

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

Civil Revision No. 52/2020  
Engineers Housing Scheme  
Versus  
Muhammad Haroon ,etc.

Petitioner by: Mr. Abdul Wahid Qureshi, Advocate,  
Respondents by: Mr. Sajjad Haider Malik, Advocate,  
Date of Decision: 02.09.2020.

**FIAZ AHMAD ANJUM JANDRAN, J.-** Through the instant civil revision petition, petitioner impugns orders dated 13.09.2019 and 26.11.2019 passed by the learned Civil Judge 1<sup>st</sup> Class and learned Additional District Judge, Islamabad-West, respectively, whereby application under Order XXXIX Rules 1&2 of the Code of Civil Procedure ('C.P.C') in suit for declaration, cancellation of mutations, permanent and mandatory injunction filed by him, was dismissed while appeal also met the same fate.

2. Facts, relevant for the disposal of instant civil revision petition, are that on 29.09.2018, petitioner filed suit for declaration, cancellation of mutations, permanent and mandatory injunction against the respondents regarding land measuring 09-Kanal 02-Marla situated in Khasra No.492, Village Sara-e-Kharboza, Tehsil and District, Islamabad ('suit property'). It was the stance of the petitioner that the entire suit property contained in Khasra No.492 was purchased by it through various mutations while the mutations in favour of the private respondents in the said Khasra, not only entered subsequently but the same have not yet been sanctioned; that under the garb of said entries, private respondents intend to dispossess the petitioner. Along with the suit, an application under Order XXXIX Rule 1&2 of CPC was also filed, which was dismissed by the learned trial Court vide order dated 13.09.2019. The petitioner assailed the said order in appeal which was

dismissed by the learned ADJ vide order dated 26.11.2019, hence, the instant civil revision petition.

3. Learned counsel for the petitioner argued that the petitioner is owner in possession of the suit property; that title of the private respondents is defective as the mutations entered in their favour are still under process; that the layout plan for the constructions over the suit property has also been sanctioned by the C.D.A after due process that includes proclamation in the newspaper; that balance of convenience leans in its favour and in case of dispossession, there is apprehension of irreparable loss.

4. Learned counsel for the private respondents contends that as per petitioner's own stance, a layout plan was sanctioned in its favour by the C.D.A, therefore, C.D.A should have been made party to the suit; that the petitioner claims ownership on the basis of documents pertaining to the year 2016 while the claim of private respondents is based on the documents pertaining to the year 2020; that actually the private respondents are in possession of the suit property having their houses and that they purchased the land from the original owners having ownership since 1956.

Learned counsel further contends that in order to verify the claim of petitioner regarding possession of the suit property, neither he moved any application to the learned trial Court nor to the learned Appellate Court for appointment of local commission for spot inspection; that private respondents are still ready if the case is remanded for the appointment of local commission and spot inspection; that on facts, there are concurrent observations, therefore, the instant revision petition is liable to be dismissed.

5. Heard and record examined.

6. As far as the submission regarding remand of the case for spot inspection by the local commission is concerned, learned counsel for the petitioner expressed reluctance to accept the offer, however, went on to say that in case the matter is remanded, at-least an injunctive order should be issued in favour of the petitioner. The request so made, cannot be acceded to being beyond the scope of the petition and the fact that the proceedings of the instant civil revision petition are not meant to create or defeat right of any of the parties by creating evidence.

7. Adverting to the merits, it is noticed that the two learned courts rendered common observations qua the entitlement of the petitioner regarding the suit property on the basis of title documents, while the ultimate decision on the issue of possession would, of course, be made after the recording of evidence. At present, there exists nothing on record which could be made basis even to tentatively held that the petitioner is entitled for grant of temporary injunction as prayed for.

8. The petitioner asserted to have the possession of the suit property but on the other hand has prayed for an injunctive order from raising construction or changing nature of the suit property by the private respondents as reveals through prayer clause of the application under Order XXXIX Rules 1&2 CPC which reads as under:-

“In the circumstances, it is, therefore, respectfully prayed that the petition may kindly be accepted and temporary injunction may please be granted by restraining the respondents from sanctioning the mutations mentioned in para No.6 of the appeal, selling, alienating the suit land or raising any sort of construction, changing its nature and interfering in the rightful and peaceful possession of the petitioner over the suit land, or doing any other act which adversely affects the rights of the petitioner in the suit land in any manner whatsoever till final disposal of the instant appeal.”

9. The above prayer clause reveals that the petitioner intends to blow hot and cold in one breath as on one hand there is claim of ownership with possession of the suit property, while on the other hand sought direction against the private respondents to restrain from raising constructions or changing nature of suit property in any manner whatsoever. It is quite strange that when exclusive possession of the suit property, as claimed, is with the petitioner then how the respondents can raise constructions over the suit property.

10. As a sequel to above, the orders of the two learned courts, in the backdrop of the facts highlighted above qua merits of the case, are well reasoned and do not call for any interference. The instant civil revision petition lacks merits and accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE