

ORDER SHEET
LAHORE HIGH COURT
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT
C.R. No. 574 of 2024

Ghulam Fareed	Vs.	Muhammad Bilal, etc.
<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
06.11.2024	Mr. Azmat Islam Ghilzai, Advocate for petitioner.	

Petitioner, Ghulam Fareed who was defendant No.2 in a suit for possession filed by Muhammad Bilal, Respondent No.1, has called in question dismissal of his application under Section 12(2) C.P.C. by Additional District Judge vide impugned order dated 20.04.2024 by stating that as the decree was obtained by the respondent No.1 through fraud and misrepresentation, therefore, by allowing the aforementioned application the said decree should have been set aside, hence, seeks reversal of the impugned order on the ground that the same is not sustainable.

2. Perusal of the record shows that respondent No.1, Muhammad Bilal filed suit for possession of land measuring 14-marlas, bearing Khata No.298, Khasra No.30/31 in Mauza Shah Jamal, Tehsil and District, Muzaffargarh against the petitioner and Atta Muhammad, respondent No.2 on 05.03.1994 by contending that he had purchased land in dispute from respondent No.2 vide registered sale deed dated 12.10.1993 Exh.P4 and thereafter possession was handed over to respondent No.2 as tenant vide agreement of the same date for rent of Rs.500/- per month who had sub-let the same to petitioner without any authority and refused to return the possession of the property resulting in filing of the suit for possession. The petitioner

contested the said suit by claiming to have purchased the property through mutation No.885 for Rs.100,000/- on 10.01.1994 exhibited as P2 and D1 fee of which was deposited in the treasury on 02.10.1993 which was prior to its transfer to the respondent No.1 and claimed that sale deed in favour of respondent No.1 was a fraudulent document. The respondent No.2 through written statement affirmed the sale deed but denied having taken possession of property on rental basis. After recording of evidence the said suit was dismissed on 15.11.1997 by the Civil Judge, Muzaffargarh by declaring the sale deed of respondent No.1 as based on fraud and collusion and that transfer in favour of petitioner was genuine, however, on 27.11.1997 appeal filed by respondent No.1 was accepted by the Additional District Judge, Kot Addu, Muzaffargarh on 07.09.1998 with the result that findings of the trial court were reversed and the suit was decreed in favour of Respondent No.1 by upholding his sale deed, against which petitioner filed C.R. No.569-D of 1998 before this Court on 22.09.1998 which was dismissed on merits by this Court on 08.10.2015 and findings of the Additional District Judge were upheld by holding that respondent No.1 was owner of the property and that the petitioner had not been able to establish transfer/sale in his favour as he had withheld best evidence so adverse presumption was drawn against him and by placing reliance on judgment reported as "*Rasool Bakhsh and another versus Muhammad Ramzan*" (**2007 SCMR 85**), it was also held that registered instrument/sale deed attains presumption of truth and has preference over the mutation. Petitioner, thereafter, filed C.P. No.3522 of 2015 before Hon'ble Supreme Court of

Pakistan which was withdrawn on 06.03.2020 in the following terms:

“After arguing the case at some length ASC for the petitioner seeks permission to withdraw this petition in order to resort to other remedies which may be available to the petitioner under the law. Dismissed accordingly.”

3. Thereafter, petitioner filed application under Section 12(2) C.P.C. before learned Additional District Judge on 01.02.2024 which was dismissed on 20.04.2024 and the said order is under challenge through this revision petition. The application under Section 12(2) C.P.C. filed by the petitioner has been dismissed as not only being time barred but also not maintainable. Perusal of the record shows that decree passed by Additional District Judge dated 07.09.1998 has merged into order dated 08.10.2015 passed by this Court in C.R. No.569-D of 1998, therefore, said order was final order in the matter and application under Section 12(2) C.P.C. filed by the petitioner before Additional District Judge was not maintainable and has rightly been dismissed on that account for the reason that application under Section 12(2) C.P.C. is required to be made before the court that has passed the final decision, which principle of law has been affirmed by the Supreme Court in judgment reported as “*Province of Punjab through Collector, Sialkot versus Muhammad Irshad Bajwa*” (**1999 SCMR 1555**) which provides that competent forum to challenge the validity of judgment, decree or order under Section 12(2), C.P.C. is the Court which passed the final order.

4. In the present case, the final order had been passed by the High Court as the Hon’ble Supreme Court had not entertained the petitioner’s application for leave to appeal against the same.

Reliance in this regard is placed on judgments of the Supreme Court in case titled "*Khawaja Muhammad Yousaf versus Federal Government through Secretary, Ministry of Kashmir Affairs and Northern Areas and others*" (**1999 SCMR 1516**) where it is held that if Supreme Court merely reaffirms a judgment or order of a High Court by refusing leave, the final judgment in terms of Section 12(2), C.P.C. will be of the High Court and not of the Supreme Court. If, however, Supreme Court reverses a judgment of a High Court and records a finding on question of fact or law contrary to what was held by the High Court, in that event the final judgment or order would be of the Supreme Court for the purposes of Section 12(2), C.P.C.

5. When confronted of the aforementioned legal position that the petitioner was required to file the application under Section 12(2) C.P.C. before the High Court and not the court of Additional District Judge, the learned counsel for the petitioner has argued that the respondents' appeal had been allowed by the learned Additional District Judge by reversing the findings of the trial court, where after the order of the Additional District Judge was maintained by this court and then the petition for leave to appeal was withdrawn from the Hon'ble Supreme Court, hence, the petitioner is aggrieved of the order of the Additional District Judge which was maintained by Higher forums, consequently the petitioner had filed application before the Additional District Judge, which according to him was maintainable. It is pertinent to mention here that this argument of the petitioner is fallacious for the reason that supposing an order passed by the Civil Court/Trial Court is upheld up to this Court or

the Hon'ble Supreme Court on merit and not on technical grounds, then this assertion of the petitioner would enable the aggrieved party to restart another round of litigation by filing application under Section 12(2) C.P.C. before the Civil Court by ignoring the findings affirmed by the forums above. Hence, this was not a valid ground to file application before the Additional District Judge.

6. There is another aspect of the matter, which is whether the petitioner could file application under section 12(2) C.P.C. before the High Court, where he had already availed the remedy by filing Civil Revision against the order of Additional District Judge which was dismissed on merits is not presently in issue in this petition and has been left open to be considered and decided in some other case, lest the opinion if expressed herein without the matter currently being in dispute may prejudice the rights of either party.

7. As regards the question that said application was barred by time or not, said aspect of the matter was not required to be decided in view of the fact that said application was not maintainable before Additional District Judge as already discussed above. Consequently, no ground to warrant interference in the impugned order is made out for the reason that the same does not suffer from any illegality, jurisdictional defect or mis-reading and non-reading of material available on record.

8. In view of the above, this Civil Revision being devoid of merits stands **dismissed**.

(Muzamil Akhtar Shabir)
Judge

*Muzamil Mohsin**

Approved for reporting.