

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No: D- 1497 of 2023

[Baqaulah Khan Rajput Vs. Syed Muhammad Hyder Zaidi and others]

PRESENT:

Mr. Justice Arshad Hussain Khan

Mr. Justice Syed Fiaz-ul-Hassan Shah

Petitioner : Through Mr. Muhammad Amir Qureshi,
Advocate.

Respondent Nos.1 to 5 : Mr. Liaquat Ali, Advocate holding brief
for Syed Muhammad Saulat Rizvi,
Advocate.

Respondent No.10 : Through Mr. Maqsood Ahmed Bughio,
Advocate.

Respondent Nos.6,7&9 : Through Mr. Allah Bachayo Soomro,
Addl. A.G Sindh.

Date of hearing & order : 17.04.2025.

ARSHAD HUSSAIN KHAN, J; Through instant constitutional petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged the judgment and decree dated 29.01.2022 passed by learned 5th Senior Civil Judge, Hyderabad in F.C Suit No.1023 of 2017 whereby the Suit filed by the respondents Nos.1 to 5 against the petitioner was decreed to the extent of prayer clause (a) of the plaint. Being aggrieved, the petitioner filed Civil Revision Application No.10 of 2022 before the learned 6th Additional District Judge, Hyderabad; however, same was dismissed vide judgment dated 17.03.2023; hence maintained this petition with a prayer to set-aside both the aforesaid judgments passed by the Courts below.

2. Briefly the facts of the case are that respondents No.1 to 5 filed a suit for recovery of possession under Section 9 of the Specific Relief Act, 1877 stating therein that respondents/plaintiffs are owners having possession of suit property viz. House bearing No.66-D, measuring an area of about 100 square yards, situated at Block-A, Unit No.4, Latifabad, Hyderabad, which was purchased by their father by virtue of Sale Agreement dated 09.11.1987 for total sale

consideration of Rs.1,90,000/- [Rupees One Lac, Ninety Thousand only] from one Ahsan Ullah Chohan son of Qamaruddin Chohan, who was the Special Attorney of Mst. Shahzadi Begum wife of Faiz Muhammad. Record also reflects that the respondents were in possession of the property since 1974 as tenants, which remained with them as bonafide purchasers but after the death of their father on 09.12.2005, the petitioners/defendants threatened them to hand over the possession to them, hence respondents/plaintiffs filed a Cr. Misc. Application No.2694 of 2016 for protection which was allowed vide order dated 03.12.2016 passed by learned VIIth Additional Sessions Judge/Ex-Officio Justice of Peace, Hyderabad. Record further reflects that on 23.03.2017 when respondents/plaintiffs were at Karachi at about 08:00 PM petitioners/ defendants along with 8/10 unknown persons by breaking open the locks occupied the suit property forcibly, illegally and unlawfully, so also robbed away all the valuable household articles including dowry articles of the sisters of plaintiff No.1 whereupon respondent/plaintiff No.1 reported the matter to police station Hussainabad Hyderabad and also moved application but no action was taken. Ultimately, the plaintiffs filed a Criminal Miscellaneous application Under Section 22-A AB Cr.P.C. before the Court of Justice of Peace/VIIth Additional Sessions Judge Hyderabad, which was dismissed. Plaintiffs challenged the order dated 06.04.2017 before the High Court of Sindh, Circuit Court, Hyderabad by filing C.P. No.D-1110 of 2017 which is pending for adjudication. Subsequently, the respondents filed aforesaid suit with the following prayers:-

- a) *That, this Honorable Court may be pleased to pass Judgment and decree in favor of plaintiffs and against the defendants named above directing the Defendants to vacate/hand over/return back the vacant physical possession of the above cited Suit Property to the plaintiffs i.e. House bearing No: 66-D, measuring an area of about 100 Sq; Yds: Situated at Block-A, Unit No: 4, Latifabad, Hyderabad, without any hitch or hindrance or ALTERNATIVELY the Nazir of this Honorable Court may kindly be appointed to get the possession from the said defendants and hand over the same to the above named plaintiffs in peaceful manner legal manner.*
- b) *Cost of the suit may be granted in the plaintiffs.*
- c) *Any other further relief which this honorable Court may deem fit and proper in the circumstances of case may also be awarded.*

3. The trial Court after recording evidence and hearing the parties decreed the suit of the respondents/plaintiffs vide judgment and

decree dated 29.01.2022, against which the petitioners/defendants preferred Civil Revision Application No.10 of 2022 which was dismissed by the learned appellate Court. Hence this petition.

4. Learned counsel for petitioners has contended that impugned judgments passed by the Courts below are against the law, equity and natural norms of justice; that the suit filed by the respondents / plaintiffs is barred by law as according to Article 3 of Limitation Act, 1908 same has to be filed within six months; however, the respondents/plaintiffs failed to comply with the said provision of law; that respondent/plaintiff No.1 did not disclose name of neighbor, however during evidence he disclosed name of Mir Gul Hassan as neighbour who is residing far away from the suit property, as such, suit U/S 9 of Specific Relief Act was not maintainable; that petitioner/defendant No.1 is the sole, absolute and exclusive owner of the house built on Plot No.68, admeasuring 111 Sq.Yds. Block "A", Unit No.4, Latifabad, Hyderabad and prior to this one Shahzadi Begum was owner of the said property and the alleged sale agreement dated 09.11.1987 pertains to House No.65/D, admeasuring 100 Sq.Yds, situated at Block "A", Unit No.4, Latifabad, Hyderabad; that said Mst. Shahzadi was expired on 24.07.1983 while the alleged sale agreement was executed on 09.11.1987 through alleged Special attorney Ahsanullah and on the basis of Special Power of Attorney, the alleged attorney cannot sale the property, even till to-date the respondents / plaintiffs have not filed any suit for Specific Performance of Contract; that it is admitted by petitioners/defendants that father respondents/plaintiffs was tenant in the house built on Plot No.68, admeasuring 111 Sq. Yds. Block "A", Unit No.4, Latifabad, Hyderabad and when they failed to pay rent about 18 months and then differences arose between the parties petitioner/defendant approached the police authorities, however on 15.03.2017 respondents/ plaintiffs vacated the said property along with all household articles and handed over the keys to petitioner/defendant No.1 and since then he is in occupation of the suit property but respondents/plaintiffs malafide started civil and criminal litigation against him, therefore, he prayed that impugned judgment(s) may be set-aside as prayed.

5. Conversely, the stance of the respondents/plaintiffs is that judgment(s) and decree passed by the Courts below are legal and do not require interference of this Court. It has been contended that the respondents/plaintiffs approached the trial Court by invoking

provision of Section 9 of Specific Relief Act, 1877 and not section 8 thereof as such the respondents/plaintiffs were not required to prove their title before the Court rather all they had to prove was their possession over suit property for which they have brought on record sufficient evidence / material. Further contended that the evidence brought on record by respondents/plaintiffs on material points have remained unchallenged/un-shattered during cross examination therefore, learned trial Court as well as appellate Court have rightly passed the impugned judgments. Lastly, it is contended that instant petition may be dismissed with cost.

6. We have heard the learned counsel for the parties and perused the material available on record with their assistance.

7. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice¹. It may also be observed 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 also well settled 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.

8. It is also well settled principle of law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts, even if such findings are erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of mis-reading or non-reading of evidence or if the findings are based on evidence which may cause miscarriage of justice but it is not proper for this Court to disturb the findings of facts through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as substitute of revision or appeal.

¹ Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

² Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

9. Besides above, under the provisions of section 9 of the Act of 1877, if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him, may by suit recover possession thereof, notwithstanding any other title that may be set up in such suit. The prerequisites of section 9 *ibid* are that:

- i. The person suing must have been dispossessed;*
- ii. Such dispossession must be of immovable property;*
- iii. Such dispossession should be without consent and should be otherwise in due course of law; and*
- iv. The suit is to be brought within a period of six months from the date of dispossession.*

10. It is by now settled that the question of title either of the plaintiff or defendant cannot be raised or gone into in order to seek relief under Section 9 *ibid*³.

11. It is one of the contentions made by learned counsel for the petitioner that respondents/plaintiffs filed the suit U/S 9 of Specific Relief Act, 1877 claiming to be illegally dispossessed from the suit property which can be filed within a period of six months from alleged dispossession and perusal of record reveals that the respondents / plaintiffs were dispossessed from the property on 23.03.2017 and the suit was filed on the last day of prescribed period of limitation, hence the issue regarding limitation for filing of the suit is decided in favour of the respondents/ plaintiffs.

12. It may also be observed that this constitution petition has been filed against the concurrent findings of two courts below. Although we have attempted to find out if any of the piece of evidence has been missed out which could have, if read by the two forums below, could have altered the relief, but we found nothing inspiring to interfere. Moreover, it is not the jurisdiction of this court to reappraise the evidence under Article-199 of the Constitution of Islamic Republic of Pakistan. Had there been a glaring deviation from law or if any jurisdictional error has been performed by the two courts below, this court would have exercised its jurisdiction, but that is not the case here. No interference as such is required.

³ *Late Mst. Majeedan through Legal Heirs and another Vs. Late Muhammad Naseem through Legal Heirs and another* [2001 SCMR 345]

13. After reviewing the impugned judgments, we have come to the conclusion that the factual findings made by the trial Court and confirmed by the Appellate Court are based on a proper and fair assessment of the evidence. A review of the record shows that the respondents / plaintiffs succeeded before the Trial court in establishing the fact that they were in possession of the suit property and were forcibly and illegally dispossessed by the petitioner / defendants without due course of law, as such, a decree in respect of only possession was passed as the title / ownership was outside the purview of the suit under Section 9 of the Specific Relief Act. Both the Courts below Court have thoroughly discussed every aspect of the case and have addressed them in detail, leaving no scope for further discussion. The mere claim of the petitioner that the impugned judgments and decree are contrary to the law and the facts on record, without making a genuine effort to substantiate the same, carries no weight.

14. The upshot of the above discussion is that the petitioner has failed to point out any material illegality or irregularity in the decisions made by the Courts below warranting interference by this Court while exercising the constitutional jurisdiction. Learned counsel for the petitioner has also not been able to point out any misreading and non-reading of the evidence by the Courts below. In the circumstances, the instant petition is dismissed alongwith pending applications with no order as to costs.

JUDGE

JUDGE

****Hafiz Fahad****