

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.195 of 2019
Wazir Khan
Versus
Nazar Jaffar and others

Date of Hearing: 04.12.2019
Petitioner by: Mr. Sher Afzal Khan Marwat, Advocate,
Respondents by: M/s Riasat Ali Azad and Muhammad Bilal
Mughal, Advocates for respondent No.1.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition filed under Section 115 of the Civil Procedure Code, 1908 (“C.P.C.”), the petitioner, Wazir Khan, impugns order dated 09.05.2019 passed by the Court of the learned Additional District Judge, Islamabad, whereby he was directed to restore possession of the suit property (i.e. 1 *Kanal*, 14 *Marlas* in *Khewat* No.754, *Khatooni* Nos.1774/1778, *Khasra* No.744 and 745, *Qitta* 2, *Khasra* Nos.583, 584 and 585, *Qitta* 3, near Kalma Chowk, Simly Dam Road within the Revenue Estate of Phulgran, Tehsil and District Islamabad) to respondent No.1 (Nazar Jaffar) while deciding his application under Section 7 of the Illegal Dispossession Act, 2005 (“the 2005 Act”) filed along with his complaint under Sections 3 and 4 of the said Act.

2. Learned counsel for the petitioner submitted that the suit property was purchased by the petitioner through registered sale deed dated 14.02.2019 from Zafar Ahmad, Muhammad Irfan and Allah Ditta; that possession of the said property was handed over to the petitioner pursuant to the terms of the said sale deed; that respondent No.1 was not in possession of the said property prior to 19.03.2019; that the petitioner has not dispossessed any person from the suit property; that a *sine qua non* for a complaint under the provisions of the 2005 Act is that the complainant should have been illegally dispossessed from an immovable property; that in the impugned order dated 09.05.2019, the learned Trial Court has determined the ownership dispute with respect to the suit property; that the learned Trial Court ignored the report of the Station House

Officer that the petitioner had constructed a house over the suit property; that the learned Trial Court gave credence to an agreement to sell dated 24.07.2017 in respondent No.1's favour and disregarded a registered sale deed in the petitioner's favour; that since Mst. Nawab Jan is residing abroad, she could not have executed the said agreement to sell; that the ownership of the suit property has not been mutated in favour of respondent No.1; that the location and the boundaries of the property allegedly sold through the said agreement to sell have not been clearly set out therein whereas the registered sale deed in the petitioner's favour clearly mentions the location and boundaries of the property purchased by the petitioner; and that the impugned order dated 09.05.2019 suffers from material irregularities and jurisdictional errors. Learned counsel for the petitioner prayed for the revision petition to be allowed and for the impugned order dated 09.05.2019 to be set-aside.

3. On the other hand, learned counsel for respondent No.1 raised a preliminary objection to the maintainability of the instant petition on the ground that the petitioner has not filed copies of the documents which were a part of the record before the learned Trial Court. He also submitted that since the proceedings before the learned Trial Court were criminal in nature, a civil revision petition against the impugned order dated 09.05.2019 was not maintainable. He further submitted that he would not be in a position to make his submissions on merits since the documents on which he intends to place reliance had not been filed along with the instant revision petition by the petitioner.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. In the first instance, I propose to decide the preliminary objection taken by the learned counsel for respondent No.1. The instant civil revision petition has been filed under Section 115 C.P.C. The first *proviso* to Section 115 C.P.C. provides *inter alia* that where a person files a revision petition under the said Section, he shall, in support of such a petition, furnish copies of the pleadings,

documents and order of the subordinate Court, and the High Court shall, except for reasons to be recorded, dispose of such a petition without calling for the record of the subordinate Court.

6. In the case at hand, it is an admitted position that the petitioner has chosen not to file along with the instant petition documents which were a part of the record before the learned Trial Court. The documents referred to in the impugned order dated 09.05.2019, and which have not been filed by the petitioner along with this petition are listed in **Schedule-A** hereto. Reference to these documents has also been made in the impugned order dated 09.05.2019. The mandate and the requirement of the first *proviso* to Section 115 C.P.C. cannot be simply ignored by this Court. Since the requirement to file copies of the pleadings and documents before the learned Trial Court was brought in through an amendment made in Section 115 C.P.C. through Ordinance X of 1980, this Court is duty bound to ensure strict compliance with the same. Since the petitioner has not filed the documents which were part of the record before the learned Trial Court, this Court is left with no option but to dismiss the instant petition on this ground alone. In holding so, reliance is placed on the judgment in the case of Mst. Banori Vs. Jilani (PLD 2010 SC 1186), wherein the Hon'ble Supreme Court held that in future it should be ensured that no application filed under Section 115 C.P.C. should be entertained unless accompanied by copies of the commanded documents and record. It was also held that respect is required to be shown to the provisions of the two *provisos* added in Section 115 C.P.C. In this regard, paragraph 16 of the said report is reproduced herein below:-

“But before we part with this judgment, we consider it necessary to reiterate that the courts of law can never be a party to putting legal provisions to disuse or to discard the same. It is one of the obligations of every court to give effect to each and every provision of each and every law. Needless to add that the provisions of the two provisos added to section 115, C.P.C., were extraordinary provisions incorporated to eliminate or at least to minimize delays in dispensation of justice. It was to avoid delays caused in the process of obtaining copies of decisions that the courts were asked to provide such copies within three days. Summoning and retention of subordinate courts’ record by the revisional courts was another factor contributing towards such delays. As a cure, the applicants were ordered to furnish copies of the requisite record along with the applications submitted by them and the courts were asked to

decide these applications without calling for the subordinate courts' records unless that availability of such record with the revisional court was indispensable on account of reasons to be recorded in writing. Fixing of outer limit of time for filing of applications invoking revisional jurisdiction and also fixing of time for final disposal of these applications, were also wrung of the same ladder."

