

HCJD/C-121
JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No.3435/2014

MUHAMMAD NASEER ABBASI
VERSUS
CAPITAL DEVELOPMENT AUTHORITY & OTHERS.

Petitioner by : Sardar Asmat Ullah Khan, Advocate.
Respondents by : M/S. Sheraz Ahmed Ranjha & Masood Hussain Shah,
Advocates
Date of Hearing : 27-10-2015.

ATHAR MINALLAH J: The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 (hereinafter referred to as the “*Constitution*”) assailing orders dated 06-06-2014 and 30-06-2014, passed by the learned Civil Judge and learned Additional District Judge-West respectively.

2. The facts, in brief, are that the petitioner filed a suit in the year 2003 for declaration and permanent injunction in respect of two properties in Islamabad. In the case of one property, Mst. Saeeda Naseer Abbasi, who was then the wife of the petitioner, was a co-owner, while the other property was solely in her name. Mst. Saeeda Naseer Abbasi was a defendant in the said suit while the petitioner, as plaintiff, claimed that the ownership of the former was benami. The petitioner and Mst. Saeeda Naseer Abbasi executed a compromise deed dated 03-05-2003, and the same was filed in the learned trial Court. On the basis of the compromise/settlement between the parties the suit was decreed on 03-05-2003 in the following terms.

"حکم۔ بروئے بیان مدعلیہا وراضی نہم اور مدعی اس طور پر ٹکری کیا جاتا ہے کہ مدعی جائیداد مندعو بہ بمطابق قانون وادائیگی واجبت اپنے نام منتقل کرائے گا۔ ہر دو فریقین اپنے بیان کے پابند رہیں گے۔ خرچہ بزمہ فریقین۔ مثل بعد از ترتیب و تکمیل داخل دفتر ہو۔"

3. Mst. Saeeda Naseer Abbasi passed away on 27-02-2014, and during her lifetime neither had any execution proceedings been initiated, nor was any attempt made to get the property transferred pursuant to the judgment and decree dated 03-05-2003. It is evident from the record that after her death the petitioner approached the *Capital Development Authority* i.e. respondent No.1 with a request to transfer the two properties in his name on the basis of the decree. However, vide letter dated 04-04-2014, the respondent No.1 regretted his request and advised him to execute/file necessary proceedings in the competent Court for the purposes of implementation of the decree dated 03-05-2003. Admittedly, the execution of the decree by that time had become barred on account of lapse of the period of limitation and, therefore, on 15-03-2014, the petitioner filed a suit for declaration and mandatory injunction to the effect that he is entitled to the transfer of the suit property in his name pursuant to the judgment and decree dated 03-05-2003, with a further prayer to direct the respondent No.1/defendant No.1 to transfer the two properties in his name. The respondent No.3, who is the brother of Mst Saeeda Naseer Abbasi, filed an application under Order 1 Rule 10 of the Civil Procedure Code, 1908 (hereinafter referred to as "CPC") seeking his impleadment as a party/defendant claiming to be a necessary party. No child was born out of the marriage between Mst Saeeda Naseer Abbasi and the petitioner. The application was allowed by the learned trial Court vide order dated 06-06-2014. It is pertinent to mention that the respondent No.3 had also filed an application under Section 12 (2) of the CPC and the same was withdrawn after his application under Order 1 Rule 10 of the CPC was accepted. The petitioner filed a revision petition and the same was dismissed by the learned Additional District Judge-West, Islamabad, vide the impugned order dated 30-06-2014.

4. Mr. Sardar Asmat Ullah Khan, ASC, appearing for the petitioner has contended that; both the Courts have committed grave illegalities in accepting the application, as the matter had attained finality pursuant to the passing of the judgment and decree dated 03-05-2003; the grounds relied upon by the learned Additional District Judge-West, Islamabad, while dismissing the revision petition are not tenable in law; the learned Additional District Judge-West, Islamabad, had not taken into consideration that the title and interest of Mst. Saeeda Naseer Abbasi had extinguished consequent upon the suit having been decreed vide judgement and decree dated 03-05-2003; the respondent No.3 is claiming a right as a legal heir of Mst. Saeeda Naseer Abbasi, while the latter had executed a written compromise/settlement; the judgment and decree dated 03-05-2003 has attained finality and has become a past and closed transaction; during her life time Mst. Saeeda Naseer Abbasi had not raised any objection, nor had she challenged the judgment and decree; both the Courts fell in error by assuming that the two properties are part of the estate/assets of Mst. Saeeda Naseer Abbasi; the respondent No.3 is, therefore, a stranger and thus neither a necessary nor proper party; the learned Additional District Judge-West, Islamabad, misinterpreted the law laid down by the Lahore High Court in the judgment reported as “Messrs Jans Caterers versus The Islamic Republic of Pakistan through The Chairman, Pakistan Western Railway, Lahore and 2 others”, *PLD 1972 Lahore 169*; no specific bar exists for the High Court to exercise its powers under Article 199 of the Constitution to interfere with an order passed by the revisional court, and in this regard reliance has been placed on “Muhammad Anwar and others vs. Mst. Ilyas Begum and others”, *PLD 2013 Supreme Court 225*, “Muhammad Ashraf Butt and others vs. Muhammad Asif Bhatti and others”, *PLD 2011 Supreme Court 905*, “Qamar-ud-Din vs. Muhammad Din and others”, *PLD 2001 Supreme Court 518*; even if the decree has not been executed within the prescribed period of limitation it remains valid and binding and does not become ineffective; reliance

has been placed on “Ali Ahmad and another vs. Muhammad Afzal and another”, **PLD 1973 Lahore 207**; no party can be allowed to argue that as the Court has a wide discretion in the matter of joinder of parties, any person who is neither a necessary nor a proper party may be joined at the convenience of the applicant; reliance has been placed on “Pakistan Banking Council and another vs. Ali Mahtaram Naqvi and others”, **1985 SCMR 714**; the petitioner had become the owner of the two properties when the judgment and decree dated 03-05-2003 was passed in his favour; reliance has been placed on “Muhammad Rafique and 2 others vs Noor Khan”, **2003 YLR 1434**; a decree passed by a competent Court is to be implemented and the executive authorities cannot refuse to do so on the pretext that execution was not sought within limitation; reliance has been placed on “Khaliq Dad, etc vs. M.B.R. etc. **NLR 2002 Revenue 80**; “Muhammad Jameel through L.Rs. vs. Syeda Sakina Raiz and 2 others”, **2014 CLC 1098**.

5. The learned counsel for the respondent No.3, namely Mr. Sheraz Ahmed Ranjha, ASC, argued that; the judgment and decree dated 03-05-2003 was passed in a suit wherein Mst. Saeeda Naseer Abbasi was a defendant; the judgment and decree had been obtained by the petitioner on the basis of fraud; the respondent No.3 is, admittedly, the legal heir and most obviously a necessary/proper party in the suit; a party claiming interest could not be kept away from the proceedings and if the respondent No.3 had not been impleaded as a defendant, it would have led to multiplicity of litigation; a party can be impleaded at any stage of the proceedings; mere delay in making an application to be added as a party cannot be made a ground for rejection of the prayer; the respondent No.3, after the demise of Mst. Saeeda Naseer Abbasi, has a vital interest in the subject matter and, therefore, was entitled to be impleaded as a party; reliance has been placed on “Metropolitan Corporation of Lahore through Adminstrator vs. Syed Bhais (Pvt) Limited through Managing Director and 5 others”, **2004 MLD 1395**, “Syed Khurram Shah vs Mian Muhammad Shahbaz Sharif and 4 others”, **PLD 2009 Lahore 140**, “Ghulam Hussain and another vs.

Malik Shahbaz Khan and another”, 1985 SCMR 1925, “Noor Avenue Cooperative Housing Society, Hanjarwal, Lahore through President vs. Lahore Development Authority through Director General, L.D.A, Lahore and 3 others”, 2008 CLC 200, “Razia Begum vs. Iqbal Begum and 7 others”, PLD 1957 Lahore 1040, “Syed Khurram Shah vs. Mian Muhammad Shahbaz Sharif”, PLD 2009 Lahore 140, “Tirathdas Kallumal and another vs. Acharya Devendra Prasadji and others”, PLD 1967 Karachi 711 and “Abdul Ghafoor vs. Alamgir and 4 others”, 2006 YLR 2662.

6. The learned counsel for the *Capital Development Authority* has relied on “Muhammad Khan and 6 others vs. Mst. Ghulam Fatima and 12 others”, 1991 SCMR 970 in support of his contention that a High Court is not vested with jurisdiction to exercise powers under Article 199 of the Constitution against a revisional order arising out of civil litigation and has, therefore, contended that the petition is not maintainable and thus liable to be dismissed.

7. The learned counsels have been heard and the record perused with their able assistance.

8. It is neither disputed nor denied that the judgment and decree dated 03-05-2003 was not executed during the lifetime of Mst. Saeeda Naseer Abbasi, nor had any proceedings been initiated in this regard. The limitation prescribed under the law for the execution of the decree dated 03-05-2003 had expired at the time when the petitioner approached the *Capital Development Authority* for the transfer of the properties. The properties continue to be in the name of late Mst. Saeeda Naseer Abbasi. Perusal of the prayer sought in the suit shows that the petitioner is seeking a declaration 'to the effect that the plaintiff is entitled to transfer the suit property in his name in accordance with judgment and decree dated 03-05-2003'. A direction has also been sought for the transfer. The judgment dated 03-05-2003 has made specific reference to the compromise deed 'Exhibit C-1', a copy whereof is attached with the petition as Annexure J. The

