

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No. 330 of 2015

Mst. Ayesha Ahmed.

Versus

Ishtiaq Hussain, etc.

Petitioner By : Mr. Zulfiqar Ali Abbasi, Advocate.

Respondents By : Raja Inam Amin Minhas& Ch. Waqas
Zamir, Advocates.

Date of hearing : 07.09.2020.

LUBNA SALEEM PERVEZ, J.- Through instant Civil Revision Petition, the petitioner has assailed the Order dated 24.07.2015, passed by learned Civil Judge, 1st Class (East), Islamabad, whereby, petitioner's application filed under section 12(2) CPC to challenge judgment & decree dated 23.07.2014, has been dismissed.

2. Facts, in brief, are that Respondent No.1 filed suit on 26.06.2014, against one Syed Makhdoom Gillani for specific performance of an agreement to sell dated 09.04.2014 in respect of property measuring 3 kanal 2 marla in Khasra No. 2803, Model Town Humak, Islamabad and obtained judgment and decree dated 23.07.2014, wherein, it has been observed that *in view of the above as the defendant has admitted entire claim of the plaintiff therefore the suit is decreed. Tehsildar Islamabad shall transfer the land in the name of plaintiff after completion of formalities.* It has been noticed on 23.07.2014 that one Malik Khalid Mehmood Advocate appeared for Syed Makhdoom Gillani as his attorney. Respondent No.2/Ayesha Ahmed challenged judgment and decree dated 23.07.2014 by filing petition under section 12(2) CPC on 01.06.2015 against Ishtiaq Hussain and Syed Makhdoom Gillani, on the contention that she

has purchased the land measuring 2 kanal 8 marla comprising Khasra No. 2803, Model Town Humak, Islamabad from its original owners through registered sale deed No. 9920 dated 09.06.2014 endorsed by sub Registrar Islamabad against sale consideration of 2,47,00,000/- and she filed this application under section 12(2) CPC when she came to know about judgment dated 23.07.2014, when started raising construction on the plot. This application was dismissed by learned Civil Judge, vide order dated 24.07.2015, against which order present civil revision has been filed.

3. As per record petitioner / Ayesha Ahmed also filed a suit for Declaration and Permanent Injunction on 11.07.2014 against Ishtiaq Hussain on the strength of registered sale deed dated 09.06.2014 and obtained interim injunction under order 39 Rule 1 & 2, vide order dated 08.11.2014, from learned Civil Judge, 1st class, East-V, Islamabad. This injunction was challenged by Ishtiaq Hussain by filing appeal before the learned District Judge, East-Islamabad, who vide order dated 04.05.2016 dismissed the appeal. Ishtiaq Hussain further challenged order dated 08.11.2014 and 04.05.2016 before this Court and vide order dated 28.06.2016, in civil revision No. 201/2016, this Court dismissed the revision on merits, however, directed the trial Court to conclude the trial within a period of six months positively under intimation to this Court.

4. Learned counsel for the petitioner submitted that learned Civil Judge, while dismissing the petition u/s 12(2) CPC has not appreciated the facts that the petitioner holds the registered sale deed of the property having specific boundaries and has rejected the application without considering the material facts and documentary evidence; that learned civil Judge has not considered the record, which could prove that the order dated 23.07.2014 was obtained by the Respondent No.1 through fraud and misrepresentation as the petitioner is the

legal and lawful owner of the immovable property having been purchased from original owners through registered sale deeds; that Respondent No.1 in connivance with Respondent No.2 filed frivolous suit for specific performance on 26.06.2014, and on 23.07.2014 on the statement of attorney of Makhdoom Gillani obtained decree of the suit land with the directions to the Tehsildar to transfer the land; that the petitioner after purchasing the suit land is in possession of the property; that the petitioner also filed suit against the Respondent No.1 on 11.07.2014, which has now been decided in favour of the petitioner, vide judgment and decree dated 10.10.2019; that the respondent has challenged the said judgment and decree in appeal which has also been dismissed, vide judgment dated 17.01.2020 by ADJ-III, Islamabad; that since, the ownership of the property in question has now been declared to be of the petitioner vide two concurrent judgments of the Courts below, therefore, there remains no doubt that the respondent has obtained the decree dated 23.07.2014 through fraud and misrepresentation, therefore, the present civil petition is liable to be accepted.

5. Learned counsel for the respondent, on the other hand, supported the impugned order and submitted that the application has been rightly dismissed by the learned civil Judge who has considered the facts and circumstances and has specifically pointed out that the application under section 12(2) CPC filed on 26.01.2014 was preferred by one Iftikhar Hussain through attorney namely Mehmood Hussain, who happens to be husband of the petitioner, which application was dismissed by the concerned civil Court on 04.04.2015 and the learned ADJ, thereafter dismissed the revision filed by Iftikhar Hussain, vide order dated 19.05.2015; that suit of the Respondent No.1 was decreed in his favour with the consent of attorney of Makhdoom Gillani, who accepted the claim of the present respondent; that petitioner has also filed suit for declaration

and permanent injunction on 11.07.2014, therefore, he is involved in parallel litigation, which is not permissible under the law and relied on cases re: *Government of The Punjab Education Department Versus Attaullah Qureshi* (2001 YLR 1085), *Lal Din Versus Muhammad Ibrahim* (1993 SCMR 710) and submitted that the present civil revision is not maintainable.

