up the matter on an early date. The urgency application is treated as one for anti-date hearing of the matter and the same is allowed.

2. Exemption Application is allowed subject to all just exceptions.

3 to 5. Briefly stated facts of the case are that the respondents herein filed a civil suit being No. 193 of 2017 for declaration and recovery of amount of Rs. 11,93,181=81 against the applicants, averring therein that they are sons and daughters of late Manzoor Ali Dashti from his ex-wife, namely, Mst. Hooran, while respondent No.1 is his widow and the respondent Nos.2 to 5 are his daughters and son from her. It was also averred that late Manzoor Ali Dashti was an employed in WAPDA who died during his service on 11.05.2015 leaving behind him the respondents and applicants as his surviving legal heirs and after his death, WAPDA issued a cheque of Rs. 25,00,000/- to applicant No.1 as death claim of their deceased predecessor. It was claim of the respondents that all the legal heirs of the said deceased are entitled to their respective shares in

the death claim of their deceased predecessor. It was case of the respondents that the applicant No.1 encashed the cheque but refused to give their respective shares; hence, cause of action accrued to respondents to file the instant suit. The applicants contested the suit by filing their joint written statement wherein they denied the claim of the respondents by asserting that the latter had entered into a family settlement in presence of witnesses whereby respondent No.1 was appointed in WAPDA on son quota and the alleged cheque was issued to applicant No.1 for her family only. Learned 1st Senior Civil Judge, Jacobabad after framing issues on the divergent pleadings of the parties and recording pro and contra evidence, decreed the suit of the respondents as prayed, vide judgment and decree dated 28-02-2009. Against that, the applicants preferred Civil Appeal No. 10 of 2019, which was heard and dismissed by the learned District Judge, Jacobabad vide judgment and decree, dated 24.08.2019 and 28.08.2019 respectively, Aggrieved by the concurrent findings of the Courts below the applicants have preferred this revision application.

Learned counsel for the applicants contents that the judgment and decree passed by the Courts below are not sustainable in law as the same are bad in law and facts being not based on evidence on record have been passed. He has also contends that both the Courts below acted in exercise of their jurisdiction illegally and with material irregularity while passing impugned judgment and decree.

It is now well settled principal of law that the powers of High Court in revisional jurisdiction under section 115 C.P.C. are very limited. On reappraisal of the evidence, even if a different view is possible, the High Court cannot substitute its own view and upset the findings of facts concurrently arrived at by the Courts below. Such findings can only be interfered with if the Courts below have misread and misconstrued the evidence on record or have

committed any jurisdictional error or any material irregularity and illegality in arriving at such findings. In the instant case, the learned counsel for the applicants failed to point out any misreading and non-reading of evidence or any misconceiving of fact or commission of any jurisdictional error by the learned Courts below.

Against the claim of respondents, the assertion of applicants is that the applicants had entered into a family settlement in presence of witnesses whereby respondent No.1 was appointed in WAPDA on son quota and the alleged cheque was issued to applicant No.1 for her family only. The learned trial Court framed a specific issue i.e. Issue No.3 on such pleadings of the applicants and answered the issue by assessing the evidence on record in negative by holding in paragraph No.15 of its judgment, as under:

> *15. It is noteworthy that such assertions are required to be proved through convincing piece of evidence in shape of a document or witness in whose presence such settlement was held. However, she has failed to prove the fact in issue by adducing cogent evidence either in shape of reliable document or material witness.*

I do not find any justification to interfere with the well-reasoned concurrent findings of the Courts below.

For the foregoing facts and reasons, as no case is made out on the ground of any material irregularity or exercise of jurisdiction not vested in the Courts or failure of exercise of jurisdiction vested in it, the impugned judgments of Courts below do not call for any interference or exercise of discretion on any point of law in this case of concurrent findings. Accordingly, the instant revision application is dismissed in *limine*, along with listed applications.

13/01/2020

JUDGE