

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-852 of 2025

(Azizan w/o Khuda Bux - v - Raheem Bux)

Date Order with signature(s) of Judge(s)

Hg:/Priority.

For orders on Misc. No.26412/24

For hearing of Misc. No.26413/24

For hearing of main case.

Date of Hearing and Decision: 16.12.2025.

Mr. Hussain Bux Saryo, Advocate for the Petitioner.

Mr. Aurangzeb, Advocate for the Respondents.

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the order dated 27.05.2024 passed by the Court of Learned IXth Additional District & Sessions Judge (West) Karachi (Revisional Court) in Civil Revision No.81 of 2023 (re: Mst. Azizan through LRs - v - Pir Fazal Haq & Ors.) whereby revision application was dismissed and order dated 17.10.2023 passed by the court of Learned 4th Senior Civil Judge (West) Karachi (Trial Court) dismissing the application under section 12(2) of C.P.C in Suit No.963 of 2007 (re: Pir Fazal-e-Haq - v - Imam Bux & Ors.) was maintained.

2. Learned counsel for the petitioner contended that the respondents filed Suit No. 963 of 2007 for declaration, cancellation, mandatory injunction, and permanent injunction concerning the life estate of the deceased Qadir Dad. He further contended that the deceased Qadir Dad left behind two daughters, namely Soni Bibi and Azizan, and one son, Allah Dad; that Late Qadir Dad owned 19-1 acres of land in Deh Halkani, Manghopir, Karachi. He contended that the respondents did not array Mst. Azizan as a party to the Suit and subsequently sought a compromise decree by filing an application under Order XXIII Rule 3 CPC. He further contended that the petitioner, being an owner of the land by way of inheritance, was a necessary party to the Suit; that the compromise decree was obtained through fraud and misrepresentation. He argued that the application under Section 12(2) CPC was dismissed on mere

surmises and conjectures. He prayed that the revision application be allowed and that the orders passed by the courts below be set aside, the compromise decree be reversed and Petitioners may be allowed to file written statement and the suit be decided on merits.

3. Learned counsel for the respondent argued that the petitioner was one of the legal heirs of the deceased Qadir Dad and that the compromise decree effected between the parties did not affect her rights. However, he conceded that if the instant petition is allowed, he has no objection.

4. Heard arguments and perused the material made available on record.

5. It appeared from the record on its analysis that dispute between the parties related to the immovable property bearing survey number 37 (19-1 acres) (the Suit Property) situated in Deh Halkani Manghopir Karachi owned by predecessor in interest of the parties namely Qadir Dad who died in year 1947. It is the claim of the Petitioners that on passing away of Qadir Dad, the Suit Property devolved upon his legal heirs namely Allah Dad, Mst Soni Bibi and Mst Azizan. Legal Heirs of Mst Son Bibi viz. Pir Fazl e Haq filed a suit against the Legal Heirs of Late Allah Dad for declaration of ownership based upon inheritance, cancellation of entries in record of right and permanent injunction. Legal Heirs of Mst Azizan (the Petitioners in the present petition) were not made party in the Suit. It was the case of the Respondent Fazl e Haq (Plaintiff in the Suit) that his mother Mst. Soni Bibi being the legal heir of Late Qadir Dad was entitled for her share in the Suit Property but the legal heirs of Allah Dad denied such right and they had occupied the Suit Property, thus the entries in the Record of Rights denying right of inheritance to the Mst. Soni Bibi were without lawful authority as such liable to be canceled and he was entitled to possession of the Suit Property to the extent of his mother's share therein.

6. It further transpired from the record that during proceedings of the Suit compromise was effected. Plaintiff and Defendants No 1 to 10 (Respondents No 1 to 11 in the present petition) filed an application under Order XXIII Rule 3 C.P.C. The compromise application was accepted and the Suit was decreed vide judgment and decree dated 16.04.2008 and 21.04.2008 in terms as set forth in compromise application. The Suit was ordered to proceed against Defendants No 11 to 14, the officials of Revenue Department and M/S Rizwan Company. Through the said compromise decree, rights to the extent of 3-acres of land in the

Suit Property were surrendered in favour of one Alamgir Hasan Sheikh son of Muhammad Hafeez Shaikh. Para-3 of the compromise application being relevant is reproduced herein below:

“That out of total area of land viz.19-1 acre, 03 acres of such land is hereby given/ delivered to Mr. Moham-mad Alamgir Hasan Sheikh son of Mohammad Hafeez Sheikh from whom the parties had obtained Rs.10 lacs as loan and the piece of land of 03 acres is hereby given to him in lieu of such loan. The remaining 16-1 acres of the suit property has been distributed by the parties among themselves and also have obtained possession of their respective portion accordingly. A separate Sulhnama dated 14-4-2008 written on separate sheet is also annexed herewith which may be treated as part and parcel of this Compromise Application. The parties as such, indemnifies each other against any loss if occasioned on account of breach of such settlement.”

7. The Suit against Defendants to 11 to 14 (Respondents No 12 to 15 in the instant petition) proceeded, however the said defendants failed to appear and defend the Suit after filing of written statement by Defendant No 12 (Mukhtiarkar Revenue Gadap). The suit was proceeded ex - partie and decreed in favor of Plaintiff (Respondent No 1) vide judgment and decree dated 29.10.2009 and 04.11.2009 respectively, Revenue Officials were directed to record fresh entry in the record of rights in favor of all the legal heirs of deceased Qadir Dad. It will be conducive to reproduce the relevant part of the judgment dated 29.10.2009 which reads as follows:

“The Defendant No 1 to 10 admitted his entitlement and to that extent the suit has already been decreed vide preliminary decree dated 16.04.2008. Now there remain only one question as to whether Form VII is liable to be canceled or not, for which it is suffice to record that plaintiff has been declared as one of the legal heirs and inherited properties left by the deceased as such previous Form VII which is not containing the name of plaintiff is found defective and hereby canceled and same time defendants No 11 to 14 are directed to issue fresh Form VII in the name of all the legal heirs including plaintiff. The evidence led by plaintiff has gone un-rebutted, the contention raised by defendants No 11 to 14 are without any substance/ evidence as such same has no value. Therefore the suit of the plaintiff is decreed.”

8. Petitioners being legal heirs of late Azizan filed an application under section 12(2) of C.P.C praying inter alia therein to set aside the compromise decree and to proceed the matter on merits. Petitioners asserted that the compromise decree was obtained behind their back, a right of fair trial was not afforded to them and compromise decree deprived them the right of inheritance in the Suit Property. Learned Trial Court accepted the application and framed following issues to decide the 12(2) C.P.C as a suit:

- I. Whether the application under section 12(2) C.P.C are not maintainable and barred by law?
- 2. Whether the Plaintiff has obtained the Compromise order dated 16.04.2008 and compromise decree dated 21.04.2008 by playing fraud, misrepresentation and concealment of facts?
- 3. Whether the plaintiff has obtained the judgment dated 29.10.2009 and decree dated 04.11.2009 by playing fraud, misrepresentation and concealment of facts?
- 4. What should the order be?

9. Petitioners led evidence, however Respondents did not appear in the witness box. Learned Trial Court dismissed the application under section 12(2) C.P.C being not maintainable, though without assigning any reasons as to how the application was not maintainable and barred under the law. Learned Trial Court was required to explore the reasons for holding the application to be not maintainable. The Revision application filed before the Revisional Court also met the same fate.

10. Reappraisal of the Record evidenced that the 12(2) C.P.C application was not maintainable on two accounts, First it was filed with delay and Second the application did not contain the grounds to establish the ingredients of fraud and misrepresentation. For filing of an application under section 12(2) C.P.C a period of Three years is available under article 95 of the Schedule to Limitation Act 1908. The article reads as under:

Description of Suit	Period of Limitation	Time from which period begins to run
To set aside a decree obtained by fraud, or the other relief on the ground of fraud.	Three Years	When the fraud becomes known to the party wronged

