

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**C.R No.40/2020.**

Mst. Nasreen Akhtar

Versus

Shah Jehan

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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**01.**      31.01.2020      Raja Kamran Alam Satti, Advocate for the petitioner.

Through the instant civil revision petition, the petitioner has assailed the judgment & decree dated 30.07.2019, passed by learned Civil Judge 1<sup>st</sup> Class-West, Islamabad and judgment & decree dated 14.10.2019, passed by learned Additional District Judge-X, West-Islamabad, whereby suit filed by the petitioner for declaration, possession, mandatory and permanent injunction was dismissed concurrently.

2. Brief facts referred in the instant case are that petitioner Mst. Nasreen Akhtar filed suit against respondent Shah Jehan for declaration, possession, mandatory and permanent injunction with the prayer that her husband constructed a house 2½ Marla located at corner house, street No.9, Kachi Abadi, Sector G-6/2, Islamabad in the year 2008 and the same was given to the petitioner/plaintiff by her husband through an affidavit, whereas respondent/defendant, who is member of *Qabza* group in the said vicinity extended threats to vacate the suit house. Ad-interim injunction was granted by Trial Court vide order dated 06.10.2018, whereby the respondent/defendant was restrained from interfering into peaceful possession of the petitioner/plaintiff, however, the said order was violated and the petitioner/plaintiff was dispossessed by the respondent on 08.10.2008, where-after the petitioner/plaintiff sought amended

relief of possession. The suit was contested by the respondent/defendant, who denied contents of the plaint and took the stance that the petitioner/plaintiff and her husband Liaqat Masih sold out the suit house to him against sale consideration of Rs.9,00,000/- two years ago and husband of the petitioner/plaintiff received entire sale consideration and handed over the possession to him. Learned Trial Court after concluding the trial, dismissed the suit vide impugned judgment & decree dated 30.07.2019, against which the petitioner filed an appeal before the Court of learned Additional District Judge, which was also dismissed through impugned judgment & decree dated 14.10.2019.

3. Learned counsel for the petitioner contends that both the Courts below have not appreciated the evidence in its true perspective and the event of dispossession gave rise to the filing of the suit for possession and declaration; that evidence produced by the petitioner through witnesses leaves nothing in favour of the respondent, who has failed to justify his plea raised in the written statement; that both the Courts below have drawn adverse inference from the evidence, which is not permissible legally.

4. I have heard learned counsel for the petitioner and perused the record.

5. Perusal of the record reveals that the petitioner initially filed suit for declaration, temporary and permanent injunction with the claim that her husband constructed suit house at the corner of street No.9, Kachi Abadi, G-6/2, Islamabad from his own resources, which was transferred to the petitioner, however, the respondent extended threats. Ad-interim injunction was granted by learned Trial Court vide order dated 06.10.2018, which was violated by the respondent on 08.10.2018 and the petitioner was dispossessed by the respondent.

6. I have gone through the evidence of the petitioner, who appeared as P.W.1 and acknowledged in her cross-examination as under:-

۱۔ مکان متد عویہ کی تعمیر کی بابت بینک سٹینٹ پیش کر سکتی ہوں اسکے علاوہ تعمیر کے متعلق کوئی اور ثبوت پیش نہ کر سکتی ہوں۔ یہ درست ہے کہ مکان متد عویہ پر کوئی میٹر نہ لگا ہوا ہے۔

۲۔ یہ درست ہے کہ دعویٰ کے ساتھ جو میٹر کے بل کی کاپی لگائی ہے وہ مکان متد عویہ کے میٹر کا بل نہ ہے۔ جس بل میٹر کی کاپی لگائی ہے وہ میرے دیور کے مکان کے میٹر کا بل ہے۔

۳۔ یہ درست ہے کہ میں نے دعویٰ کے ساتھ گیس میٹر کے بل کی جو کاپی لگائی ہے وہ بشیر مسیح کے نام ہے۔ عاشق حسین کے نام نہ ہے۔

۴۔ یہ درست ہے کہ مکان متد عویہ سرکاری کوارٹر G-6/2 گلی نمبر 9 کے آخر پر بنا ہوا ہے۔ مکان متد عویہ کے پیچھے بھی سرکاری گھر بنے ہوئے ہیں۔ یہ درست ہے کہ سرکاری مکانوں کے درمیان جو کچرے والی جگہ تھی اس پر ہم نے یہ مکان تعمیر کیا ہے۔