respondent No. 3 is, admittedly, the brother of deceased Mst Saeeda Naseer Abbasi and has acquired an interest in the properties as an heir. Whether such interest in the context of the pending suit will have any effect or not is to be determined by the trial Court. The respondent No. 3 had filed an application under section 12(2) of CPC, thus giving rise to multiplicity of litigation. The said application was withdrawn after the acceptance of his application under Order 1, Rule 10 of the CPC. The respondent No. 3 is, therefore, both a necessary and proper party. The presence of the respondent No. 3 is obviously essential to enable the learned trial Court to effectively and completely adjudicate upon and settle all questions and matters material for a proper decision, and simultaneously avoiding multiplicity of litigation. The rights of the respondent No.3 as a legal heir accrued as soon as Mst. Saeeda Naseer Abbasi passed away. This Court is not impressed with the argument of the learned counsel for the petitioner that the judgment and decree dated 03-05-2003 had attained finality, extinguishing the right of Mst. Saeeda Naseer Abbasi and, therefore, the respondent No.3 cannot claim any right or interest as a legal heir. It would be appropriate to avoid making any observation relating to the merits of the pending suit, and neither shall this order prejudice the proceedings therein. After going through the case law cited at the Bar by the learned counsel for the petitioner, the same has been found distinguishable in the facts and circumstances of the instant petition.

9. In “Central Government of Pakistan and others vs. Suleman Khan and others”, PLD 1992 SC 590 the august Supreme Court elucidated the scope, application and purpose of Order 1 Rule 10 CPC and held that the same is wide enough and that the said provisions have to be interpreted liberally so as to achieve the complete adjudication of all the questions, which are involved in the lis, one of the purposes being to avoid multiplicity of the proceedings. Moreover, in “Rauf B. Qadri vs State Bank of Pakistan and another” PLD 2002 SC 1111, the august Supreme Court while considering the provisions of Order 1 Rule 10 CPC in the context of power to transpose has held that the said power is derived

amongst others from Order 1 Rule 10 CPC. The august Supreme Court, therefore, while referring to Order 1 Rule 10 CPC has enunciated the principle that the provisions *ibid* have to be interpreted liberally in the interest of complete adjudication of all the questions involved in a *lis* and in order to avoid the multiplicity of the proceedings. It has further been held that such power by the Court is invariably exercised generously and technical hurdles are always bypassed for consideration of effectual adjudication and inexpensive access to justice. Reliance is also placed on “Said Alam and another vs. Raja Sohrab Khan and 8 others”, 1970 SCMR 639. It is, therefore, obvious that a party is a necessary party if he/she ought to have been jointed and in whose absence no effective decree can be passed. On the other hand persons whose presence before the Court is necessary to enable it effectually and completely to adjudicate upon and settle all question involved in the suit, are proper parties.

10. The respective judgments passed by the two Courts are well reasoned. Nothing has been pointed out or brought to the attention of this Court which may show that they suffer from patent error, non-reading/misreading of facts on the record or having committed a grave illegality in applying the correct law.

11. Next, is the question argued by the learned counsel appearing for the *Capital Development Authority* that a constitutional petition is not maintainable against an order passed by a competent Court while exercising revisional powers. The law in this regard by now is well settled. The august Supreme Court in “Muhammad Ashraf Butt and others vs. Muhammad Asif Bhatti and others”, PLD 2011 SC 905 considered this question and has held as follows:-

“Suffice it to say that on account of the provisions of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, it is an alienable right of every citizen to

enjoy the equal protection of law and to be treated in accordance with law, therefore, if a revisional Court has passed an order which does not qualify the test of Article 4 ibid and suffer from a patent error, of fact, such as non-reading/misreading of the facts on the record or has committed a grave illegality in applying the correct law, such as the error of misapplication and non application of correct law, thus being an illegality of a sheer nature can always be rectified by the High Court while exercising its constitutional jurisdiction under Article 199, as no bar/limitation in this behalf on the exercise of constitutional jurisdiction of the High Court either emanates from the plain reading of the Article or can be read into it.”

12. The said principles and law were reaffirmed by the august Supreme Court in the case of “Muhammad Anwar and others vs. Mst. Ilyas Begum and others” **PLD 2013 SC 255**. A constitutional petition, therefore, is maintainable against an order passed by a Court in exercise of the powers of revision vested in it, and the scope of the powers and jurisdiction of a High Court in such circumstances has been eloquently described by the august Supreme Court in the above referred judgments.

13. In view of the above, the instant petition is without merit and is, therefore, accordingly dismissed.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on _____

JUDGE

Approved for reporting.

*Asif Mughal/