

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Munib Akhtar
Mr. Justice Irfan Saadat Khan
Mr. Justice Aqeel Ahmed Abbasi

Civil Petition No.1218-K of 2023

*(against the order dated 12.10.2023 passed by
the High Court of Sindh, Karachi, in Civil Revision
Application No.S-60 of 2008 (Hyderabad))*

Syed Ali Ahmed Shah

... Petitioners

Versus

Syed Shoukat Hussain Shah & Others

... Respondents

For the Petitioners: Mr. Khalid Javed, ASC

For Respondent No.1: Mr. Neel Keshav, ASC

Date of Hearing: 16.12.2024

ORDER

Aqeel Ahmed Abbasi, J. Through instant Civil Petition for Leave to Appeal filed under Section 185 (3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 12.10.2023 passed by the learned Single Judge of Sindh High Court at Karachi, whereby, the review application (CMA No.345/2023) filed under Order 47 Rule 1 CPC read with Section 114 and Section 151 CPC seeking review of order dated 16.12.2022 passed in Civil Revision Application No.60/2008 was dismissed.

2. Briefly, the facts as noted by the learned Single Judge of High Court of Sindh while dismissing the aforesaid application in the impugned order are that there was a dispute between the parties in respect of urban land measuring 05 Guntas only equivalent to 5445 Sq. Ft. arising out of Survey No.206 situated in Deh Dad, Taluka Nawabshah "Suit Land". Both parties claimed that the suit land was purchased by their predecessor in interest namely Syed Kamran Shah and Syed Khair Shah by 50 paisa equal share. However, the

applicant/plaintiff claimed his due share in the suit property, which devolved upon him being one of the legal heirs of Syed Kamran Shah, however, the same had fraudulently been mutated in the name of respondent No.1, who allegedly constructed thereon Petrol Pump and Sun Shed. The applicant being aggrieved by and dissatisfied with such mutation had filed the F.C. Suit No.13 of 2001, against Respondent No.1 and others, for Declaration, Partition, separate Possession, Injunction, and correction on the record of right before the trial Court with the following prayer(s):-

- a) It be declared that S. No.206 Deh 50 Dad admeasures only 5 ghuntas, and entry No.22 dated 27.02.1992, in the name of defendant No.1, in village form VIII B Deh 50 Dad is fraudulent, forged, and fabricated.
- b) That it be further declared that the plaintiff is co-proprietor of the suit land and the defendant No.1, being a co-proprietor cannot holds of any specific portion of suit land and to change its character without having the same partitioned by a competent Court.
- (c) Decree for partition of the suit property be passed and separate possession of the plaintiff's share be awarded to him by partitioning and dividing the suit property in between the co-owners according to their respective shares.

The suit was contested by the parties and after framing the issues, the private parties led their evidence and the trial Court after hearing the parties Decreed the suit of the applicant vide Judgment dated 04.10.2006 and Decree dated 12.10.2006. The aforesaid Judgment and Decree were impugned in Civil Appeal No.117/2006, which was allowed by the learned Appellate Court vide Judgement dated 16.07.2008 and Decree dated 22.07.2008 and dismissed the Suit No.13 of 2001 filed by the applicant. The matter did not end here and was agitated before the learned Single Judge of Sindh High Court in Civil Revision No.60 of 2008 which was disposed of by consent of the learned counsel for the parties vide order dated 16.12.2022 in the following terms:-

- "3. Mr. Arbab Ali Hakro learned counsel for the applicant/plaintiff submits that admittedly the suit land was purchased jointly in equal shares by predecessors of the applicant and respondent;

however, the share devolved upon the applicant was fraudulently mutated in favor of respondent No.1.

4. Mr. Abdul Majeed Khoso learned counsel for respondent; however, denied the allegation and submits that along with suit property, there was another joint property having Survey Nos. 184, 185/1 to 4, 205 and 244 total admeasuring 12-39 acres situated in the same Deh and all the property was privately partitioned and as such suit land came in the share of the respondent, who constructed thereon Petrol Pump and Sun Shade, as such there is no illegality in the judgment passed by learned Appellate Court, he lastly submitted that respondent has acquired right in the estate is deemed to be in possession in each inch thereof till the entire land as discussed supra is partitioned according to the respective shares.
5. However, counsel for both the parties, after arguing the matter at some length agreed to the principle that since admittedly all the privately partitioned property was jointly owned by the predecessors in the interest of both the parties; therefore, the matter may be remanded to the trial Court to decide the issue of private partition between the parties in respects all joint properties, within a reasonable time, to settle the dispute for all joint properties, within a reasonable time, to settle the dispute for all time to come and their share be distributed under law.
6. Since the parties have reached the consensus for disposal of this revision application to resolve the issue of inheritance by way of partition of the entire properties left by the predecessor in interest, through the learned trial Court and keeping in view the aforesaid stance and without touching the merits of the case, and without prejudice, the claim of the parties on the subject properties, with the consent of the parties judgments and Decrees passed by both courts below are set aside. Resultantly matter is remanded to the trial Court to first look into the issue of partition in respect of all the properties involved in the matter, which include suit property also, jointly owned and purchased by the predecessors of both the parties namely Syed Kamran Shah and Syed Khair Shah and then decide the matter under law. The aforesaid exercise shall be undertaken within one month.

Captioned revision application stands disposed of in the above terms."

