

Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No. 219 of 2018

Dr. Syed Tanseer Asghar and others

Versus

Dr. Asghar Ali Khattak and another

Petitioners By : Mr. Muhammad Jamshaid Hussain Shah,
Advocate.

Respondents By : Mr. Gul Hussain Jadoon and Ms. Zill-e-
Huma, Advocates

Date of Hearing : 18.11.2019

AAMER FAROOQ, J. - In view of my detailed Judgment passed
in Civil Revision No. 258 of 2017, the instant Civil Revision is **dismissed**.

(AAMER FAROOQ)
JUDGE

Announced in open Court this 31st day of January, 2020.

JUDGE

M.Shah/.

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No. 258 of 2017

M/s Ahbab Agro Farms (Pvt) Limited

Versus

Dr. Asghar Ali Khattak

Petitioner(s) By : Ms. Zill-e-Huma, Advocate.
Mr. Muhammad Jamshaid Hussain Shah,
Advocate in C.R. No. 219/2018.

Respondent(s) By : Mr. Gul Hussain Jadoon, Advocate.

Date of Hearing : 18.11.2019.

AAMER FAROOQ, J. - This judgment shall decide the instant petition as well as Civil Revision No. 219 of 2018, as common questions of law and facts are involved.

2. The facts, leading to filing of the instant petitions, are that Dr. Asghar Ali Khattak approached M/s Ahbab Agro Farms (Pvt) Limited for purchase of a farm house plot. After negotiation, provisional allotment was made in favour of the respondent in respect of land measuring 20-Kanals for the sum of Rs.20,00,000/-. In this behalf, sum of Rs.5,00,000/- was paid in advance and remaining price was also duly paid. Terms between the parties were altered in the sense that the petitioner offered to provide land in Phase-II of the project in the sum of Rs.30,00,000/-, however, after negotiation, the matter was concluded and the petitioner failed to fulfill its part of the bargain and the respondent approached the Court seeking specific performance of the agreement. The suit was decided in the favour of the respondent vide judgment and decree dated 25.02.2013. An appeal was filed, which was dismissed as being barred by

limitation. The petitioner filed civil revision (C.R. No. 277/2014), before this Court, which also was dismissed. The petition for leave to appeal, filed before the Hon'ble Supreme Court of Pakistan, was also dismissed. The respondent filed execution application, in which the petitioner, after lapse of almost three years, filed objection petition. The referred objection petition was dismissed vide judgment dated 21.12.2016. Appeal was also dismissed on 13.04.2017.

3. In the execution proceedings, the land, as per report of the Patwari, was attached on 06.06.2017, which was challenged by the petitioners in Civil Revision No. 219 of 2018, by way of objection petition. The referred objection petition was dismissed by the learned Executing Court vide order dated 05.03.2018 and revision against the order was also dismissed on 27.03.2018.

4. Learned counsel for M/s Ahbab Agro Farms (Pvt) Limited, *inter alia*, contended that the objection petition has been dismissed on erroneous considerations. It was submitted that the Court has held wrongly that the Executing Court cannot go behind the decree. It was submitted that the judgment and decree, in its present form, is not executable as no land is available. It was further contended that the decree holder did not pay the requisite charges; that the respondent wants to grab the land of other allottees.

5. Learned counsel for Dr. Asghar Ali Khattak, *inter alia*, submitted that the judgment and decree has attained finality and at this stage, cannot be interfered with. It was further contended that the petitioner is lingering on the matter under one pretext or the other. It was further pointed out that under facts and circumstances, the instant petition is not maintainable.

6. Addressing the arguments in Civil Revision No.219/2018, it was contended that the land is owned by the petitioners and has wrongly been attached.

7. Learned counsel for respondent No.1, namely Asghar Ali Khattak, *inter alia*, contended that the instant Civil Revision is not maintainable inasmuch

as it is against the order passed in Civil Revision. Moreover, it was contended that the objectors/petitioners are owners/shareholders of M/s Ahbab Agro Farms (Pvt) Limited and knew about the decree all along.

8. Arguments advanced by the learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

9. It is an admitted position that the judgment and decree passed in favour of Dr. Asghar Ali Khattak has attained finality. It is also trite law that the Court executing the decree cannot go behind the same, unless it is obtained through fraud or there are exceptional circumstances. The objections filed by M/s Ahbab Agro Farms (Pvt) Limited are based on misconception that the decree cannot be executed. In this behalf, the learned Executing Court categorically mentioned the report of Patwari, which also is available on record, according to which, land owned by M/s Ahbab Agro Farms (Pvt) Limited and its shareholders is available. Moreover, the petitioners, in Civil Revision No. 219/2018, are all connected with M/s Ahbab Agro Farms (Pvt) Limited being its shareholders and knew about the judgment and decree and now cannot hide behind corporate veil that they had no knowledge of the judgment and decree. M/s Ahbab Agro Farms (Pvt) Limited and its shareholders/owners are playing hide and seek with Dr. Asghar Ali Khattak and denying benefits of judgment and decree passed in his favour. Even otherwise, Civil Revision No. 219/2018 is not maintainable inasmuch as it is directed against order dated 27.03.2018, passed in civil revision. No civil revision can be filed against the order passed in civil revision by the District Judge under section 115 C.P.C. The appropriate remedy for the petitioners was a petition under Article 199 of the Constitution, however, since findings in the above case are being rendered on merit, hence the above defect is inconsequential. Even otherwise, civil revision is converted into writ petition and office is directed to number the same accordingly. There is no jurisdictional

error on part of the Courts whose orders have been assailed in the above petitions.

10. For the above reasons, the instant petitions are without merit and are accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

Announced in open Court this 31st day of January, 2020.

JUDGE

M.Shah/.