

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4267/2016

Khalida Bibi

Versus

Mst. Shabnam un Nisa and others

Date of Hearing:	17.06.2019
Petitioner by:	Sardar Muhammad Aftab, Advocate
Respondents by:	Mr. Sharafat Ali Chaudhry, Advocate for respondents No.1 to 3, Mr. Muhammad Shoaib Chaudhry and Ch. Adil Javaid, Advocate for respondents No. 4 to 10 Mr. Safdar Janjua, Advocate for respondent No.11

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Khalida Bibi, impugns the judgment dated 23.11.2015, passed by the Court of the learned Additional District Judge, Islamabad, allowing civil revision petition filed by respondents No.1 to 3 against the order dated 17.04.2015, passed by the Court of the learned Civil Judge, Islamabad, allowing the application under Order I, Rule 10 of the Code of Civil Procedure, 1908 ("C.P.C.") filed by the petitioner seeking her impleadment as a defendant in the suit for declaration, specific performance and permanent injunction, instituted by respondents No.1 to 3. In the said suit, the plaintiffs/respondents No.1 to 3 had *inter-alia* sought specific performance of the agreement dated 24.07.1985 as well as a declaration to the effect that they were entitled to the plot measuring 166-6/9 square yards bearing No.173 at I-9/4, Islamabad ("the suit property").

2. The facts essential for the disposal of the instant petition are that vide allotment letter dated 28.01.1982, the suit property was allotted by the Capital Development Authority ("C.D.A.") to one Waris Khan, who was the predecessor of respondents No.4 to 10. The suit property could not be sold unless a house was constructed thereon. Apparently, Waris Khan did not have sufficient resources to construct a house on the suit property. On 18.07.1985, he is said to have entered into an agreement with one Raja Muhammad Safdar

Khan, who was the predecessor of respondents No.1 to 3, to construct a house on the suit property. The said agreement is said to have been registered on 24.07.1985. Waris Khan is also said to have executed an irrevocable general power of attorney in favour of Raja Muhammad Safdar Khan, which was also registered. The position taken by respondents No.1 to 3, in their suit, was that the said agreement constituted a sale of the suit property between Waris Khan (the predecessor of respondents No.4 to 10) and Raja Muhammad Safdar Khan (the predecessor of respondents No.1 to 3). Since after the completion of the house on the suit property, the same was not transferred in favour of respondents No.1 to 3, they, on 02.03.2011, instituted a suit for declaration, specific performance and permanent injunction against respondents No.4 to 11.

3. Apparently, on 20.11.2012, the said suit was dismissed for non-prosecution. On 27.11.2012, an application was filed on behalf of respondents No.1 to 3 for the restoration of the said suit. Vide order dated 17.12.2013, the said suit was restored to its original number.

4. Vide C.D.A.'s letter dated 11.01.2013, the suit property was transferred to the petitioner. This transfer was made when respondents No.1 to 3's application for the restoration of their suit was pending before the learned Civil Court.

5. Presently, respondents No.1 to 3 are in possession of the suit property. They claim to be in possession of the suit property ever since 1985 as owners.

6. On 02.10.2014, the petitioner filed an application under Order I, Rule 10 C.P.C., praying for her impleadment as a defendant in the said suit. In the said application, it has been pleaded *inter-alia* that the petitioner is the lawful owner of the suit property through C.D.A.'s transfer letter dated 11.01.2013. Vide order dated 17.04.2015, the said application was allowed by the learned Civil Court. The said order was assailed by respondents No.1 to 3 in a civil revision petition before the Court of the learned Additional District Judge, Islamabad. Vide judgment dated 23.11.2015, the said revision petition was allowed primarily on the ground that the transfer of the suit property in the petitioner's favour was hit by the

doctrine of the *lis-pendens*. Furthermore, it was held that the petitioner was not a proper or necessary party to the suit, and had no *locus-standi* to participate in the proceedings. The said judgment dated 23.11.2015 has been assailed by the petitioner in the instant writ petition.

7. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the impugned judgment dated 23.11.2015 suffered from jurisdictional irregularities which rendered it liable to be set-aside in the Constitutional jurisdiction of this Court; that the learned revisional Court erred by not appreciating that the transfer of the suit property in the petitioner's favour was not hit by the doctrine of *lis-pendens*; that there was no suit pending on 11.01.2013 when the suit property was transferred in the petitioner's favour; that since respondents No.1 to 3's suit was dismissed for non-prosecution on 20.11.2012, the transfer of the suit property in the petitioner's favour was not hit by the doctrine of *lis-pendens* even though an application for the restoration of the suit was pending when the said transfer was made; that on account of being a third party purchaser for value without notice, the petitioner is a necessary party and the learned Civil Court's order dated 17.04.2015, whereby her application for the impleadment as party, was allowed, suffered from no illegality or jurisdictional irregularity; that respondents No.1 to 3's revision petition before the Court of the learned Additional District Judge, Islamabad, was not competent since the value of the suit for the purpose of Court fee and jurisdiction was stated to be Rs.70,00,000/- in paragraph 21 of the suit; and that the said revision petition was not maintainable on account of being beyond the pecuniary jurisdiction of the Court of the learned Additional District Judge, Islamabad. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned judgment dated 23.11.2015 to be set-aside.

8. On the other hand, learned counsel for respondents No.1 to 3 submitted that the writ petition instituted by the petitioner was grossly time barred; that the impugned revisional judgment was passed on 23.11.2015, whereas the instant writ petition was filed on

21.11.2016, i.e. with a delay of almost one year; and that the said petition seeking the issuance of a writ of *certiorari* is liable to be dismissed due to *laches*. In making his submissions, learned counsel for respondents No.1 to 3 placed reliance in the case of Park View Enclave (Pvt.) Ltd. Vs. Capital Development Authority (2018 CLC 947).

9. He further submitted that respondents No.1 to 3 as plaintiffs could not be compelled to initiate litigation against the petitioner; that the petitioner's rights as a purchaser *pendente lite* would be subject to the outcome of the civil suit instituted by respondents No.1 to 3; that since respondents No.1 to 3's application for the restoration of the suit was pending when the suit property was transferred in the petitioner's favour, the learned revisional Court was correct in holding that the transfer was hit by the doctrine of *lis pendens*. In making this submission, learned counsel for respondents No.1 to 3 placed reliance on the judgments in the cases of Muhammad Ashraf Butt and others Vs. Muhammad Asif Bhatti and others (PLD 2011 Supreme Court 905), Mst. Tabassum Shaheen Vs. Mst. Uzma Rahat and others (2012 SCMR 983) and Muhammad Imran Vs. President Kasb Bank Ltd. and another (2014 CLC 561). Learned counsel for respondents No.1 to 3 prayed for the writ petition to be dismissed.

10. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant writ petition are set out in sufficient detail in paragraphs No.2 to 6 above and need not be recapitulated.

11. I propose, in the first instance, to decide the question as to whether the Court of the learned Additional District Judge, Islamabad, had the pecuniary jurisdiction to adjudicate upon respondents No.1 to 3's revision petition. In view of Section 3 of the Suit Valuation Act, 1887, pecuniary jurisdiction was to be determined on the basis of the value of the suit as mentioned in the plaint and not on the basis of the value of the subject matter involved in the suit. In the case of Muhammad Ayub Vs. Obaidullah (1999 SCMR 394), it was held that the forum of appeal was to be

determined according to the value of the suit as mentioned in the plaint and the fixation of the price of the disputed property by the trial Court was totally irrelevant. The same principle applies in determining the forum where a revision petition is to be filed.

12. It is an admitted fact that respondents No.1 to 3, in paragraph 21 of their suit, had pleaded that the value of the suit for the purposes of Court fee and jurisdiction was Rs.70,00,000/-. The valuation in the said suit was far in excess of Rs.25,00,000/- and, therefore, more than the pecuniary jurisdiction of the learned Additional District Judge, Islamabad. Ignorance of the law cannot be a valid defence. It is well settled that an order, judgment or a decree passed by a Court without jurisdiction is nullity, and that its invalidity could be set up whenever and where ever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any order, judgment or decree, and such a defect cannot be cured even by consent of parties. Consequently, it is safe to hold that the proceedings before the Court of the learned Additional District Judge, Islamabad, were without jurisdiction and the impugned judgment dated 23.11.2015 was resultantly without jurisdiction and void.

