

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 3506/2021

Malik Muhammad Rafiq, etc.

Versus

Public at large, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
-------------------------------------	-----------------------------------	--

04.11.2022

The instant petition was heard on 13.06.2022. However after perusal of the record it appears that the petitioners have filed the instant petition challenging judgment and decree dated 21.09.2021 pursuant to which their suit for declaration of rights of adopted parents was dismissed. The suit for declaration is of a civil nature suit and there exists a right of appeal against the judgment and decree passed therein but the petitioners instead filing an appeal filed the instant petition and the office treating the judgment and decree as were issued by the Guardian Court entertained the same as a writ. The judgment and decree ought to have been treated as having been passed by the Civil Court in relation to a suit for declaration under Section 42 of the Act and not as a guardianship suit. The instant petition is not maintainable. However, to meet the ends of justice and to decide the issue on

merit, this Court has ample powers to convert a writ petition into an appeal or treat one kind of proceedings into another. In this regard reliance can be placed on **Mian Asghar Ali Vs. Government of Punjab and others (2017 SCMR 118)**, wherein the following was held:

"Power to convert and or treat one kind of proceeding into another is derived from authority to do ex debito justitiae, which always existed and have always been exercised by the Court not only to advance the cause of justice but also to prevent the injustice. No fetters or bar could be placed on the High Court and or this Court to convert and treat one type of proceeding into another and proceed to decide the matter either itself provided it has jurisdiction over the lis that has fallen on its lap for adjudication in exercise of another jurisdiction vested in the very Court or may remit the lis to the court/forum/ authority of competent jurisdiction for decision of the lis on its own merits. Courts have been treating and or converting appeal into revisions and vice versa and Constitution Petitions into appeal or revision and vice versa. In the case of Jane Margrete William v. Abdul Hamid Mian (1994 SCMR 1555), C.M.A. under section 151, C.P.C. filed in the High Court, was treated as cross objection. In the case of Capital Development Authority v. Khuda Bakhsh and 5 others (1994 SCMR 771), where the High Court converted the C.M.A. filed in a disposed off Writ Petition as a separate Writ Petition and decided the same accordingly, this Court held if the High Court was satisfied that circumstances of the case justified conversion of Miscellaneous

Application filed by the Respondent in a disposed off case into proceedings under Article 199 of the Constitution of Pakistan, there is no legal bar to such conversion of proceedings.”

2. Since the jurisdiction to hear an appeal against the impugned judgment and decree is also vested in this Court, therefore, the instant petition is to be treated as Regular First Appeal. The office is directed to number the petition accordingly and fix the same before the court on 08.11.2022.

(BABAR SATTAR)
JUDGE