

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

**W.P No. 116/2020**

**Malik Usman.**

***Vs***

**Muhammad Siddique, etc.**

<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>
---	---	--

*01.*    *17-01-2020.*    Sardar Waqas Naseer, Advocate for petitioner.

Through instant petition, the petitioner has assailed order dated 18.11.2019, passed by learned Additional District Judge-I/Judge MCAC(East), Islamabad, whereby application, under section 12(2) and 9(13) of the Code of Civil Procedure, 1908 (hereinafter referred to as the "**CPC**"), filed by the Petitioner were dismissed.

2.    Facts in brief, as narrated by the learned counsel for Petitioner, are that the Respondent No.1 and Muhammad Aksar, predecessor-in-interest of the Respondent Nos. 2 to 8 filed Civil Suit No. 167/2012, on 24.04.2012, for permanent injunction on the ground that they are owners of ancestral property bearing Khasra Nos. 723 / 724, 725/1, 726, 718, 444, 445, 443, 458 and the Petitioner, who is the occupant of 15 Marla land in the north-southern side of Khasra No. 723 has encroached 9 Marla land of the

Respondents/Plaintiffs and raised construction thereon. Initially the suit was dismissed, vide judgment dated 11.04.2013 (while ex-parte for present Petitioner), against which order, Plaintiffs / Respondents filed review petition under section 114 read with order 47 of CPC on 07.05.2013, which was decided on 23.05.2013 in their favour, whereby, it has been held that Exp-P/9 (Register Haq-Darane Zameen) annexed with the Civil Suit No. 167/2012, proves the ownership of Khasra No. 723 in the name of Respondents / Plaintiffs and thus Petitioner / Defendant was directed to hand over the vacant physical possession of 9 Marla of the suit land to the Respondents/Plaintiffs which he had occupied illegally. Petitioner/Defendant challenged order dated 23.05.2013 through Civil Appeal No 322/2013 on 19.06.2013, and the learned Additional District Judge, Islamabad (East), vide order dated 28.02.2015, set aside all the proceedings held before the courts below and remanded back the suit for fresh trial. During the fresh proceedings before the learned trial Court in Civil Suit No. 167/2012, again neither present Petitioner/Defendant nor his counsel appeared so as to furnish proof of their ownership over the suit land, whereupon, the suit was once again allowed,

vide decree dated 10.10.2017, issued in favour of Respondents/Plaintiffs while ex-parte against the present Petitioner/Defendant, on the basis of document of ownership i.e Register Haq-Darane Zameen.

3. Being aggrieved, Petitioner / Defendant assailed decree dated 10.10.2017, through review petition and also filed application under section 12(2) of CPC, alleging that Respondents/Plaintiffs has obtained the decree through fraud. Application under section 12(2) of CPC was dismissed, vide order, dated 26.09.2019. Petitioner filed the revision petition before the learned Additional District Judge-I/Judge MCAC (East), Islamabad, against dismissal of application under section 12(2) of CPC, but at that forum also, could not prove his allegations of fraud and justify his continuous non-appearance during the proceedings, despite that he was allowed ample opportunities of hearing during respective proceedings, resultantly, his revision petition was dismissed, vide order dated 18.11.2019. Hence, Petitioner / Defendant filed instant petition for setting aside order dated 18.11.2019.

4. Learned counsel for petitioner contended that the learned Additional District Judge has failed to appreciate the real

controversy, whereas, the impugned order suffers from misreading and non-reading of material available on record which as such suffers from material illegalities. However, when asked to prove the illegalities and highlight the flaws in the impugned order, learned counsel failed to point out even a single irregularity or illegality in the impugned judgment. Even he could not put forth the so-called real controversy which according to him was misread or non-read by learned Additional District Judge. He could not submit any argument regarding claim of suit Khasra of the Respondents/Plaintiffs or controvert the allegation or encroachment but reiterated the contents of application u/s 12(2).

5. Arguments heard, record perused.

6. It is observed that learned counsel avoided the trial proceedings in the first instance as well as after the remand of the case, vide order dated 28.02.2015, which was appropriate forum where he could <sup>have</sup> proved his ownership of the suit Khasra through documentary evidence. Learned counsel, in attendance, also admitted that he did not attend the trial proceedings, however, failed to furnish any sufficient reason or bonafide ground for non-attendance. It is also

observed that deliberate non-attendance of the Petitioner/Defendant resulted in ex-parte decision against the present Petitioner, against which he filed application under section 12(2) of CPC, asserting serious allegations of obtaining order dated 10.10.2017 through fraud and misrepresentation. Such allegations are quite significant and onus to prove the same lied on Petitioner/Defendant who was required to put forward the particulars of commission of fraud while filing application under section 12(2) of CPC, whereas, contrary to that no such evidence was produced by him thus, his said application was rightly dismissed, vide order dated 26.06.2019.

7. During the course of arguments, learned counsel was specifically asked time and again to show any specific proof of fraud and misrepresentation, however, neither anything could be brought on record nor he could point out any illegality in findings of the learned Additional District Judge-I/Judge MCAC (East), Islamabad, vide impugned order dated 18.11.2019.

8. After perusal of the entire record including orders of the learned trial as well as learned appellate Courts, I am of the considered view that the present

Petitioner/Defendant deliberately avoided the trial proceedings since have malafidely encroached the suit Khasra, whereas, the respondents succeeded in proving their ownership and possession of the suit land through documentary evidence and consequently lead to prove their version of encroachment of suit land of 9 Marlas. The pleadings by the Petitioner/Defendant did not contain any submission to controvert the allegation of encroachment of land rather cases filed before the lower appellate forums were on generalized technical grounds. Thus, I have no doubt in my mind while holding that the Petitioner/Defendant with malafide intention encroached the suit land belonging to Respondents/plaintiffs and indulged them in the lengthy litigation, for which the Respondents/Plaintiffs have paid unnecessary cost and faced mental agony, which tantamount to abuse and misuse of the process of law on the part of Petitioner/Defendant.

9. In view of above facts and circumstances of the case, it is held that the revision petition of the Petitioner/Defendant has rightly been dismissed, vide order dated 18.11.2019 and findings of the learned Additional District Judge do not suffer from

any illegality, irregularity, infirmity or flaw which, as such, is based on lawful reasoning, hence, Instant petition is, hereby, *dismissed in limine with the cost of Rs. 1,00,000/-(one hundred thousand)*, to be paid by the Petitioner/Defendant to the Respondents/Plaintiffs for dragging the later into false and frivolous litigation. Guidance in this regard has respectfully been taken from the observations made by the august Supreme Court of Pakistan in case of **"Muhammad Anwar Vs. Mst. Ilyas Begum" [2013 PLD 255 SC]**.

**(LUBNA SALEEM PERVEZ)**  
**Judge**

Sherazi/.