13. Even though I have held that the impugned judgment dated 23.11.2015 is to be without jurisdiction and void, I cannot remand the matter to the Court of the learned Additional District Judge Islamabad, for the simple reason that the said Court does not have the jurisdiction in the pecuniary terms to adjudicate upon respondents No.1 to 3's revision petition. In the case of Major Muhammad Noman Vs. Usman Habib (PLD 2019 Islamabad 255), I had the occasion to hold as follows:-

"22. Ordinarily, when this Court, in exercise of its jurisdiction under Article 199 of the Constitution, sets aside an order of a Court or a Tribunal, it remands the matter for a decision afresh in accordance with the law. In the case at hand, even though the order passed by the Court of the learned Additional District Judge has been found not to be sustainable, this Court cannot remand the matter to the said Court, since the said Court does not have the jurisdiction in pecuniary terms to entertain the revision petition against the order

and decree dated 11.05.2017. The Court of the learned Additional District Judge could entertain revision petitions up to a pecuniary limit of Rs.25,00,000/- only. Given the value of the subject-matter of the reference or the proceedings before the learned Civil Court, the revision petition against the order and decree dated 11.05.2017 should have been filed before this Court and not Court of the learned Additional District Judge.

23. Section 4 of the Islamabad High Court Act, 2010, provides that the Islamabad High Court shall have, in respect of the Islamabad Capital Territory, original, appellate, revisional and other jurisdiction, as under the Constitution or the laws in force immediately before the commencement of the said Act, is exercisable in respect of the said territory by the Lahore High Court. Now it is not disputed that immediately before the commencement of the said Act, the High Court had appellate and revisional jurisdiction with respect to matters where the value of the suit in which the order or decree was passed exceeded Rs.2,500,000/-. I say this because Section 18(1) of the West Pakistan Civil Courts Ordinance, 1962, (as it stood when the Islamabad High Court Act, 2010, was enacted) provided that an appeal from a decree or order of a Civil Judge shall lie to the High Court if the value of the Original Suit in which the decree or order was made exceeds Rs.2,500,000/-, and to the District Judge in any other case. This had also been confirmed by the Registrar of this Court in its letter dated 03.12.2012 to the District and Sessions Judge, Islamabad.”

14. Where the question of jurisdiction is intertwined with the substantive issue, it may be appropriate to combine the ruling on jurisdiction with the decision on the merits of the case.

15. True, the petitioner had filed the instant writ petition with a substantial delay. However, this delay cannot cause this Court to shut its eyes to the fact that the impugned judgment dated 23.11.2015 is without jurisdiction. The issue of *laches* is always required to be considered with reference to the facts of each case and no hard and fast rule can be laid down in this behalf. In the cases of S.A. Jameel Vs. Secretary to the Govt. of Punjab Cooperative Department (2005 SCMR 126) and Ardeshir Cowasjee and others Vs. Karachi Building Control Authority and others (1999 SCMR 2883), it has been held that delay/*laches* of several years can be overlooked in a writ petition if the cause of the case and the dictates of justice so warrant. It was also held that in certain cases, delay/*laches* of just a month will be fatal to a writ petition.

16. Since the impugned judgment dated 23.11.2015 has been held to be without jurisdiction and void, it is my view that *laches* or delay

on the petitioner's part in filing the instant writ petition would not be a good ground for letting a void judgment to remain in the field.

17. In view of the above, the instant writ petition is allowed and the impugned judgment dated 23.11.2015 is set-aside. There shall be no order as to costs. It ought to be borne in mind that while allowing this writ petition, I have not given any observation as to the findings in the impugned judgment on the merits of the case.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING

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