

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 210/2019

Muhammad Yaqoob etc

Versus

Rasheed etc.

Petitioners by: Syed Zia Ul Hassan Bokhari, Advocate

Respondent No. 1 by: Ch. Tanveer Akhtar, Advocate

Date of Decision: 25.10.2019

MOHSIN AKHTAR KAYANI J. Through this Civil Revision, petitioners have assailed the order dated 10.05.2019, passed by learned Additional District Judge-VI (East), Islamabad, through which the order dated 07.03.2018, passed by learned Civil Judge, (East), Islamabad has been set-aside whereby application under Order XXXIX Rules 1 & 2 CPC filed by the petitioners was allowed.

2. Learned counsel for the petitioners contends that petitioners have filed suit for possession through partition, permanent and mandatory injunction against respondent No.1 alongwith two officials/respondents with the declaration that petitioners are legal heirs of deceased Abdul Razzaq and are joint owners of land measuring 06 marlas, bearing Khewet No. 301, Khatooni No.571, Khasra Nos. 2103, 2105, situated at Mouza Kirpa, Tehsil and District, Islamabad and respondent No.1 has no right of title or interest in the suit land and at the same time, the petitioners have claimed the partitioning of the suit property. It was further contended that the respondent No1/Rasheed has contested the civil suit by way of filing his written statement and the learned Trial Court while hearing the application under Order XXXIX Rule 1 & 2 allowed the same, whereby respondent No. 1 was restrained from changing the nature of the suit land

and he was not allowed to construct the suit property. The said order was assailed in appeal and the learned Appellate Court has not considered the law on the subject and set-aside the injunctive relief due to which respondent No.1 will change the nature of the suit land and as such if petitioners succeeded in their claim, the suit property would have already been converted from agricultural land to residential or commercial, whereafter the rights of the petitioners would be jeopardized.

3. Conversely, learned counsel for respondent No. 1 contends that respondent No.1 is in possession of a joint property and as such the claim of petitioners could only be adjudicated after recording of evidence and the suit is not maintainable due to the fact that the other co-sharers have not been impleaded as party in the suit. Learned counsel for respondent No.1 has placed reliance upon the record of rights and contends that the total land available in the Khasra Nos. 2103 and 2105 is 05 Kanal and 08 Marlas and petitioners are claiming only 06 Marlas of land, which could only be divided subject to partition decree, however, it is not the case of the petitioners that respondent No1 is utilizing the better portion of the suit property. It has lastly been contended that the learned Appellate Court has rightly set-aside the order dated 07.03.2018.

4. Arguments heard, record perused.

5. From the perusal of record, it has been observed that the petitioners have filed suit for possession through partition, permanent and mandatory injunction with the claim that they are owners of 06 marlas of land and respondent No.1 is joint owner with petitioners in Khasra Nos. 2103 and 2105 situated at Mouza Kirpa, Tehsil and District, Islamabad and as such the construction raised by the respondent No.1 without partitioning the suit property amounts to denial of rights of the petitioners.

6. I have gone through the revenue record as well as pleadings of the parties and the periodical record of rights for the year 2001-2002 appended with instant civil revision qua the suit property, whereby Khasra No. 2103

comprises of one Kanal and 16 marlas and Khasra No. 2105 comprises of 03 Kanal and 12 marlas of the properties and as such petitioners are claiming their rights to the extent of 06 marlas only from the total land measuring 05 Kanal and 08 marlas, however, at this stage, it is not the case of the petitioners that respondent No.1 is raising construction upon the entire land, although the respondent No.1 is in possession of entire land and as such owns that the petitioners are the co-sharers of the property to the extent of 06 marlas, if the said stance of the parties is correct, then there is no need to pass any injunctive order against respondent No.1 as there is ample land available with respondent No.1, which can accommodate the claim of the petitioners subject to final outcome.

7. It has further been reflected from the arguments of the learned counsel for the parties that respondent No.1 has partly acknowledged the rights of the petitioners, in such type of eventuality, the learned Trial Court can adopt the procedure provided in terms of Order X Rule 2 CPC or to confront the claim in terms of notice to admit fact and document and if the other side acknowledges the same, the courts are equipped with the powers to decide the matter by shortening the litigation.

8. I have gone through the orders of the Courts below and have come to a considerable view that although the petitioners/plaintiffs have arguable case, but balance of convenience and irreparable loss are not available to them as they are not in possession of any piece of land, hence their claim can only be settled by way of recording of evidence, whereas respondent No.1 has given an affidavit in the learned Trial Court, whereby he acknowledges that he is raising construction at his own risk and cost, even otherwise, he is in possession of land beyond the claim of 06 marlas by the petitioners, therefore, petitioners' right would not be damaged.

9. It has also been observed from the record and arguments of the learned counsel for the parties that petitioners have failed to point out any

jurisdictional defect or illegal exercise of jurisdiction in the impugned judgment dated 10.05.2019, passed by learned Additional District Judge-VI (East), Islamabad, although the learned Appellate Court has observed in the impugned judgment that respondent No.1 is duty bound to obtain permission from CDA before raising any construction, therefore, necessary permission is required to be obtained under the law.

10. The long and short of what has been discussed above, instant civil revision is misconceived and same is hereby **dismissed.**

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN