

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P.No.2762/2018

Muhammad Mushtaq Khan & another
vs.
Murad Khan Afridi & 02 others

Petitioners by: Mr. Muhammad Safdar Ali Bhatti, Advocate.

Respondents by: Nemo.

Date of Decision: 16.07.2021

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioners have called in question order of the learned Additional District Judge (East), Islamabad, dated 01.06.2018, whereby civil revision petition filed by the petitioners against order of the learned Civil Judge (East), Islamabad, dated 20.10.2017, has been dismissed.

2. Succinctly, petitioners namely Muhammad Mushtaq Khan and Nazar Khan filed a civil suit for permanent injunction through pre-emption against the respondents Murad Khan Afridi and Sagheer Ahmed, as such, the suit was contested by the said respondents through written statement, whereafter issues were framed and evidence of both the parties was recorded, however when the matter was fixed for final arguments, the petitioners filed an application under Order XIII Rule 1 & 2 CPC for additional evidence, which was dismissed by learned Civil Judge (East), Islamabad vide impugned order dated 20.10.2017. Feeling aggrieved thereof, the petitioners filed civil revision petition, which has been dismissed by learned Additional District Judge-V (East), Islamabad vide impugned order dated 01.06.2018. Hence, the instant writ petition.

3. Learned counsel for petitioners contends that to ensure justice recording of Postman's statement is necessary but, both the Courts below preferred fulfillment of the formalities over rendering the justice, as such, the petitioners are obliged to call in the Postman when Respondent No.2 refused the receiving of legal notice; that the apex Court has maintained that additional evidence can be allowed even if the list of witnesses is not submitted before the learned trial Court; that both the Courts below have not appreciated the facts and circumstances of the case in accordance with law and dismissed the application in a hasty manner.

4. Arguments heard, record perused.

5. Perusal of record reveals that notices had been issued to respondents No.1 and 2, in response whereof Mr. TasaddaqKhurshidAbbasi, Advocate placed on record his Power of Attorney on behalf of Respondents No.1 & 2, but neither the said learned counsel nor respondents No.1 & 2 remained vigilant to pursue the instant case despite granting a number of opportunities, therefore, this Court deemed it appropriate to proceed Respondents No.1 & 2 against ex-parte vide order dated 15.07.2021 and decide the matter on the basis of available record.

6. It has been observed from the available record that petitioner has filed a suit for permanent injunction through pre-emption against the respondents and during the course of proceedings, he got exhibited his notice for right of pre-emption dated 22.06.2013 referred as Ex.P3 and even submitted a postal receipts dated 24.06.2013 Ex.P2, but later on, he requested the Court that he intends to produce the postman in order to prove the record of delivery of said notice Ex.P2, but his request was turned down by the Trial Court vide order dated

20.10.2017 on the ground that he has miserably failed to show any good cause for the omission of postman from the list. This order has been maintained by the revisional Court vide order dated 01.06.2018, passed by learned Additional District Judge (East), Islamabad.

7. While considering these aspects, suit is yet to be adjudicated in terms of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, whereby constitution guaranteed the concept of fair trial and due process of law, though no justified reason has been explained by the petitioners that as to why he has not produced the postman earlier, but on the other hand, learned Trial Court exhibited the receipts in the evidence, such aspect demonstrates that the delivery of the notice is prima facie acknowledged by the Trial Court, but the receipts have been exhibited in accordance with law i.e. Qanun-e-Shahadat Order, 1984, such aspect could only be rectified if the postman concerned will be produced in the Court to justify the contents of Ex.P2, the postal record.

8. All these aspects have not been looked into by both the Courts below and no justified reason has been highlighted as to how and under what circumstances the postal receipts Ex.P2 have been exhibited when the postman did not appear before the Court.

9. In view of above, instant writ petition is ALLOWED. The impugned order dated 01.06.2018, passed by learned Additional District Judge (East), Islamabad and order dated 20.10.2017, passed by learned Civil Judge (East), Islamabad are hereby SET-ASIDE. The petitioners are permitted to produce the postman in order to justify Ex.P2 from the record of the postal department, which is a data record and same will not cause prejudice to either side. However, instant matter is pending before Trial Court since 2013, therefore, the

Trial Court seized with the matter is directed to decide the matter in accordance with law within the period of next six (06) months, under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN