

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O. No.118/2019

Kashif Naeem

Versus

Mst. Ghazala Shaheen and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.07.2019	Mr. Tahir Mehmood Abbasi, Advocate for the appellant

Through the instant appeal, the appellant, Kashif Naeem, impugns the order dated 29.05.2019, passed by the Court of the learned Civil Judge Islamabad, dismissing his application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (C.P.C.) filed along with his suit for *“declaration, specific performance of contract dated 21.04.2011, permanent and mandatory injunction”*. In the said suit, the appellant had prayed for *inter-alia* a decree for specific performance of the agreement dated 21.04.2011 for the sale of Unit No.9 comprising one Basement, one Shop and one Flat bearing Plot No.G-2, Al-Noor Plaza, I-9, Islamabad (*“the suit property”*) executed between respondent No.1 (seller) and the appellant (purchaser).

2. Learned counsel for the appellant submitted that the learned Civil Court erred by dismissing the appellant’s application for interim injunction solely on the ground that the suit property was the subject matter of an earlier judgment and decree dated 06.12.2012 in favour of respondent No.4 (Arshad Mehmood); that an application under Section 12(2) C.P.C. had been filed against the said judgment and decree; that against the order dismissing the application under Section 12(2) C.P.C., a revision petition had been preferred which was also dismissed; and that against the revisional order, a writ petition has been filed which is still pending in this Court.

3. Learned counsel further submitted that respondent No.4 was respondent No.1's ex-husband and had obtained a decree with respect to the suit property in his favour through fraud; that respondent No.2 (Karamat Hussain) is respondent No.1's brother; and that the learned Civil Court erred by dismissing the appellant's application for interim injunction. Learned counsel for the appellant prayed for the appeal to be allowed and for the impugned order dated 29.05.2019 to be set-aside.

4. I have heard the contentions of the learned counsel for the appellant and have perused the record with his able assistance.

5. It is an admitted position that a decree with respect to the suit property in favour of respondent No.4 is still intact. An application under Section 12(2) C.P.C. against the said judgment and decree was dismissed and so was the revision petition against the order dismissing the application under Section 12(2) C.P.C. The mere pendency of a writ petition against the revisional order would not dilute the effect of the decree in favour of respondent No.4.

6. After having gone through the impugned order dated 29.05.2019, I find the same to be well reasoned and lawful. Since the subject matter of the suit instituted by the appellant is immovable property, the doctrine of *lis pendens* comes to his aid.

7. In view of the above, the instant appeal is dismissed in limine. Nothing observed herein shall have any bearing on the decision of the learned Civil Court while deciding the appellant's suit.

(MIANGUL HASSAN AURANGZEB)
JUDGE