

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 92-2017

Mst. Rakeeb Bibi

Versus

Sajjad Hussain Shah and others.

Petitioner by: Syed Ulfat Hussain Shah brother in law of petitioner.

Respondents by: Malik Talat Hussain, Advocate for respondents No.1 & 2.
Mr. Amir Latif Gill, Advocate for CDA.

Date of Decision: 29.04.2022.

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MOHSIN AKHTAR KAYANI J.Through the instant writ petition, the petitioner has assailed the order dated 22.12.2016, passed by learned Additional District Judge (West), Islamabad, whereby plaintiff of suit filed by the petitioner Mst. RakeebBibi has been rejected in terms of Order VII Rule 11 CPC.

2. Brother in law of the petitioner in person contends that counsel for petitioner is not available and request for adjournment has been made on his behalf, though at this stage, it appears that petitioner is not interested in deciding the matter on merit, which is reflected from the order sheets of this case dated 27.04.2020. The petitioner was absent on 18.03.2022, 17.11.2021, 25.02.2021, which reflects either the proxy counsel appeared in the Court and sought adjournment, even this Court has granted absolute last opportunity on 17.11.2021 to the parties to argue the case on the next date of hearing, failing which, matter shall be decided as per available record, therefore, this Court has left with no other option, but to decide the instant case on merit while considering the record, though Syed Ulfat Hussain Shah claims that he is brother in law of the petitioner, who has been

confronted qua the legal rights, who reiterated the stance referred in the plaint.

3. Arguments heard and record perused.
4. Perusal of record reveals that petitioner has filed a suit for Declaration, Permanent and Mandatory Injunction against the CDA as well as Sajjad Hussain Shah and Aftab Hussain Shah with the following prayer:-

1. *Decree for Declaration to the effect that the plaintiff is entitled for compensation as well as alternative benefits against the Build Up Property mention as serial No.61 as per proforma prepared by the staff of defendant No.3 in favour of the plaintiff.*
2. *Decree for Permanent Injunction to the effect that the defendant No.3 may kindly be restrained from issuing any allotment in favour of the defendant No.1 and 2 against the acquisition of the Build Up Properties mentioned as serial No.61 of proforma prepared by the staff of the defendant No.3 which is actually owned and possessed by the plaintiff or further awarding any benefits to the defendant No.1 and 2 out of the acquisition of the said property of the plaintiff.*
3. *Decree for Mandatory Injunction to the effect that specifically directed to the defendant No.3 to remove the name of Bibi Hussain Fatima in list of award and return the compensation received by the same lady.*

Any other relief which this honorable court deem fit and proper may also be awarded.

5. The suit has been contested by the respective parties, whereby respondent has filed application under Order VII Rule 11 CPC on the ground that the plaintiff has no cause of action, even the same has been filed by a fake person and has not appended CNIC with the plaint, even the suit is barred by time and earlier a writ petition was filed, which has been withdrawn on the similar question, whereby trial Court after considering the background of the case has rejected the plaint vide order dated 16.11.2016, which has been assailed

through the civil revision titled Sajjad Hussain Shah etc vs. Mst. RakeebBibi etc., whereby revisional Court has rejected the plaint with the following observation:-

I have carefully considered the contention raised by the counsel for the parties, therefore, in order to reach at just decision, it is necessary to consider the claim of the respondent No.1 Mst. Raqeeb Bibi on the basis of the suit against the respondent. Para No.4 of the plaint clearly indicate that husband of the respondent No.1 Mst. Raqeeb Bibi and Ulfat Hussain has allegedly purchased the house from Altaf Hussain husband of Bibi Hussain Fatima. Therefore, the plaintiff/respondent No.1 has not brought her entitlement to file the suit or annexed any document which suggest that her husband Ameer Hussain was not alive and she is only the remaining legal heirs to claim her right in lieu of her husband Syed Ameer Hussain. Furthermore, learned counsel for the petitioners draw the attention of the Court towards the Writ Petition filed by Ulfat Hussain Shah and Mir Hussain Shah allegedly husband of the respondent No.1/plaintiff regarding the same subject matter wherein they have claimed their right in pursuance of same registered sale deed No. 13440 which was subsequently withdrawn, therefore, it can easily be construed that the original purchasers are alive, hence the present plaintiff/respondent No.1 has no locus standi to file her claim on the basis of registered sale deed to which she never remained party, therefore, the plaint was incompetently filed by the respondent No.1/plaintiff.

6. While going through the above order and record it appears that revisional Court has rightly appreciated the question of cause of action on the basis of para-4 of the plaint, in which it has been referred that present petitioner Mst. Raqeeb Bibi allegedly purchased the house from Altaf Hussain husband of Bibi Hussain Fatima, as a result the complainant has failed to bring on record the entire claim to file the suit nor there is a document, which suggest her right.

7. It is trite law that any new right could not be created by way of suit for declaration in terms of Section 42 of the Specific Relief Act,

1877, which was not in existence, even this aspect has been guided by the Hon'ble Supreme Court of Pakistan reported as **2022 SCMR 348 (Muhammad JameelVs Abdul Ghafoor).**

8. The writ petition was earlier filed by Ulfat Hussain Shah and Mir Hussain Shah, allegedly husband of the plaintiff regarding the same subject matter, which was dismissed as withdrawn and the revisional Court has rightly construed that the original purchasers are still alive, as a result whereof, plaintiff has no *locus standi* to file her claim on the basis of registered sale deed to which she never remained party nor have any personal right. This aspect demonstrated that no illegality has been observed by the revisional Court, who has settled the question in legal terms, even otherwise, the award has not been challenged and original affectees are still alive, hence the plaint has rightly been rejected in terms of Order VII Rule 11 CPC.

9. For what has been discussed above, instant writ petition is not maintainable, no question of interference is made out, even otherwise, the scope of writ petition against the order passed by revisional Court is limited, therefore, the same is hereby **DISMISSED.**

(MOHSIN AKHTAR KAYANI)
JUDGE