

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No. 3232/2021

Jammu & Kashmir Cooperative Housing Society, etc.

Versus

Nisar Ahmad Afzal, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04-01-2022	Sheikh Muhammad Suleman, Ms Hifsa Suleman, Advocates for petitioners. Mian Muhammad Faisal Irfan, Advocate for respondent no.2 Mr Ali Almas Abbasi, Advocate for respondent no.4.

Athar Minallah, C.J.- Through this constitutional petition, the petitioner has impugned order, dated 12-07-2021, passed by the learned Civil Judge 1<sup>st</sup> Class (West), Islamabad whereby application filed by the respondents under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (*hereinafter referred to as the 'CPC'*) was allowed while the petition under Order VII Rule 11 *ibid* filed by the petitioner was dismissed.

2. Respondents no.1 and 2 filed a suit on 07-07-2020 seeking declaration, cancellation of document, permanent and mandatory injunctions

and recovery. The prayer has been sought regarding mutation no.2791, dated 22-09-2003, mutation no.2792, dated 22-09-2003, mutation no.5358, dated 28-08-2004 and agreement to sell, dated 27-02-2003. The suit has been filed alleging fraud and forgery.

3. The learned counsel for the petitioners has been heard at length. He has argued that the matter was conclusively decided by the competent forums and, therefore, the suit was not competent. However, the learned counsel, despite his able assistance, could not show that the filing of the suit was barred under any law nor that the prayers sought have been conclusively decided by a competent court. The learned counsel has argued that the suit was barred because it was not filed within the prescribed time. This question obviously can be raised before the learned trial court and it cannot be decided while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The impugned order is well reasoned and does not suffer from any legal infirmity. The discretion exercised by the learned trial court has not been found to be arbitrary or

fanciful. The learned counsel has placed reliance on the judgments titled '*Sultan Ahmed and others v. Ch. Muhammad Irshad and others*' [2010 YLR (Lahore) 3002], '*Ghulam Muhammad v. Mst. Rasoolan Bibi*' [1996 MLD (Board of Revenue Punjab) 256], '*Mumtaz Mohammad and others v. Khurshid through L.Rs. and others*' [2017 MLD (Peshawar) 1767], '*Muhammad Nazir v. Muhammad Yousaf through General Attorney and others*' [2012 MLD (Lahore) 439], and '*Zahid Zaman Khan and others v. Khan Afsar and others*' [PLD 2016 SC 409]. With the able assistance of the learned counsel, the said judgments have been carefully perused and the court has found them to be distinguishable in the facts and circumstances of the case in hand. The learned counsel has not been able to raise any legitimate ground to interfere with the well-reasoned order passed by the learned trial court.

4. For the above reasons, the petition is without merit and, therefore, accordingly ~~dismissed~~.

(CHIEF JUSTICE)