

Form No: HCJD/C-121
JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No. 65 of 2020

Muhammad Afzal

Versus

Shaheen Bibi, etc.

Petitioners By : Afzaal Qadeer Satti, Advocate.

Respondents By : M/s Raja Yasir Shakeel, Khizer Hayat Khan, M. Amer Naeem Khan, Advocate. and Mr. Awais-Ul- Islam, Advocate.
(For Respondent No.5)

Date of Decision : 19.02.2020.

LUBNA SALEEM PERVEZ, J. - Through instant Civil Revision Petition, Petitioner namely Muhammad Afzal son of Ali Bhadur has assailed order dated 03.12.2019, passed by learned Civil Judge, 1st Class (West), Islamabad, whereby, the Petitioner's application for impleadment as a party filed under Order I Rule 10 CPC, was dismissed.

2. Learned Counsel for Petitioner, inter alia, contended that the learned Civil Judge has not appreciated the fact that Petitioner is owner in possession of land measuring 26 kanal in Khatooni No. 55, 11/11, Khasra No. 2154, 2174 and 2456, situated in Revenue Estate Maira Jaffar, Tehsil & District Islamabad, which is the suit property in the suit pending before the learned Civil Judge. Learned Counsel further contended that Petitioner is necessary party in the suit and denial of his request in this regard is legally unjustified and prayed for setting aside the impugned order dated 03.12.2019.

3. Conversely, learned Counsel for Respondents vehemently controverted the submissions made by the Petitioner's Counsel and submitted that actually the application under order 1 Rule 10 CPC dated 05.10.2019, has been filed on the behest of Adil Butt (Respondent No.5 in the present Revision Petition and Defendant No.2 in pending suit) to prolong the proceedings in the suit. Learned Counsel submitted that the Petitioner was one of the defence witnesses in the suit and has recorded his statement as DW-2 on 01.04.2019, whereby, he stated that he had sold the suit land to Adil Mehmood (Respondent No.5 in the present Revision Petition and Defendant No.2 in pending suit) in 2011. Learned Counsel prayed for dismissal of instant revision petition as being based on false and frivolous grounds. Learned counsel in support of his contentions relied upon case law reported as **"Moulvi Shahzado Dreho vs. District Nazim, Sukkur and others" (2010 MLD 14)**, wherein, it has been held that *"when the petitioner found himself on a weaker side he appear to have set up intervener with ulterior purpose and keep the litigation alive, otherwise, if intervener would have any interest in the property no reason had been assigned by him that why he waited for such long time for seeking relief.....Constitutional petition as well as application Under Order 1 Rule 10 CPC was dismissed."*

4. On the other hand, learned Counsel appearing on behalf of Respondent No.5 (Defendant No.2 in the suit) submitted that he has no objection on acceptance of this Civil Revision Petition as well as acceptance of Petitioner's application under Order I Rule 10 CPC, as according to him impleadment of Petitioner as a party in the suit pending before the learned trial Court is necessary for reaching to a just and equitable conclusion in the matter.

5. I have heard the arguments of the rival parties and perused the impugned order as well as record of the case.

6. Perusal of the record reveals that the suit was filed by Respondent Nos.1 to 3 before the learned Civil Judge, 1st Class, West-Islamabad for declaration, possession and permanent injunction and recovery of mense profit on 30.06.2014, in respect of land measuring 7 Kanal 2 Marlas in Khasra No. 2634/2467 situated in Mouza Maira Sumbal Jaffar, Tehsil & District Islamabad, contending to be lawful owners of this property against eight (08) Defendants wherein, Adil Butt son of Syed Muhammad Fayyaz was listed at Sr.No.2. Record further shows that present Petitioner was brought as a witness by Respondents who during his statement on oath stated that suit land was sold by him in 2011 to said Adil Butt. His statement was recorded on 01.04.2019. Keeping these facts in view, the question arises as to why the application under Order 1 Rule 10 CPC has been filed in the year 2019, by the Petitioner to implead him as a party in a suit filed in 2014 when the evidence from both sides have been closed and proceedings in the suit are at the conclusion stage; and as to why the Petitioner had participated in the trial by recording statement as witness from the defendant side as DW-2. It is noted that learned Counsel for Respondent No.5 has consented before this Court to allow the Petitioner to join the suit as a party by accepting application under Order 1 Rule 10 CPC. Arguments put forth before this Court by the learned Counsel for Petitioner are contradictory to the statement given on oath as DW-2. I am therefore, convinced with the argument of learned Counsel for the Respondents except Respondent No.5 that the application filed by the Petitioner for impleadment as a party in the pending suit at this stage of proceeding is tainted with malafide intentions and aimed at prolonging the trial. Therefore, I am of the considered view that the learned Civil Judge has rightly rejected the application of the Petitioner. Moreover, learned

Counsel for Petitioner has also failed to point out any illegality in the impugned order.

7. For the forgoing reasons, I do not find any legal infirmity in the impugned order which is based on proper appreciation of facts and sound reasoning; hence, does not call for any interference. The Civil Revision is accordingly dismissed.

(LUBNA SALEEM PERVEZ)
JUDGE

SHAKEELAFZAL