

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R. No. 384 of 2019

Services Cooperative Housing Society

Vs

Muhammad Arif and 02 others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
---	---	--

02) 21-10-2019. Mr Sajid Mehmood Abbasi Advocate, for the petitioner.

This Civil Revision is directed against judgments and decrees, dated 12-11-2018 and 02-04-2019 passed by the learned Civil Judge 1st Class and the learned Additional District Judge-IX, (West) Islamabad.

2. The facts, in brief, are that Muhammad Arif son of Muhammad Sardar [hereinafter referred to as "**Respondent no. 1**"] filed a suit on 26-01-2011, seeking declaration and permanent injunction. The controversy is regarding plot no. 1041-A under membership no. 4928, measuring 500 square yards, situated in the National Police Foundation Housing Scheme E-11, Islamabad [hereinafter referred to as the "**Plot**"]. Respondent no. 1 had asserted in the plaint that he had purchased the Plot from its owner namely, Muhammad Mazhar Hussain vide agreement to sell, dated 10-06-2006. The Plot was

transferred in the name of Respondent no. 1 by the National Police Foundation [hereinafter referred to as the "**Respondent Foundation**"] vide letter, dated 28-06-2006. After completing the proceedings and payment of dues in favour of the respondent Foundation, the latter vide letter, dated 11-04-2008, handed over possession of the Plot to Respondent no.1. The certificate of possession was issued on 11-04-2008. After taking possession of the Plot, Respondent no. 1 constructed a boundary wall. The Services Co-operative Housing Society [hereinafter referred to as the "**Petitioner Society**"] threatened Respondent no. 1 from being dispossessed and thus the suit was filed. The suit was contested by the Petitioner Society and written statement was also filed by the Capital Development Authority wherein it was, inter-alia, stated that the layout plan approved in favour of the former had been withdrawn. It was further confirmed that the Plot was part of the housing society owned and managed by the Respondent Foundation. In its written statement the Petitioner Society had acknowledged approval of layout plan in favour of the Respondent Foundation but it took the plea that the same was maneuvered through fabricated documents. The learned trial Court framed nine issues out of the divergent pleadings. After recording of evidence and affording opportunity of hearing to the parties, the suit was decreed in favour of Respondent no. 1 vide judgment and decree,

dated 12-11-2018. The petitioner Society preferred an appeal which was dismissed by the learned appellate Court vide judgment and decree, dated 02-04-2019.

3. The leaned counsel for the petitioner has been heard at length. Despite his able assistance, he could not show that the concurrent findings suffer from any legal infirmity let alone misreading or non-reading of the evidence. Respondent no. 1 had established his ownership of the Plot and the fact that after taking possession, a boundary wall was also constructed. The witness who had appeared on behalf of the Petitioner Society relied on documents which were not allowed to be exhibited but placed on record as "Marks".

4. It is settled law that a document not produced and proved in evidence and only marked cannot be considered by the courts as legal evidence of a fact. Reliance in this regard is placed on the case of "State Life Insurance Corporation of Pakistan and another vs. Javaid Iqbal" [2011 SCMR 2013].

5. On the balance of probabilities Respondent no. 1 had established his right and, therefore, the suit was decreed in his favour. The Plot was allotted in favour of Respondent no. 1 in 2008 and possession was also handed over to him by the Respondent Foundation. The construction of boundary wall was not objected by the

Petitioner Society. In its written statement the Petitioner Society had acknowledged that the layout plan was approved in favour of Respondent Foundation by the Capital Development Authority. The latter in its written statement had stated that the layout plan approved in favour of the Petitioner Society had been withdrawn. The concurrent findings are well reasoned and no interference is required while exercising revisional powers.

6. For what has been discussed above, this petition is without merit and is, therefore, according **dismissed in limine** because the concurrent findings have not been found to have suffered from any legal infirmity.

CHIEF JUSTICE

Announced, in Open Court, on 13-01-2020.

CHIEF JUSTICE

Tanveer Ahmed.