

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

Writ Petition No.4392 of 2019
Ali Asghar
Versus
Raja Muhammad Siddique, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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21.09.2020	Mr. Muhammad Abdul Wase, Advocate for applicant. Rana Mohammad Irshad Khan and Mohammad Nazir Jawad, Advocates for respondent.
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Through the instant writ petition, petitioner impugns order dated 10.10.2019 passed by learned Additional District Judge-I/ Judge (MCAC) Islamabad (East), whereby revision petition filed by the respondent No.1 was allowed, whereby order dated 10.07.2019, passed by the learned trial Court was set aside and his application under Order I Rule 10 CPC, was dismissed.

2. The contention of the learned counsel for the petitioner is that the petitioner is purchaser of the subject property vide Ex.D1 through Mutation No.720, dated 31.05.2004. For all intents and purposes, petitioner is a necessary party to join the proceedings of the suit to avoid multiplicity of the proceedings.

3. Learned counsel for the respondents contends that the stated transfer of the suit property took place after three years with the intention to linger on the matter, pending since 1989, therefore, the petition is liable to be dismissed.

4. Heard, record perused.

5. It is settled principle that any person can be impleaded as party, whose presence is considered to be essential for just decision of the case and in whose absence no effective adjudication can be carried on.

6. Though plaintiff is *dominus litis* and cannot be compelled to implead a person against whom he is not interested to litigate or seek relief, however, this rule is subject to provision of Order I Rule 10 (2) of the Code of Civil Procedure ('the Code'), (2013 SCMR 602). In order to avoid multiplicity of proceedings, the person who asserts title in the suit property should be given a chance to join the proceedings, so to advance his version. In this backdrop, the order of the learned trial Court could not have been reversed. As a matter of fact, the plaintiff should have implead all those having title in the suit property as defendants so to avoid multiplicity and protracted litigation.

7. Clause (2) of Order 1, Rule 10 of the C.P.C lays down the parameter for inclusion of any person as party in the following manner:-

"10. Suit in name of wrong plaintiff. -(1) _____

Court may strike out or add parties. -(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appeared to the Court to be just, order that the name of any party in properly joined, whether as plaintiff or defence, be struck out, and that the name of any person who ought to have been joined, whereas plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely, to adjudicate upon and settle all the questions involved in the suit, be added. [Emphasis added]

(3) _____"

8. Whether, if a decision is passed in respect of land, where some portion of it has been transferred in the name of the petitioner, amongst

other transferees and it is admitted before this Court by all concerned/learned counsels for contesting parties, that possession had been transferred to the new vendees/ purchasers pursuant to said transfer. The question before the Court is that, whether all said transferees who are also in possession of land will not be effected from the decree passed by the Court, unambiguously, the answer is in negative. When factual aspects demonstrate that the present petitioner along with other transferee would be effected by the decree of the Court, then to my humble view fairness demands that they are necessary party particularly in the light of the Provision *ibid*.

9. In view of above, the instant writ petition is **allowed**, order passed by the learned Additional District judge, dated 10.10.2019 is set aside, while order dated 10.07.2019, passed by the learned Trial Court is restored with modification that all transferees/purchasers as per mutation No.720, dated 31.05.2004 be impleaded as defendants in the main suit. As the matter pertains to the year 1989, it is expected that the learned Trial Court shall make every endeavor to decide the same expeditiously preferably within a period of two months from the date of receipt of this order.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

M.A. Raza

Announced in Open Court on 30.09.2020./

JUDGE

Approved for Reporting

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