۵۔ میرے پاس مکان متد عویہ جو سرکاری کوارٹر کے درمیان کچرے والی جگہ پر بنا ہے۔ اسکی بابت کوئی ملکیت لائسنس اجازت استعمال میرے پاس نہ ہے۔

۶۔ یہ درست ہے کہ اگست 2008 میں مکان متد عویہ میں ہم لوگوں کے شفٹ ہونے کا ثبوت میرے پاس نہ ہے۔

7. The petitioner also produced Liaquat Masih as P.W.2, who is the person, who constructed the suit house in Kachi Abadi. During cross-examination, he acknowledged as under:-

۱۔ مکان متد عویہ کی تعمیر سے قبل ایک دیگر مکان میں نے کچی آبادی میں تعمیر کیا وہ مکان F-6 کچی آبادی میں واقع ہے کچی آبادی F-6/2 میں جو مکان بنایا تھا۔ مکان کی جگہ ہمیں کسی اتھارٹی کی طرف سے آلات نہ ہوئی تھی خود ہی قبضہ کر کے مکان بنایا تھا F-6/2 والا مکان میں نے فروخت نہ کیا ہے۔

۲۔ مکان کی تعمیر کے میٹر بل کا کوئی بل میرے پاس نہ ہے۔

۳۔ یہ درست ہے کہ میں مکان متد عویہ پر 06.10.2018 پر اپنی بیوی کے قابض ہونے کے متعلق کوئی ثبوت پیش نہ کر سکتا ہوں۔

۴۔ یہ درست ہے کہ مبینہ قبضہ کے بعد ہم نے مدعا علیہ کے خلاف کسی جگہ کوئی درخواست نہ دی کہ وہ مکان متد عویہ سے ہمیں ہمارا سامان نکالنے دے مکان متد عویہ سے میری بیوی کو 15 پولیس جس کو اس نے خود بلوایا تھا اس نے نکالا۔ یہ درست ہے کہ ہمارے محلے کا کوئی آدمی اس اس بابت کے شاجہان نے مکان متد عویہ پر 08.10.2018 کو قبضہ کر لیا تھا آج میرے ہمراہ بیان دینے نہ آیا ہے۔

۵۔ یہ درست ہے کہ مکان متد عویہ جس زمین پر بنایا ہے اس بابت کسی اتھارٹی یا CDA سے میرے یا میری بیوی کے حق میں کوئی الاٹمنٹ یا اجازت نامہ جاری نہ ہوا ہے ہم نے مکان

مند عویہ کی ہابت ریگولر ایزیشن کے لیے کوئی درخواست نہ دی ہے کچی آبادی G-6 کا نقشہ نہ بنا ہے۔"

8. The above referred evidence clearly spells out that the land, on which the suit was constructed is state land, which is property of CDA as such the construction of the suit house is illegal and the state land cannot be claimed by the petitioner in any manner, which requires legal right or character in terms of section 42 of Specific Relief Act, 1877, which is lacking in this case. The petitioner has no title, allotment, right or any other legal documents, on the basis of which she could claim ownership of the land rather she could claim only construction of the house on the said land but the above referred evidence is clear, wherein no record of construction has been produced to justify petitioner's claim.

9. The petitioner also produced Bailiff Muhammad Ashfaq as P.W.3, who submitted his report Exh.P.6, in which it was referred that the respondent was in possession of the suit property on 08.10.2018 and he verified this fact from independent persons of the vicinity.

10. On the other hand, the respondent himself appeared as D.W.1 and reiterated his stance referred in the written statement and also produced Muhammad Shakil as D.W.2, in whose presence the sale transaction was completed.

11. Keeping in view above background, the petitioner is not entitled for the relief claimed as such learned Trial Court has given detailed findings on issue No.1, which have not been rebutted in any manner. The evidence has rightly been appreciated although the respondent/defendant is also not owner of the property in question as the land belongs to CDA and every person, who is living in that vicinity, who has constructed Kachi Abadi is violating the law of land in blatant manner. Both the

Courts below have rightly passed the impugned judgments and decrees and no illegality has been observed in the same.

12. In view of above discussion, the instant civil revision petition bears no merits, therefore, the same is hereby **dismissed in limine**. Office is directed to transmit copy of this judgment to the Chairman, CDA (ii) Director, Estate Management, CDA (iii) Chief Commissioner, Islamabad (iv) Deputy Commissioner, Islamabad (v) Inspector General Police of Islamabad (vi) the SHO concerned to take action against the illegal occupants of G-6/2 in accordance with law and to restore the state land.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

R.Anjam