3. Learned counsel for the petitioner while referring to the grounds as agitated before the learned Single Judge of Sindh High Court in CMA No.345/2023 (Review Application) has argued that the petitioner and his counsel did not give any consent for disposal of aforesaid revision application in the terms as stated in the order dated 16.12.2022, whereas, once the matter was decided on merits by the two Courts below, it should have been decided on the basis of available record and the evidence produced by the parties, instead of deciding the same on the basis of purported consent of the parties. According to learned

counsel, the remand of the matter to the trial Court under the circumstances was an erroneous decision, which needs to be recalled. The similar arguments were agitated before the learned Single Judge, which have been dealt with in para-8 of the impugned order in the following terms:-

"8. In the present case the applicant has sought a review of the order dated 16.12.2022 by filing an application under Order XL VII, Rule 1 and Section 114 read with Section 151 C.P.C on 10.1.2023 after the limitation period, in this regard Article 162 of the Limitation Act, 1908 provides 20-days limitation commencing from the date of order, to apply for review of the judgment, however, no application for condonation of such delay has been filed as well no personal affidavit of the learned counsel for the applicant, who put his appearance on the date of hearing, has been filed in support of review application. On this score alone the application is liable to be dismissed. Even otherwise it is the well-settled proposition of law that a consent order recorded in open Court on the date of hearing, the parties subsequently cannot be allowed to recoil from such order by seeking review. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the cases of Dr. S.M. Qaim v. Raisul Hassan Naqvi **1981 SCMR 950**, Allah Dita v. Bashir Ahmed **1997 SCMR 181**, Muhammad Yaqoob v. Deputy Settlement Commissioner (Land), **1981 SCMR 519**, and Faizur Rehman v. Rahman Ud Din alias Mirza **1997 SCMR 1301**. Besides, from the perusal of the provision of Order XL VII, Rule 1, C.P.C., it is quite clear that the powers of review can be exercised only when before passing the order some important facts were neither produced by the parties before the Court nor after due diligence the same could surface during the proceedings or an omission or error is floating on the face of the record, which factum is prima facie missing in the present case."

4. Learned counsel for the petitioner was confronted to assist the Court as to whether the order passed by the learned Single Judge of Sindh High Court on 16.12.2022, whereby, the Civil Revision Application No.60 of 2008 was finally disposed of in the terms as referred to hereinabove, was assailed by filing a Civil Petition Leave to Appeal before the Supreme Court. In response to such query, learned counsel has candidly stated that the aforesaid order has not been challenged before this Court, however, the review application under Order XL VII Rule 1 C.P.C. and Section 114 read with Section 151 CPC was filed as there was an error in the impugned order, which could be recalled and reviewed under the aforesaid provisions of law. Learned counsel for the petitioner was also confronted to assist the Court as to

whether any affidavit of the petitioner or of the counsel represented the petitioner before the learned Single Judge of Sindh High Court on 10.01.2023, was filed along with application seeking review of order dated 16.12.2022 to the effect that there was no consent between the parties nor the learned counsel representing the petitioner had given such consent for disposal of aforesaid civil revision application in the terms as stated in order dated 16.12.2022, in response to such query, learned counsel for the petitioner could not refer to any such affidavit either of the petitioner, namely, Syed Ali Ahmed Shah or of the learned counsel representing the petitioner before the learned Single Judge of Sindh High Court at Circuit Court, Hyderabad, at the time of disposal of the case vide order dated 16.12.2022. No ground whatsoever for seeking review of an error apparent from record or in the impugned order passed by the learned Single Judge of Sindh High Court in the aforesaid revision application has been agitated rather, there has been serious allegation that consent of the parties has been wrongly recorded by the Hon'ble Judge of Sindh High Court, thus disputing the judicial order and the proceedings however, without any evidence, material or formal Affidavit of the petitioner or of the counsel who was present in Court along with counsel for respondent. It is settled legal position that presumption of correctness and sanctity is attached to all judicial proceedings, orders, decisions and the judgments passed by the Courts, whereas, the same can be assailed by an aggrieved party by filing appeal, revision as may be provided in accordance with law. However, in exceptional cases, any order or judgment passed by the competent Court of jurisdiction, or any proceedings can be subjected to review under Order XL VII Rule 1 C.P.C. and Section 114 read with Section 151 CPC by showing some error on the face of the record and the impugned order/decision sought to be reviewed, which otherwise could be rectified without reappraisal of the evidence or re-examination of the merits of

the case. Whereas, in the instant case no error of such nature has been pointed out except an allegation to the effect that the counsel representing the petitioner did not give any consent for disposal of the aforesaid revision application in terms of order dated 16.12.2022, however, such allegation is not duly supported by affidavit to this effect by the learned counsel, therefore, cannot be a ground or basis for seeking review of the consent order dated 16.12.2022. In view of hereinabove admitted facts and settled legal position, we are of the opinion that the learned Single Judge of Sindh High Court, at Karachi, has rightly dismissed the review application vide impugned order dated 12.10.2023, which does not suffer from any legal infirmity or factual error, hence does not require any interference by this Court. Accordingly, this Civil Petition for Leave to Appeal is hereby dismissed in limine and leave is refused.

Judge

Judge

Judge

Karachi:
16.12.2024
(Nadeem)

"APPROVED FOR REPORTING"