

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Muhammad Ali Mazhar

Civil Petition No.715 of 2020

Against the judgment dated 19.12.2019
passed by Lahore High Court, Lahore in
W.P.103227/2017

Zafar Iqbal

...Petitioner

Versus

Additional District and Sessions Judge, Ferozewala
& others

...Respondents

For the Petitioner:

Hafiz Muhammad Yusuf, ASC

For Respondents 2-4:

Mr. Aftab Alam Yasir, ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing:

17.02.2023

ORDER

Qazi Faez Isa, J. The learned counsel for the petitioner states that a suit was filed on 19 December 2002 by respondents No. 2, 3 and 4 (**'the said respondents'**) seeking specific performance of a purported oral agreement entered into with the seller, namely, Mst. Rehmat Bibi, who was arrayed as a defendant. After filing of the said suit Mst. Rehmat Bibi passed away and some of her legal heirs were brought on the record. However, he submits that since Zafar Iqbal, the present petitioner, was not arrayed as a legal heir, despite being the son of Mst. Rehmat Bibi, he submitted an application for his impleadment in the suit as a defendant, which was allowed. Revision against the order allowing the application was dismissed whereafter the said respondents filed Writ Petition No.4003/2013 before the Lahore High Court, Lahore, but withdrew it on 1 April 2015. Evidence in the suit was led and concluded. Thereafter, the said respondents filed an application seeking amendment of the plaint, alleging that Zafar Iqbal was not the son of Mst. Rehmat Bibi, but their application was dismissed by the learned Civil Judge. However, the same was allowed by the revisional Court, whose order was sustained by the High Court in the impugned judgment. The learned counsel states that the said respondents are in possession of the suit property, therefore, they are

not interested to have their suit decided. He next contends that, if for the sake of the argument alone, it be accepted that Zafar Iqbal is not the son of Mst. Rehmat Bibi it should be the legal heirs of Mst. Rehmat Bibi who would be aggrieved, and not the said respondents. He further states that the suit will either be decreed or dismissed on its own merits, and who is or is not the legal heir of Mst. Rehmat Bibi is of no concern to the said respondents.

2. The learned Mr. Aftab Alam Yasir, representing the said respondents, states that he had submitted an application in the office of this Court seeking permission that he may also be permitted to argue the case as a co-counsel, but his application was not entertained by the office. The learned Mr. Aftab Alam Yasir was already engaged as a counsel and was also in attendance on the last date of hearing. The office was correct in maintaining that two counsel cannot simultaneously argue on behalf of the same party, however, since only one counsel is before us, namely, Mr. Aftab Alam Yasir, ASC, we have heard his submissions.

3. The learned Mr. Aftab Alam Yasir states that the interest of the said respondents will be adversely affected if the amendment to the plaint is not allowed because Zafar Iqbal is not the son of Mst. Rehmat Bibi. Therefore, we asked him, what difference would it make to the said respondents (the plaintiffs in the suit) as to whether Zafar Iqbal is a legal heir of Mst. Rehmat Bibi or not because their suit will either be decreed or dismissed, but the learned counsel was not able to give any satisfactory answer. On the contrary, the said respondents' interest is better protected because in the eventuality the suit were to be decreed without Zafar Iqbal being arrayed as a party then he may file an application, under section 12(2) of the Code of Civil Procedure, 1908 (**'the Code'**), stating that the decree was obtained by fraud since he was a necessary party being a legal heir, yet was not arrayed as a defendant, and seek to set aside such decree.

4. In any case the matter stood concluded when the said respondents had withdrawn their Writ Petition No.4003/2013 from the High Court. If they had any grievance with regard to Zafar Iqbal being arrayed as a party they should have agitated it then, and should not have withdrawn their petition. We also cannot be mindful of the fact that evidence of both sides has been recorded and concluded.

Undoubtedly, the suit will be decided on its own merits, that is, the learned Trial Court Judge will determine whether an oral sale agreement had been entered into and whether the suit should be decreed or not. The said respondents wanted to amend their plaint by challenging Zafar Iqbal's paternity/maternity which has no connection with a suit which seeks specific performance of a purported agreement. It is also noteworthy that the defendants in the suit are keen to proceed with the suit, filed by the said respondents nineteen years ago, but the said respondents are delaying its conclusion, giving credence to the learned counsel for the petitioner's contention that since the said respondents are in possession of the suit property they do not want the suit to be decided.

5. In the facts and circumstances of the case, there was no justification for the exercise of revisional powers and to set aside the order of the learned Judge of the Trial Court which had dismissed the said respondents' application for amendment of the plaint and such exercise of power, in the facts and circumstances of the case, did not come within the purview of section 115 of the Code.

6. Therefore, for the aforesaid reasons we set aside the order of the Lahore High Court, Lahore, dated 19 December 2019 and of the Court of Additional District Judge, Ferozewala dated 19 October 2017 by converting this petition into an appeal and allowing it. We also impose costs on respondents No. 2, 3 and 4 throughout, to be paid to the petitioner, as in our opinion the said respondents abused the process of the court and indulged in unnecessary litigation.

Judge

Judge

Islamabad:
17.02.2023

Approved for Reporting
Mudassar/★