

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

Civil Revision No. 222 of 2018

Manzoor Hussain

Versus

Mst. Sameena Naseem Khan and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.02.2020	Mr. Zulfiqar Ali Abbasi, Advocate for the petitioner.

Through the instant civil revision petition, the petitioner, Manzoor Hussain, impugns the order dated 21.05.2018 passed by the Court of the learned Additional District Judge (East), Islamabad, whereby his appeal against the order dated 03.01.2018, passed by the Court of the learned Civil Judge, was dismissed. Vide order dated 03.01.2018, the learned Civil Court partially allowed the petitioner's application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908( "C.P.C.") to the extent that the respondents were restrained from further transferring and alienating the suit land as well as from creating any third party interest till final disposal of the suit.

2. The facts essential for the disposal of the case are that on 03.02.2017, the petitioner instituted a suit for declaration, mandatory and permanent injunction. In the said suit, it was averred that the petitioner is owner in possession of the land measuring 15 *kanals* 06 *marlas* comprising of *khasra* No. 648 (hereinafter referred to as "the suit land") transferred through a mutation No.1403, dated 25.03.1934 whereby the petitioners' predecessor-in-interest, Syed Ahmed, purchased the said land from Mst. Sairan widow of Pannun; that the said mutation was duly incorporated in the record of rights maintained by the revenue authorities; that during the course of settlement in the year 1956-57, the entries

pertaining to the khasra comprising the suit land were wrongly incorporated in the names of different persons having no nexus with the suit land; and that those persons i.e beneficiaries of wrong revenue entries further illegally transferred the suit land to respondents.

3. Along with the suit, the petitioner filed an application under Order XXXIX, Rules 1 and 2 C.P.C. wherein he prayed for the respondents to be restrained from forcibly dispossessing him or transferring/alienating the suit land on the basis of illegal entries made in the revenue record. The respondents contested the suit and application for temporary injunction. On 28.11.2017, respondent No.14 filed an application under Order VII, Rule 11 C.P.C. for rejection of the petitioner's suit. The learned Civil Judge vide order dated 03.01.2018 dismissed respondent No.14's application under Order VII, Rule 11 C.P.C. and partially allowed the petitioner's application for temporary injunction. The petitioner assailed the order to the extent of partial rejection of application for temporary injunction in appeal which was dismissed by the learned appellate Court vide impugned order dated 21.05.2018.

4. Learned counsel for the petitioner after narrating the facts leading to filing of the petition submitted that the learned Courts below concurrently erred in law and facts; that the suit land was illegally transferred to the respondents on the basis of wrong entries made in the revenue record and the persons having no nexus with the suit land; that the respondents cannot be termed as *bonafide* purchasers of the suit land without notice; that the learned courts below did not give weightage to the basic document, i.e. mutation No.1403, dated 25.03.1934 in favour of the

petitioner; that the petitioner had no knowledge about the incorporation of wrong and illegal entries in the revenue record; that on preparation of periodical record of rights after every four years a fresh cause of action accrues but this important aspect was not considered by the learned Courts below; and that learned trial Court dismissed respondent No.14's application under Order VII, Rule 11 C.P.C. by holding that *prima facie* case of the petitioner exists but at the same time while taking up the application for interim injunction taken a contrary view which is not plausible. Learned counsel for the petitioner has prayed for the revision petition to be allowed and for the application under Order XXXIX, Rules 1 and 2 C.P.C to be accepted in entirety.

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

6. The petitioner in his suit challenged longstanding entries made in the revenue record which are said to have adversely affected his rights. The petitioner's stance is that he owned the suit land pursuant to mutation No.1403, dated 25.03.1934 and record of rights maintained by the revenue authorities between the years 1934 to 1956-57. It is yet to be determined whether the entries in the Record of Rights made in 1956-57 were on the basis of fraud. Moreover, the petitioner did not bring on record any cogent material to *prima facie* establish his possession over the suit property. Not only this, the petitioner himself admitted the transfer of the suit property on several occasions through registered sale deeds and mutations in the revenue record. An injunction restraining the respondents from exercising proprietary rights cannot be issued in vacuum without the petitioner first satisfying the

test of *prima facie* proof regarding his possession over the suit land.

7. Apart from above the suit land is the subject matter of the two cross cases filed by the petitioner and respondent No.14 against each other, therefore, alienation of the suit land *pendente lite* would be subject to the principle of *lis pendens*.

8. In this view of the matter, finding no jurisdictional error or legal infirmity in the impugned order dated 21.05.2018 the revision petition is dismissed *in limine*.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

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