

Form No: HCJD/C-121.
JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Civil Revision No. 168 of 2019

Aurangzeb (deceased) through its Legal Heirs

Vs.

Tariq Khurshid Kiayani, etc.

PETITIONERS BY: M/s Muhammad Arbab Abbasi
and Raja Shakeel Abbasi,
Advocates.

RESPONDENTS BY: Mr. Tariq Khurshid Kiayani,
respondent no.1 in person.

Date of Hearing: 23.05.2019.

ATHAR MINALLAH, C.J.- Through this petition the petitioners have assailed preliminary decree and judgment, dated 27.10.2018, rendered by the Civil Judge 1st Class, East-Islamabad and judgment, dated 15.03.2019, by the learned Additional District Judge-III, East-Islamabad.

2. The facts, in brief, are that respondents/plaintiffs no. 1 and 2 filed a suit for possession through partition and injunction. It was asserted by the respondents/plaintiffs in the plaint that they were owners in possession of land measuring one (01) kanal and five (05) marlas in Khasra no. 950, 955 and 956 Mouza Kot Hathial, District

Islamabad (hereinafter referred to as the **"Property"**). The respondents/plaintiffs are co-sharer in the suit property while one of the defendants i.e. defendant no.12 is alleged to be in illegal possession. The suit was contested by the petitioners and vide order, dated 07.02.2017, the learned trial Court framed five issues arising out of the divergent pleadings. After recording of evidence and affording opportunity of hearing to the parties, the learned trial Court vide judgment, dated 27.10.2018, passed a preliminary decree. The said preliminary decree was assailed by the petitioners by preferring an appeal which was dismissed by the learned Additional District Judge vide judgment and decree, dated 15.03.2019. The concurrent findings have, therefore, been challenged through the instant petition by the petitioners.

3. The learned Counsel for the Petitioners has contended that; the concurrent findings are based on misreading and non reading; revenue record was misinterpreted by the learned trial Court; both the Courts failed to exercise jurisdiction vested in them and that the respective judgments and decrees are based on surmises and conjectures; the learned trial Court as well as the learned appellate Court failed to appreciate that there were other co-owners/co-shares, who were not impleaded amongst the defendants; khasra no. 950 and 956 measuring eight (08) kanals and eleven (11) marlas is agricultural in nature and this crucial fact was not taken into consideration by both the Courts; the respondents without availing remedies provided under the Land Revenue Act had filed the suit which was not competent.

4. Respondent no.1, namely Tariq Khurshid Kiayani has appeared in person and has argued that; the ownership of the respondents stood established and, therefore, the prayer regarding partitioning of their shares could not have been refused; there has been no misreading or non reading requiring interference by this Court; no legal infirmity has been pointed out by the learned Counsel for the petitioners.

5. The learned Counsel for the petitioners and respondent no.1 have been heard and the record perused with their able assistance.

6. Respondents no.1 and 2 had filed a suit for possession through partition and had also sought injunction. The suit was contested by the petitioners and out of the divergent pleadings issues were framed. The learned trial Court after proper appraisal of the evidence has decided the issues by recording reasons, which manifest application of the mind. The reasoning recorded by the learned trial Court shows proper appreciation of the evidence and the learned Counsel for the petitioner, despite his able assistance, could not point out any misreading or non reading warranting interference by this Court while exercising revisional powers. The respondents had successfully established ownership to the extent of their respective shares and, therefore, the learned trial Court was justified in passing the preliminary decree. The concurrent findings do not suffer from any legal infirmity requiring interference by this Court.

7. For what has been discussed above, the instant petition is without merit and is, therefore, accordingly dismissed.

(CHIEF JUSTICE)

Saeed.