

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana

High Court Appeal No.323 of 2024

Muhammad Qutub-Ul-Arefeen & Seven (7) Others
Versus
Muhammad Younus Qureshi & Four (4) Others

Mr. Syed Sibte-e-Hassan for appellants.

Date of Hearing : 03.12.2024

Date of Announcement : 03.12.2024

Date of Reasoning : 04.12. 2024

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Jawad Akbar Sarwana, J.: The Appellants/Plaintiffs herein, Hanif Qureshi and his family, including his Attorney, have impugned an Order dated 12.08.2024 wherein the learned Single Judge hearing J. Misc. No.73/2014, filed by Hanif Qureshi's brother, Haroon Qureshi, and Haroon Qureshi's family ("the Respondents"), found that the Appellants/Plaintiffs had obtained a Compromise Decree in Suit No.1660/2024 through fraud and misrepresentation. The background of the fraud/misrepresentation is both discussed and identified in the impugned Order passed in the J. Misc. by the learned Single Judge and need not be repeated here for the sake of brevity.

Counsel for Hanif Qureshi et al. argued that they/he had not been heard by the learned Single Judge, contending they were condemned unheard "without listening to a single word of Appellants", and the impugned Order was passed "without due course of law". A perusal of the documents available on record in the appeal does not support Counsel's either of the two contentions. The record reflects that the learned Single Judge gave parties a hearing, considered the evidence available and passed Orders on merits. The Respondents/Haroon Qureshi's family relied on the undisputed record and proceedings of Suit No.578/1993, filed by them against the Appellant in the first round of litigation and culminated in a decree against the Appellants. The

fraud/misrepresentation under Section 12(2) CPC had been committed on the Court in Suit No.1660/2024 in the backdrop of the subsequent actions of the Appellants/Plaintiffs following the decree that had been passed against them (the judgment-debtors) in Suit No.578/1993. The judgment/decreed passed in Suit No.578/1993 involving the same subject had not been set aside. None denied the source material, and no one objected to it, which, even otherwise, formed part of the Court's record in the earlier round of litigation between the parties. There was no necessity for any factual inquiry. It was/is not mandatory to frame issues and record evidence in every 12(2) CPC Application.¹ In the circumstances, Respondent/Haroon Qureshi established the fraud/misrepresentation played on the Court. The impugned Order is proper and does not suffer from any illegality that calls for interference. The learned Single Judge has essentially revived the Appellants/Plaintiffs Suit No.1660/2013, and parties will have the opportunity to prove their case and defences, including the Respondent/Haroon Qureshi's family, who claim title in the suit property. Appellants have not satisfied this bench as to any error of law or otherwise, on facts, in the impugned Order dated 12.08.2024 as to why it should be set aside. None of the observations we have made herein to articulate our reasoning for the dismissal order of this appeal will be relied upon by the parties or the trial court in Suit No.1660/2013, which will be decided on its own merits in accordance with law.

Given the above, the Appeal was dismissed in limine by a short Order on 03.12.2024. The above is our reasoning for the dismissal.

Judge

Chief Justice

¹ Nazir Ahmed v. Muhammad Sharif and Others, 2001 SCMR 46; Mrs. Amina Bibi through General Attorney v. Nasrullah and Others, 2000 SCMR 296;