11. From the above provision of law, it is crystal clear that an application under section 12 (2) C.P.C challenging a decree on the ground of fraud, misrepresentation or jurisdictional defect has to be filed within three years of the date of the decree. The three years' time runs from the date when such fraud or misrepresentation came into knowledge of the party. The Petitioners asserted that they were the legal heirs of original owner, nowhere in the pleadings they have mentioned that they were not in the knowledge of decree passed by Trial Court. Mere claim that they were not party to the proceedings will not advance the cause of the petitioners to cross this hurdle of limitation. The Compromise Decree was obtained in year 2008 and final decree was passed in year 2009, whereas application under 12(2) C.P.C was filed in year 2021, after about 13 years time, that too without any supporting application seeking condonation in delay, as such the application filed by the Petitioners was hopelessly time barred and barred under the law and rightly held by the Courts below to be not maintainable.

12. It is a settled notion of law that fraud vitiates all the solemn proceedings. If the party succeeded in proving fraud, the judgment and decree would have stood nullity. They were the Petitioners who pleaded that the judgment and decree was obtained through fraud and misrepresentation, as they were not impleaded as party in the proceedings, and compromise decree defeated their rights of ownership. Section 12(2) was incorporated in C.P.C through Ordinance No X of 1980, this provision of law enabled the parties to get a judgment and decree annulled which was obtained through fraud or misrepresentation and affected the rights of the party, by filing an application in the same suit and before the same Court. Prior to the Ordinance X of 1980, if a person was aggrieved of any judgment and decree of the Court, that according to him affected his rights and was the result of fraud and misrepresentation, he, in order to challenge the same, had to initiate a separate suit for the annulment thereof. However, by virtue of the above Ordinance, amendment was brought by way of section 12(2) whereby the following was added to the Code of Civil Procedure:

"Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit."

13. Thus after the insertion of this new provision, the validity of a judgment and decree obtained or alleged to have been obtained on the basis of fraud and

misrepresentation or from a court having no jurisdiction could only be challenged by moving an application to the same court which passed the final decree and not by a separate suit. When such application is filed and resisted by the Decree Holder the court may frame issues to decide it on merits or dismiss the same simpliciter on the basis of the pleadings of parties if no case for further proceedings was made, as the facts of the case may warrant. The issues so framed do not even cover the main controversy between the parties, which controversy may ultimately arise between them once the decree is set aside, the suit is revived and the applicant of the case under Section 12(2), C.P.C. is allowed to file his written statement for decision of the case afresh. The purpose of framing issues in a civil litigation is that the parties must know the crucial and critical factual and legal aspects of the case which they are required in law to prove or disprove through evidence in order to succeed in the matter on facts and also the points of law.

14. It was the case of the Petitioners that they were the legal heirs of Late Qadir Dad and were a necessary party to the proceedings and compromise decree was obtained through fraud and misrepresentation. It was for Petitioners to prove that they were the legal heirs of deceased Qadir Dad, they were the necessary party, the compromise decree affected their rights of inheritance which they failed by adducing concrete evidence. The learned trial court dismissed the application under Section 12(2) CPC by observing that the petitioners had failed to prove legal heirship and had also failed to produce any title document in that regard supporting their claim. For the sake of convenience para-14 of the judgment of Learned Trial Court is reproduced herein below:

"The plaintiff in his suit sought declaration to the effect that he is the one of the legal heir of Mst. Soni Bibi D/o/Qadir Dad. The name of Mst. Azizan D/o Qadir Dad is also shown as one of the legal heir of deceased Qadir Dad. The only documents produced by the applicants/Intervenors i.e. death certificates of Ali Buksh (died on 30.08.2009) and Ghulam Hayder (died on 14.08.2017) both dated 01.12.2020 issued by the Secretary Union Council A.B Shoro, Taluka Korti does not create any right or title of the applicants/Intervenors. The applicants/Intervenors failed to produce any family tree, F.R.C even photocopies of their CNICS or witnesses before this court in respect of their claim."

