

Order Sheet

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 198 of 2025

[Mst. Shahzadi Vs. Aamir Ali and others]

Before:-

Mr. Justice Arshad Hussain Khan

Mr. Justice Syed Fiaz ul Hassan Shah

Petitioner : through Mr. Ghulam Murtaza Soomro, Advocate

Respondents : Nemo

Mr. Allah Bachayo Soomro, Addl. A.G.,

Date of Hearing
& Decision : 30.04.2025

ORDER

ARSHAD HUSSAIN KHAN, J. Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan the Petitioner has challenged the order dated 9.1.2025 passed by learned Additional District Judge-IV, Dadu whereby the learned Judge while dismissing the Civil Revision maintained the order dated 3.12.2024 passed by learned Senior Civil Judge, Dadu in F.C. Suit No. 01 of 2022.

2. Brief facts of the case are that the petitioner and respondents are sons and daughter of deceased Allah Dino; that said Allah Dino was serving in Police Department who purchased plot bearing C.S. No. 971/42 333-3 sq.yds in Ward-B, Dadu Town. Subsequently he constructed house over the said plot which consists upon seven rooms, three wash rooms and one kitchen under the same roof; that petitioner in the year 1995 during the life of her father became widow; therefore, her father allowed her to reside with them in the said house; that said Allah Dino died on 10.6.2001. Subsequently, in the year 2007 due to uncongenial atmosphere, petitioner /defendant No.1 was allowed to raise walls over the portion of 1000 sq.fts without any partition or demarcation. In the year 2018 due to some quarrel between the parties over matrimonial issues FIRs were got registered against each other; which given cause to the parties of lawful partition and demarcation of suit property; therefore, they approached to the petitioner for partition however, upon her refusal the respondents/plaintiffs filed suit for demarcation and partition. The said suit was decreed on 22.2.2023 directing

Nazir of the Court to first inquire ownership of suit property from the concerned department and then partition the suit property amongst all the legal heirs of deceased as per their share and if partition is not possible, shall hold auction and distribute the sale proceeds between the parties and if anyone from the parties is willing to purchase the suit property at highest rate, the same may be sold to him, her or them.

3. During the course of above, the Petitioner filed simple application upon which the trial court called report from Mukhtiarkar concerned with regard to status of suit property as to whether the same is partitionable or not and on receiving the reports, the trial court passed following order dated 3.12.2024.

“ORDER

03.12.2024

“On 14.9.2024 J.D/applicant Mst Shahzadi filed application for calling market value of suit property though prior to this, market value of property was called from concerned Mukhtiarkar /City Survey office but on the request of J.D Mst Shahzadi again letter was issued to concerned Mukhtiarkar/ City Survey officer Dadu who submitted report dated 16.10.2024. Reports dated 28.6.2024 and 16.10.2024 showing value of suit property including the construction is Rs.5000/- per feet. As per record and reports of concerned officials it is clear that property is partitionable and can be partitioned among the LRs of deceased. Therefore, Mukhtiarkar/City Surveyor Dadu is hereby directed to make partition of the property as per share of LRs of deceased and handed over the possession to each. He is also directed to verify the contents raised by plaintiffs/decreed holder that electricity meter which is in the name of Mst Shahzadi and outstanding bill of that electricity meter is more than Rs.10,000,00/- and submit such report before this court. He is also directed that if Mst Shahzadi or any other LRs is not ready to accept the possession of his/her share same may be left vacated till further orders of this court. Let the copy of order be sent to Mukhtiarkar/City Survey officer for compliance and report. Matter be fixed for further proceedings on 4.1.2025.”

[Emphasis supplied]

4. The Petitioner being aggrieved with the above order dated 3.12.2024 preferred Civil Revision Appl. No. 04 of 2025. In the said Revision counsel for the petitioner contended that the petitioner does not want to keep her share, as she wants the auction proceedings of her share; however, she had no other grievance against the said order of the trial court; therefore, in view of said statement, the Revisional Court dismissed the Revision. The Petitioner being aggrieved filed the instant Constitutional Petition.

5. Learned counsel mainly argued that the Decree was passed for auction of suit property; however, learned Senior Civil Judge Dadu committed illegality while passing the order dated 3.12.2024 directing Mukhtiarkar / City Surveyor to conduct partition of suit property instead of conducting auction proceedings as prayed.

6. From the record it appears that the Petitioner had stated before the Revisional Court that she does not want to keep her share and wants auction proceedings of her share and further she has no grievance against the order of trial court. Admittedly the decree passed by the trial court is in accordance with law as all the legal heirs of deceased are entitled to inherit their share as per Muhammadan Law and further the petitioner herself is not aggrieved by the Decree passed by the trial court but she wants auction proceedings of her share only. From the report of Mukhtiarkar it is clear that the property is partitionable; therefore, the order of trial court may be complied with in its letter and spirit and there is no need to hold auction proceedings even for the share of petitioner. The Petitioner herself can sale her share either to any of the party in the suit proceedings or anyone else if any of the party to the suit proceeding is not ready to purchase her share as from the order of trial court it appears that there are arrears of electricity upon the electric meter installed at the portion in possession of the petitioner.

7. It may be observed that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of the Constitution, and if there is any error on the point of law committed by the Courts below or the Tribunal or their decision takes no notice of any pertinent provision of law, then obviously this Court may exercise Constitutional jurisdiction subject to the non-availability of any alternate remedy under the law. This Constitutional jurisdiction is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the Courts below or the Tribunals passed in violation of any provision of law or as a result of exceeding their authority and jurisdiction or due to exercising jurisdiction not vested in them or non-exercise of jurisdiction vested in them, which in the present case is non-existent.

8. In view of the above, we do not find any illegality in the impugned orders. Furthermore, learned counsel for the petitioner also could not point out any illegality, infirmity or jurisdictional error in the impugned judgment, which could warrant any interference by this Court in its extraordinary jurisdiction. Consequently, present petition, being devoid of any merit is dismissed.

JUDGE

JUDGE