6. Arguments of the learned counsel for the parties have been heard and the record perused with their able assistance.

7. The controversy agitated through present civil revision is that the petitioner as well as the respondent are the claimants of same property i.e. measuring 3 kanal 2 marla in Khasra No. 2803, Model Town Humak, Islamabad. The petitioner claimed the ownership on the strength of registered sale deed No. 9920 dated 09.06.2014, according to which she has purchased the property from its original owners namely Abid Ali and others, whereas Respondent No.1 claims to have purchased the same property from one Syed Makhdoom Gillani (since deceased, however, despite notice to his legal heirs and substituted service through publication, no one tendered appearance) through sale deed dated 09.04.2014. Perusal of the record reveals that Respondent No.1 filed suit for specific performance against Makhdoom Gillani on 26.06.2014 and within a period of less than a month the suit was decreed in his favour on the statement of attorney of Makhdoom Gillani, that they accept entire claim of the Respondent No.1 (plaintiff of that suit). The order sheets of the suit filed by Respondent No.1 against Makhdoom Gillani reveal that vide order dated 26.06.2014 notices were issued to the defendants for 02.07.2014 and the interim restraining order for alienating or interfering in the possession of the plaintiff was granted. On 02.07.2014, the defendant No.2 in the suit i.e. Joint Sub Registrar, ICT, Islamabad was declared ex-parte, however, notice to Defendant No.1 i.e.

Makhdoom Gillani again issued through registered post AD, in compliance thereof on 18.07.2014 Defendant No.1 attended the court proceedings through his counsel and submitted that entire sale consideration according to the agreement has been received along with possession and they have no objection if the suit is decreed in favour of the Plaintiff/Respondent No.1 in the present petition. The learned Judge, however, directed the plaintiff to file certified copy of register of Haqdaran-e- Zameen on 21.07.2014. The case was adjourned to 23.07.2014 with the consent of the parties and to file copy of Haqdaran-e-Zameen. On 23.07.2014 the attorney/Khalid Mehmood appeared and expressed no objection if the suit is decreed in plaintiff's favour and also filed copy of Haqdaran-e-Zameen. The learned Judge on the basis of his statement decreed the suit with the direction to the Tehsildar for transfer of the land in the name of the plaintiff. The expeditious process of disposal of the above suit is quite suspicious, when Defendant No.2/ the Joint Registrar who is the record keeper of the properties has been declared ex-parte on the very next date of hearing and the document i.e. copy of register of Haqdaran-e-Zameen was just placed on record and without discussing or examining its contents though specifically directed to file the same by the learned civil Judge and the suit was decreed. The expeditious conclusion of the proceedings also give rise to a question that when the parties to the said suit were not at logger heads over the execution of the agreement dated 09.04.2014 then what was the need of filing of the suit before the civil Court as the defendant Makhdoom Gillani through advocate on the first date of his appearance accepted the entire claim and insisted on issuing decree in favour of the plaintiff with express no objection. It has been recorded in the order sheet dated 18.07.2014 that the plaintiff has received the possession, however, it transpired from the record that controversy began when the present petitioner started construction on

the property under consideration, therefore, the statement before the learned civil Judge regarding possession by plaintiff/Respondent No.1/Ishtiaq Hussain was made *prima facie* to obtain the decree from the Court in respect of the property.

8. Impugned order dated 24.07.2015 has also been examined carefully and it revealed that the dismissal of the application filed by petitioner under section 12(2) is merely based on the dismissal of another application filed by Iftikhar Hussain against the Respondent No.1/Ishaq Hussain under section 12(2) CPC on 26.10.2014 (mistakenly recorded as 26.01.2014). The learned Civil Judge, while passing the impugned order has not discussed any of the argument nor considered the documents which were essential for the disposal of application under section 12(2) CPC filed by the present petitioner. Learned Civil Judge has also not given any finding to the effect that no fraud or misrepresentation was committed by the Respondent No.1 for obtaining decree dated 23.07.2014 in respect of the suit property for which specific allegation under section 12(2) CPC has been made by the petitioner.

9. During the pendency of this civil revision, the suit filed by the petitioner on 11.07.2014 has also been disposed of in her favour, vide judgment dated 10.10.2019 on the basis of registered sale deeds / documents of the ownership and legal title. The Respondent No.1 challenged the judgment dated 10.10.2019, in civil appeal which has been dismissed by ADJ-III, Islamabad, vide judgment dated 17.01.2020. In view of the concurrent findings of both the courts below at present the petitioner is *prima-facie* the legal owner of the suit property.

10. Keeping in view of the above stated facts and circumstances, I am of the opinion that the impugned order dated 24.07.2015 is not based on sound reasoning and has been passed without taking into consideration essential facts and documents produced before the learned Court below, which constitute fraud

and misrepresentation, for which allegation the petitioner filed application under section 12(2) CPC.

11. For the foregoing reasons, impugned order dated 24.07.2015, is set-aside and the matter is remanded back to the learned Civil Judge with the direction to decide the application under section 12 (2) CPC filed on 02.06.2015, afresh after providing opportunity of hearing to the parties, in accordance with law and decide the case on its merits within a period of 30 days from the receipt of this order, through speaking order, by taking into account the history of litigation on the issue under consideration. The operation of the judgment and decree dated 23.07.2014, shall remain suspended till decision of the application u/s 12(2) CPC.

12. The present civil revision is **allowed** in the above terms.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on this 25th day of September, 2020.

JUDGE

M Junaid Usman