

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mr. Justice Shahid Waheed

Civil Petition No.3988 of 2019

[On appeal against the Judgment dated 27.09.2019 of the Lahore High Court Multan, Bench Multan, passed in Civil Revision No.161 of 2015]

Mukhtiar Hussain

...Petitioner (s)

VERSUS

Mst. Shafia Bibi

...Respondent(s)

For Appellant(s) : Mr. Abdul Rehman Laskani, ASC
(through video link from Lahore)
Syed Rifaqat Hussain Shah, AOR

For Respondent(s) : Mr. Dil Muhammad Ali Zai, ASC

Date of Hearing : 24.11.2022

JUDGMENT

SHAHID WAHEED, J.— This petition for leave to appeal is directed against the judgment dated 27th September 2019, whereby the Lahore High Court declined to revise the concurrent findings of its two courts below dismissing the application under Order IX, Rule 13, CPC, for setting aside *ex-parte* judgment and decree dated 13th October, 2010.

2. The facts which are necessary to be stated are that the dispute between the parties was in respect of a piece of land measuring 8 kanals, 5 marlas situated within the revenue estate Ghari, Tehsil Alipur, District Muzaffargarh, which stood transferred in the name of present petitioner vide mutation No.3273 dated 22nd July 2005. The respondent challenged the said mutation through her suit and sought a declaration that it was result of fraud and misrepresentation, and as such, ineffective against her rights. Upon respondent's denial of the allegations made in the plaint, the trial Court framed issues and directed the parties to adduce evidence in support of their respective claims.

There is no denying that at the stage of recording the evidence, the petitioner had stopped appearing, and thus, the trial Court vide its order dated 22nd February 2010 proceeded *ex-parte* against him, and subsequently, by its judgment dated 13th October, 2010 issued a decree in favour of the respondent-plaintiff.

3. Being aggrieved, the petitioner on 6th November 2010 applied under Order IX, Rule 13 CPC to set aside the *ex-parte* decree dated 13th October 2010 taking the stance that there was an attempt to compromise between the parties and he was told by the respondent that the suit had been withdrawn, and under this impression, he did not appear in the proceedings. The respondent resisted the application. On consideration of the matter, the trial Court dismissed the application through its order dated 17th November 2012 with the observation that the petitioner had not brought on record any material to substantiate his plea of alleged compromise, or any impression of intended withdrawal of the suit. The petitioner thereupon preferred an appeal before the Additional District Judge, Alipur, but failed. His appeal was dismissed by the first appellate Court through its judgment dated 21st January 2015. The petitioner then filed an application under Section 115 CPC before the High Court and sought revision of the concurrent findings returned by the two courts below. Since the petitioner could not point out any jurisdictional defect or material irregularity, the High Court declined the revision through its judgment dated 27th September 2019.

4. Now, the petitioner is before us and his grouse is that the ground raised by him in the application under Order IX, Rule 13 CPC was not properly appreciated, and thus, there had been a miscarriage of justice. Upon hearing, we examined the contents of his application, and found that the solitary stance set up by him therein was that since the parties to the suit had effected a compromise, he was told by the respondent that the suit had been withdrawn, and under that impression he did not turn up to join the proceedings. Hence, the question that falls to be examined is whether the aforesaid ground could have been considered sufficient cause that could prevent the petitioner or his counsel

from appearing before the Court when the suit was called on for hearing, and based on this, could the Court set aside the *ex-parte* decree? In order to provide the peg on which this question is to be hung, it is necessary to narrate a few incidents of the trial of the suit giving rise to this petition. The suit was instituted on 14th September 2005, the petitioner was duly served in the suit, he did appear in the proceedings, filed his written statement, and issues were framed on 24th February 2006 when the case was fixed for evidence. It is also a matter of record that the petitioner through his counsel was duly defending the suit prior to 22nd February 2010, but on the said date neither the petitioner nor his counsel entered appearance, the case was kept in waiting and thereafter at 3:20 p.m the trial Court proceeded *ex-parte* against the petitioner; subsequently, the case remained pending for considerable time and finally decreed *ex-parte* on 13th October 2010. Given the circumstances, the stance of the petitioner does not appear to be tenable, for, firstly, the petitioner did not attach any compromise deed with his application nor did he mention the details of the terms and conditions of the alleged compromise in his application nor the date, time and name of the persons before whom it was made, secondly, he also did not mention in his application that he had told his counsel about the alleged compromise and instructed him not to appear before the Court, and thirdly, he had not disclosed any reason as to why he did not take any step to confirm the fact of withdrawal of suit from his counsel. All these facts show that the petitioner had deliberately chosen to refrain from joining the proceedings and also non-cooperation with the Court and, therefore, he had no right to ask its indulgence and seek setting aside of *ex-parte* decree passed against him. As such, his application deserved a summary dismissal as it was deficient in necessary material facts, and was vague in all respects, and appeared to be an attempt to cover up his misdeeds and negligence. Scrutinised thus, and per the old aphorism "*nullus commodum capere potest de injuria sua propria*", the petitioner could not be allowed to take advantage of his own wrong or

negligence, and accordingly we are not persuaded to interfere with the concurrent findings of the three courts.

5. The petitioner has failed to make out any case for grant of leave to appeal, and resultantly this petition is dismissed.

JUDGE

Bench-VI
ISLAMABAD
24.11.2022
'APPROVED FOR REPORTING'
Asif Siddiqui

JUDGE