

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 81/2019

Muhammad Shoaib
versus
Ch. Muhammad Zubair, etc.

Petitioner by: Mr. Muhammad Musawar Gul, Advocate.

Respondents by: Ch. M. Asad Raan, Advocate for respondents No.1,
10, 11 & 12.
Mr. Asad Iqbal Siddiqui, Advocate for respondents
No.8 & 9.

Date of Decision: 05.10.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Civil Revision, the petitioner has assailed the order dated 12.12.2018, passed by learned Civil Judge, 1st Class (West), Islamabad, whereby application for restoration of suit filed by the petitioner was dismissed.

2. Learned counsel for the petitioner contends that petitioner filed Civil Suit No.30/2016, before Islamabad High Court for administration, possession through partition by meets and bounds, for recovery of *mesne* profit and for permanent injunction, which was transmitted to District Court after amendment in the Islamabad High Court Act, 2010 but no notice has ever been issued to the petitioner, resultantly, civil suit was dismissed for non-prosecution on 09.07.2018, when this fact came in the knowledge of petitioner, he filed application for restoration of suit. Whereby the application for restoration of the suit has been dismissed mainly on the ground that the defendants/rival legal heirs, whose suit on similar claim has been settled through preliminary decree and as such, their application under Sections 10 & 11 CPC are also pending before the learned Trial Court on same issue, which was made basis for dismissal of application of restoration despite the fact that the learned Trial Court has to first decide the restoration application independently and thereafter decide other issues in terms of Sections 10 & 11 CPC.

3. Conversely, learned counsel for respondents contends that learned trial Court has rightly passed the order in question as petitioner has never disclosed the status of previous suit filed by respondents, which was pending much prior to the present suit, as such, petitioner is guilty of concealment of facts; that even if the application for restoration of suit is allowed, the suit is not maintainable on the question raised by the respondent in terms of Section 10 & 11 CPC.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner filed suit titled Muhammad Shoaib Vs. Ch. Muhammad Zubair & others in the Islamabad High Court in its original jurisdiction vide C.S No.30/2016, which was transmitted to District Court after amendment in Islamabad High Court Act, 2010, the same was fixed before the learned Civil Court on number of dates, but due to non-appearance of present petitioner, matter was dismissed for non-prosecution on 09.07.2018, though the respondents have separately filed their application in terms of Sections 10 & 11 CPC mainly on the ground that other suits titled Ch. Muhammad Zubair Vs. Mst. Anisa Majeed & others and Majid ullah Vs. Mst. Miraj Begum were pending before the Civil Court since 05.09.2000 and 2008 respectively qua the same property among the same parties. However, most interesting feature of this case is the conduct of present petitioner, who is party in all the civil suits earlier filed by respondents and contested by him but he has not disclosed this fact in his own suit titled Muhammad Shoaib Vs. Ch. Muhammad Zubair & others, nor any such certificate was provided in this regard, which discloses the conduct of the petitioner, as such, the reasons furnished by the petitioner for non-disclosure of earlier proceedings are not justiciable, nor he has any defense to justify his non-disclosure in any manner. Even otherwise, learned Civil Court in the connected civil matter has already passed the preliminary decree vide judgment & decree dated 23.11.2018, which has now been agitated by the present petitioner before the learned Additional District Judge, Islamabad in RFA.

6. In these given circumstances, the impugned order passed by the learned Trial Court seems justified that the restoration of suit may not serve any purpose, but propriety demands that application filed by the petitioner should have been decided notwithstanding the legal plea raised by the respondents in terms of Sections 10 & 11 CPC in their application, rather the application for restoration should be decided on its own merit.

7. Record further reflects that suit was dismissed for non-prosecution on 09.07.2018 and application for restoration was filed on 24.07.2018 within period notified under the law and as such trial Court while adjudicating upon the application has given much weightage to the status of case on the basis of preliminary decree passed by other Court.

8. This Court, at this stage, considers it appropriate that trial Court has to decide the matter on merits and as such order passed by learned Trial Court discloses an illegality of the procedural steps, therefore, impugned order dated 12.12.2018 is hereby set aside and instant civil revision is allowed. The suit filed by the petitioner stands restored subject to cost of Rs.10,000/- to be paid to the respondents due to concealment of facts by the petitioner, who has concealed the important information of previous civil suits from learned Civil Court seized with the matter. Learned trial Court is directed to decide the pending application filed under Sections 10 & 11 CPC submitted by the respondents after giving hearing to the parties on one date and shall decide the same in accordance with law within period of thirty (30) days under intimation to this Court.

(MOHSIN AKHTAR KAKANI)
JUDGE

Zahid