7. It has become common for revision petitioners to be selective in filing documents along with their petitions. At times they are able to get ad interim orders in their favour which they would otherwise not have got had complete disclosure been made by them by showing compliance with the first proviso to Section 115(1) C.P.C. where a petitioner files a revision petition which is not in conformity with requirement of first proviso to Section 115(1) C.P.C. the Court ought to dismiss the petition without further ado. In the case of Arshad Ahmad alias M. Arshad etc Vs. Muhammad Yar etc (2012 Lahore 483), it was held that the petitioners are bound under the law to produce the complete certified copies of the pleadings, evidence etc. of the case with a revision petition. In the case of Muhammad Yousaf Vs. Fazal Ellahi (2017 MLD 1997), it was held that where a petitioner does not file complete certified copies of documents of the case with the revision petition, this is sufficient to non suit the petitioner and dismiss the revision petition.

8. The Institution Branch of this Court also appears not to have given heed to the law laid down by the Hon'ble Supreme Court in the case of Mst. Banori Vs. Jilani (supra). The Hon'ble Supreme Court had directed for the said judgment to be sent to the Registrars of all the High Courts so that it is placed before the Hon'ble Chief Justices of the High Courts and is also circulated to all the learned Judges of the subordinate Courts. In terms of Article 189 of the Constitution, the said judgment is binding on this Court. In order for the mandate in the first *proviso* to Section 115 C.P.C. to be strictly observed, the office is directed not to entertain a civil revision petition without a certificate from the petitioner or his counsel that the requirement of the said *proviso* has been complied with by furnishing copies of the pleadings, documents and order of the subordinate Court along with the revision petition. Furthermore, in case such a certificate is not provided, an office objection in this regard should be raised.

9. In view of the above, the instant revision petition is dismissed as not maintainable. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON ____/2019

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING

Uploaded By : Engr. Umer Rasheed Dar

SCHEDULE-A

Sr.#	DOCUMENTS
1.	Copies of periodical record pertaining to the years 1997-98 and 2001-02
2.	Copy of plaint of civil suit titled "Khalid Mehmood Vs. Mst. Nawab Jan, etc." along with written statement
3.	Application under Order XXXIX, Rules 1 and 2 C.P.C. read with Section 151 C.P.C. along with written reply
4.	Attested copy of application under Section 151 C.P.C.
5.	Attested copy of order dated 21.05.2010 passed by the learned Civil Court in the suit titled "Khalid Mehmood Vs. Mst. Nawab Jan, etc."
6.	Attested copy of sale agreement dated 25.06.2007 between Mst. Nawab Jan and Khalid Mehmood
7.	Photocopy of electricity bill dated 30.06.2010
8.	Attested copy of map of house in dispute
9.	Attested copies of photographs of under construction house/house in dispute
10.	Attested copies of construction agreement dated 15.07.2007 between Khalid Mehmood and M/s Nasir Rafiq.
11.	Attested copy of agreement regarding excavation/blasting dated 07.07.2007
12.	Attested copies of order dated 12.02.2019 & 13.02.2019
13.	Attested copy of order dated 04.04.2016
14.	Attested copy of order dated 10.03.2016 in suit titled "Khalid Mehmood vs. Mst. Nawab Jan, etc."
15.	Attested copy of plaint of civil suit titled "Mst. Nawab Jan Vs. Khalid Mehmood" for declaration, cancellation of forged and fraud agreements to sell prepared by the defendant on 25.06.2007 and 03.07.2007, restoration of possession, permanent and mandatory injunction along with damages along with written statement.
16.	Attested copy of application titled "Mst. Nawab Jan Vs. Khalid Mehmood" for appointment of local commission for preparing inventory list of the household articles of the suit house situated at Mouza Phulgran, Islamabad along with report of the local commission
17.	Attested copy of plaint of civil suit titled "Nazar Jaffar Vs. Mst. Nawab Jan" for specific performance of agreement dated 24.07.2017, permanent and mandatory injunction.
18.	Attested copy of list of documents in suit titled "Nazar Jaffar Vs. Mst. Nawab Jan".
19.	Copy of agreement dated 24.07.2017 between Mst. Nawab Jan and Nazar Jaffar regarding house in dispute
20.	Photocopy of affidavit of Mst. Nawab Jan dated 24.07.2017
21.	Photocopy of affidavit of Mst. Nawab Jan dated 13.02.2019
22.	Attested copies of complete order sheet in civil suit titled "Nazar Jaffar Vs. Mst. Nawab Jan"
23.	Photocopy of application dated 19.03.2019 regarding registration of F.I.R.
24.	Photocopy of <i>Iqrarnama</i> dated 19.03.2019 between Nazar Jaffar and Wazir Khan
25.	Photocopy of transfer deed in the name of Mst. Nawab Jan
26.	Photocopy of transfer deed in the name of Mst. Farah Naz
27.	Photocopy of transfer deed in the name of Mst. Nobahar
28.	Photocopy of registry in the name of Mst. Farah Naz

