

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

C.R. No.53/2019

Syed Pir Ghulam Moin-ul-Haq Gillani & another

versus

Bibi Aziz Fatima (deceased) through legal heirs & 12 others

Petitioners by: Syed Muhammad Ali Bukhari, Advocate.

Respondents by: Syed Ishfaq Hussain Naqvi, Advocate for
Respondent No.1.

Mr. Usman Ali Ch., Advocate for
Respondent No.13.

Date of Hearing: 08.03.2021.

MOHSIN AKHTAR KAYANI, J: Through the instant Civil Revision petition, the petitioners have called in question order of the learned Civil Judge 1st Class (West), Islamabad, dated 20.10.2018, whereby application filed by the petitioners under Section 12(2) CPC has been dismissed.

2. Succinctly, Bibi Aziz Fatima (deceased), represented through legal heirs, had filed a civil suit for declaration, cancellation of documents along with permanent injunction against her brother Maqbool Hussain and others with respect to her share in her father's properties i.e. land measuring 26 Kanal situated in Golra Sharif and land measuring 11 Kanal, 14 Marla, situated in Darek Mohri, Islamabad. The suit was decreed vide ex-parte judgment and decree dated 09.04.2012, as such, petitioners namely Syed Pir Ghulam Moin-ul-Haq Gillani and Syed Pir Ghulam Qutb-ul-Haq Gillani were not impleaded in the suit, who otherwise claim to be bonafide purchaser of suit properties against certain sale consideration, which compelled them to file application under Section 12(2) CPC, which has been dismissed vide impugned order dated 20.10.2018. Hence, instant civil revision petition.

3. Learned counsel for petitioners contended that ex-parte judgment and decree, dated 09.04.2012, were obtained by misrepresentation, fraud and concealment of facts as neither petitioners were impleaded in the suit nor had they been served any notice or summon, as such, petitioners have been condemned unheard, which is against the principle of natural justice but, the learned trial Court has not appreciated all these facts and circumstances of the case and decreed the suit ex-parte, even otherwise, application filed thereto under Section 12(2) CPC has also been not adjudicated upon in accordance with law and dismissed the same defeating the very norms of justice.

4. Conversely, learned counsel for respondents No.1 and 13 contended that after the demise of father of respondent No.1, her brother Maqbool Hussain Shah with malafide intention had not mentioned her name in the mutation of inheritance, which was later on added on an application filed by respondent No.1; that prior to said correction of name, the said Maqbool Hussain Shah had illegally sold out the entire land to the petitioners and others depriving respondent No.1 of her legal share to her father's legacy; that the learned trial Court has rightly appreciated the facts and circumstances of the case and decreed the suit in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioners are mainly aggrieved with the judgment and decree, dated 09.04.2012, passed by learned Civil Court in favour of Bibi Aziz Fatima (respondent No.1), whereby she has been allowed to get benefit of inheritance from her late father, Pir Ghulam Rasool Shah. After the demise of said Pir Ghulam Rasool Shah, inheritance mutation No.442, dated 23.06.1972, revenue estate of Golra Sharif, Islamabad (Exh.P2) and inheritance mutation No.253, dated 18.12.1972, in revenue estate of Darek Mohri, Islamabad (Exh.P3) were sanctioned,

whereby share of respondent No.1 was omitted allegedly by her brother Syed Maqbool Hussain Shah. Accordingly, Respondent No.1 filed application for correction of mutation before the Collector, Islamabad, whereby the mutations were corrected vide inheritance mutation No.1531, dated 28.02.1998 (Exh.P4) of village Golra Sharif, Islamabad and mutation No.1294, dated 28.02.1998 (Exh.P5) of village Derik Mohri, Islamabad by the Tehsildar, Islamabad, however prior to such correction the suit pieces of land were already sold by brother of respondent No.1.

7. The present petitioners contended that they are bona fide purchasers of suit properties having been purchased from the first legal heir of late Pir Ghulam Rasool Shah and now they have further sold it out to subsequent vendees. The pleadings of the petitioners are silent qua the date of knowledge as well as qua the date when they have attained the rights in the subject property, rather the application under Section 12(2) CPC had only been filed on one count that the petitioners had not been impleaded as parties in main civil suit, as such, they learnt about the ex-parte decree when respondent No.1 filed execution petition before the learned Additional District Judge on 26.10.2013.

8. The above mentioned grounds, if considered to be true, even then the petitioners have no direct concern with the correction of inheritance mutations, which otherwise had wrongly been incorporated depriving respondent No.1 of the legacy of her father, per se, the same could be corrected at any stage inasmuch as such mistake surfaces to the affectee. The rights of petitioners being bona fide purchasers are considered to be protected under the law and, as such, they are not aggrieved with the judgment and decree passed in favour of respondent No.1, rather they can claim their rights against their vendor, if they have been deprived of any of their right qua the suit properties.

9. At last, respondent No.1 was not bound to implead all the subsequent vendees in her suit qua the correction of her legal heirship in the revenue record, which is only against her rival co-legal heirs i.e. his brothers, who have deprived respondent No.1 of her father's legacy, even otherwise, the petitioners have no direct right to become party in the main *lis*, which is within the family.

10. The respondents have also raised objection that instant civil revision is time barred on the ground that the matter had initially been filed before learned Additional District Judge, who had returned it on 04.02.2019 and later on, the petitioners have filed instant civil revision petition before this Court on 19.02.2019 and, as such, the approach of petitioners before the wrong forum was not due to their own fault, rather the jurisdiction was exercised on the basis of pecuniary jurisdiction / valuation fixed by respondent No.1 in the plaint, which reveals that the suit was not valued for the purpose of jurisdiction in a proper manner, however when learned Additional District Judge observed that the valuation has neither been fixed in the plaint nor in the decree sheet, the civil revision petition was returned to be filed before the proper forum. In such eventuality, the time period consumed by the petitioners before the court of learned Additional District Judge is protected and, as such, no adverse inference could be drawn in this regard.

11. In view of above, no question of fraud or misrepresentation is reflected from the proceedings, rather the non-impleadment of petitioners in the civil suit filed by respondent No.1 is not a ground to set aside the ex-parte decree, especially when the concept of necessary party in terms of Order I Rule 10 CPC is that the person who ought to be joined as party to the suit and in whose absence an effective decree could not be passed is called necessary party. Reliance is placed upon 2013 SCMR 602 (Vidur

Impex and Traders (Pvt.) Ltd. v. Tosh Apartments (Pvt.) Ltd., 2005 SCMR 564 (Allah Dad v. Dhuman Khan), 2003 SCMR 965 (Dr. Saleem Javed v. Mst. Fauzia Nasim) and PLD 2002 SC 615 (Ghulam Ahmad Chaudhry v. Akbar Hussain). It is also settled proposition that suit cannot be proceeded in absence of necessary party, however from bare reading of the entire record, this Court is confident to hold that the present petitioners are not necessary parties to be impleaded in suit unless the real brothers of respondent No.1 had contested the suit and claimed that land was sold out / transferred by him, per se, such aspect is silent in the entire proceedings, though the petitioners contended that they are bona fide purchasers, who have already transferred the land to subsequent vendees, therefore, at this stage, petitioners have no case for interference by this Court.

12. In view of above position, the instant civil revision petition is DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 17th March, 2021.

JUDGE

Khalid Z.