

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 151/2019.

Raja Muhammad Hanif

Versus

Ch. Qaiser Maskin, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	23.04.2019.	Mr. Khalil ur Rehman Abbasi, Advocate for petitioner.

Through this Civil Revision, the petitioner has assailed the judgment dated 10.01.2018, passed by learned Additional District Judge (West), Islamabad, whereby appeal U/O XLIII Rule 1 CPC against order dated 28.03.2017, passed by learned Civil Judge 1st Class (West), Islamabad, filed by respondent No.1 was allowed and status-quo granted in favour of respondent No.1 in terms of Order XXXIX Rules 1 & 2 CPC.

2. Learned counsel for the petitioner *inter-alia* contends that petitioner is defendant No.1 in the suit titled Ch. Qaiser Miskeen Vs. Rja Muhammad Hanif, etc., whereby respondent No.1 prayed for the following relief:-

That decree for declaration to the effect that the plaintiff is owner in possession of the suit land for which the defendants have absolutely no right or concern whatsoever with the same and as a consequential relief decree for permanent injunction restraining the defendants from claiming any right or interest over the suit land or making any sort of construction over there or getting any better, valuable and potential portion of the suit land or to change its basic characteristic or to do any other illegal act which creates an invasion over the rights of the plaintiff, may graciously be passed in favour of the plaintiff and against the defendants, with cost.

3. The respondent has claimed the declaration in

his favour regarding suit land measuring 10 Kanal 13 Marlas situated in Khasra No.1659/164 Revenue Estate of Jhangi Syeddan, Tehsil & District Islamabad. Learned trial Court while hearing the application U/O XXXIX Rule 1 & 2 CPC, passed the restraining order that any construction made by the plaintiff/petitioner upon the suit property will be made at his own risk and cost during the pendency of instant suit. The said order was assailed through appeal U/O XLIII Rule 1 CPC by Ch. Qaiser Miskeen/plaintiff, which was set aside by the learned Additional District Judge (West), Islamabad and status-quo order has been granted till the final decision of the suit qua the suit property.

4. Learned counsel for the petitioner further contends that petitioner is defendant in the main suit and any restraining order will create further complications and the balance of convenience lies in favour of petitioner which was not considered by the trial Court as well as Appellate Court; that generalize order of status-quo will infringe the rights of petitioner.

5. Arguments heard, record perused.

6. Perusal of record reveals that respondent No.1 filed suit for declaration and permanent injunction against the petitioner, however, learned trial Court granted injunctive relief with the condition that any construction raised by plaintiff will be made at his own risk and cost, whereas, appellate Court passed the restraining order without such restriction.

7. Be that as it may, both the orders reflect that case of the petitioner could only be resolved after recording of evidence and as such he acknowledges that respondent No.1 is his co-sharer and no exclusive possession is available to the petitioner as claimed by him in Khasra No.1659/164.

8. I have asked the learned counsel for the petitioner to demonstrate petitioner's right of ownership in Khasra No.1659/164, which is only 04 Marlas out of 10 Kanal 13 Marlas. Learned counsel for the petitioner concedes that same cannot be established without recording of evidence. This admission on the part of petitioner itself established that he acknowledges the share of respondent No.1 and he agitated the matter before the civil Court, therefore, he could not claim any benefit, as such the matter in dispute could only be resolved after recording of evidence and it is settled law that petitioner has to demonstrate any illegality or illegal exercise of jurisdiction in the impugned order, failing which civil revision is not maintainable.

9. Keeping in view the above background, petitioner has failed to point out any jurisdictional defect or any illegal exercise of jurisdiction by the Court below, therefore, instant civil revision is misconceived and the same is hereby dismissed in limine.

(MOHSIN AKHTAR KAYANI)
JUDGE