15. Though in the plaint, the Respondent No 1 (plaintiff in the suit) has asserted that Late Qadir Dad had left behind three legal heirs, viz. Allah Dad,

Mst. Soni Bibi and Mst Azizan all of whom were entitled to their respective shares in the property as ordained under Shariah. But such assertion of the parties has been vehemently denied by the Mukhtiarkar Gadap (Defendant No 12 in the Suit), in its written statement (page 187 of the Petition) filed before Learned Trial Court. Defendant No 12 stated that the Suit Property originally belonged to Qadir Dad son of Khair Muhammad, upon his death the mutation was effected and the Suit Property was entered in the record of rights in the names of his legal heirs namely Allah Bachayo, Allah Bux, Imam Bux, Mst Hawa, Jan Bibi, and Mayam (the sons and daughters) and Widow Bibi Naz. The Suit Property as per record has been sold out to Defendant No 14 M/S Rizwan & Company through registered sale deed at different times. The written statement filed by Mukhtiarkar Gadap Town did not support the claim of heirship of Petitioners. The Petitioners did not produce any witness from the family to support their claim.

16. The careful examination of the application under section 12(2) C.P.C demonstrated that the same did not mention a single ground as to what fraud or misrepresentation was committed by the respondents and how the decree of the Trial Court was liable to be set aside for want of jurisdiction. One more important aspect of the case that cannot be overlooked is that the Compromise Decree dated 21.04.2008 was a private settlement between the parties and under doctrine of merger of decrees it merged in the final the judgment and Decree dated 29.10.2009 and 04.11.2009. Through the Final Decree learned Trial Court directed the Revenue Authorities to mutate the Suit Property in favor of all legal heirs of deceased Qadir Dad. The Final Decree passed by the Trial Court did not in any manner affect the rights of any of the legal heirs of deceased, rather the same protected the rights of legal heirs in the Suit Property.

17. It is another important aspect of the case that Respondents No 15 has tendered no objection for allowing of the application under section 12(2) C.P.C. The no objection so tendered smacked mala fide intentions and ulterior motives of the parties. Per Mukhtiarkar Gadap Report that the legal heirs of Late Qadir Dad have sold out the Suit Property to M/S Rizwan & Company (Respondent No 15) through registered sale deeds, if the case is reopened on the basis of such no objection, it will prejudice the case of Respondents No 1 to 11. The Petitioners are required to establish their heirship by instituting separate proceedings. It further transpired from the record that the respondent/plaintiff did not lead any evidence and straightaway conceded to the application filed by the petitioners,

which fact was sufficient to construe that the petitioner and the parties to the suit were mixed up to defeat the rights acquired by other parties.

18. The contentions of the parties that original owner Qadir Dad left him behind only One Son and Two Daughters as surviving legal heirs, was specifically denied by the Mukhtiarkar in its written statement, wherein it was stated that Late Qadir Dad left behind three sons, three daughters and widow as the surviving legal heirs and the Suit Property was mutated in the names of legal heirs in year 1956. The name of Azizan since deceased, the predecessor in interest of the Petitioners did not reflect in the list of legal heirs. It is a well-known legal exposition that the validity of a judgment, decree, or order under Section 12(2), C.P.C., can only be challenged on the plea of fraud, misrepresentation, or want of jurisdiction. The literal meaning of fraud can be understood as a planned and calculated usage of deceptiveness, or a trick or dishonest means to divest another of his movable or immovable property or a legal right. The term "misrepresentation" refers to the act of conveying false or misleading information about something or someone to get unfair or unwarranted advantage and the expression "want of jurisdiction" epitomizes the lack of authority to hear a case by a Court; who surpasses its power or dominion to hear a case, or a court which does not have authority to hear the matter. For setting aside any judgment and decree, party laying the claim of fraud, misrepresentation and jurisdictional defect is obligated to characteristically and judiciously point out the act of fraud, misrepresentation, or want of jurisdiction, if any. No such ground was agitated in the application under section 12(2) C.P.C.

19. Since the Petitioners alleged fraud and misrepresentation, the onus to prove the same was on their shoulders, but they failed to discharge this burden. No illegality, infirmity or perversity has been pointed out in the concurrent findings of the courts below that may require interference of this Court to exercise the powers of judicial review conferred under article 199 of the Constitution of Islamic Republic of Pakistan of 1973. Consequently, this petition is dismissed. The petitioner is, however, at liberty to initiate proceedings to claim her share in the life estate of the deceased Qadir Dad, if so advised.

JUDGE

Approved for reporting