

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No.S-384 of 2025

[Shakeel Ahmed & others Vs. Ayesha Omar & others]

Petitioners : Through Mr. Shamsuddin Memon, Advocate

Respondents No.1to4 : Through Mr. Abdul Samad Qureshi, Advocate

Date of hearing & order: 10.11.2025.

JUDGMENT

Arshad Hussain Khan, J.- The petitioners through this Constitutional Petition have assailed judgment dated 15.12.2023 passed by the learned 6th Additional District Judge, Hyderabad whereby the learned appellate Court while maintaining the order dated 08.09.2023 passed by the learned 2nd Senior Civil Judge, Hyderabad, on an application u/s 12(2) CPC filed by the petitioners, dismissed the Revision Application of the petitioners.

2. Concisely, the facts of the case are that respondent No.1/plaintiff instituted *Suit No.532 of 2021* for Declaration and Partition against the present petitioners and others, which was decreed vide judgment and decree dated 30.04.2022. Thereafter, the petitioners filed an *application under Section 12(2) read with Section 151, C.P.C.*, contending that the said judgment and decree had been obtained by respondent No.1 through fraud and misrepresentation, and sought setting aside thereof. However, after hearing the parties, the learned Trial Court dismissed the said application vide order dated 08.09.2023. The petitioners, being aggrieved, preferred a *Civil Revision Application*, which too was dismissed through the impugned judgment dated 15.12.2023; hence, the present petition.

3. Heard arguments of both the respective parties and perused the material available on record with their able assistance.

4. Precisely, the stance of the petitioners in the present petition is that the impugned orders are unlawful, as the decree passed in *Suit No.532 of 2021* was allegedly obtained through fraud and misrepresentation. It is further asserted that both the trial and revisional courts failed to properly examine the plea of fraud, resulting in miscarriage of justice. The impugned orders, being arbitrary and passed without due application of mind, are thus liable to be interfered with by this Court.

5. From the record, it appears that respondent No.1/plaintiff filed *Suit No.532 of 2021* for Declaration and Partition against the present petitioners and others, claiming her share in the properties left by her deceased maternal grandfather, **Jameel Ahmed Qureshi**, through her mother, **Mst. Nuzhat Qureshi**, who was one of the legal heirs and daughters of the deceased. Upon admission of the suit, notices and summons were issued, whereafter counsel for the present petitioners/defendants filed *Vakalatnama* on their behalf. However, the remaining private defendants neither entered appearance nor filed *Vakalatnama*.

The record further reflects that despite having been granted sufficient opportunities, the present petitioners/defendants failed to file their written statement, and consequently, they were debarred from filing the same vide order dated **18.09.2021**. The remaining private defendants were similarly debarred on **16.04.2022**. Thereafter, on 28.04.2022, the plaintiff filed *ex parte proof along with documents*, and her examination-in-chief was recorded. The matter was then fixed for final arguments and disposal on **30.04.2022**.

On the said date, the petitioners, along with other defendants, filed an application seeking recall of the earlier order debarring them from filing written statement; however, after hearing the parties, the learned Trial Court dismissed the said application. The petitioners did not challenge that order, which, therefore, attained finality. Subsequently, on the same date, i.e., **30.04.2022**, the suit of the respondent/plaintiff was finally decreed by judgment and decree of even date.

Instead of filing an appeal against the said judgment and decree, the petitioners chose to file an *application under Section 12(2), C.P.C.*, alleging fraud and misrepresentation. The said application was initially dismissed by the learned Trial Court; however, in revision, that order was set aside, and the matter was remanded for decision afresh on merits. Pursuant to the remand, the learned Trial Court again heard the parties and, through a detailed order dated **08.09.2023**, dismissed the said application. The petitioners once again preferred a *Civil Revision Application*, which too was dismissed through the **impugned judgment dated 15.12.2023**. The said revisional order is now under challenge in the present constitutional petition.

6. From a perusal of the record, it appears that the petitioners were afforded repeated opportunities to file their written statement but failed to avail the same, resulting in their being rightly debarred from defence by the learned Trial Court. The subsequent application seeking recall of the said order was dismissed, and as

the petitioners did not challenge that dismissal, it attained **finality** in law. Therefore, the plea now raised through the application under Section 12(2), C.P.C., is in effect an attempt to reopen and circumvent the consequences of their own default, which is not permissible within the settled parameters of law.

7. It is a well-settled principle that an application under Section 12(2), C.P.C., lies only where a decree is alleged to have been obtained through **fraud, misrepresentation, or want of jurisdiction**, and not for re-agitating matters that could or should have been contested in the original proceedings. Both the learned Trial Court and the Revisional Court, after examining the material on record, have **concurrently held** that the petitioners failed to produce any tangible evidence to substantiate their allegation of fraud or misrepresentation. Mere assertions, unaccompanied by credible proof, cannot form a valid basis to annul a decree that has attained finality.

8. It further appears that the petitioners, despite having due knowledge of the proceedings, remained negligent in pursuing their defence. Their overall conduct during the trial reflects a clear lack of diligence, and the plea of fraud, raised belatedly, appears to be nothing but an afterthought. The concurrent findings recorded by the two courts below are well-reasoned, based on proper appreciation of the material available on record, and no jurisdictional defect, perversity, or patent illegality has been demonstrated so as to warrant interference by this Court in the exercise of its constitutional jurisdiction.

9. Accordingly, this Court finds that the impugned judgment dated **15.12.2023** suffers from no legal infirmity warranting interference. The petitioners have failed to make out any case for exercise of extraordinary constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

10. As the sequel of above discussion of facts and circumstances, impugned judgment / order passed by learned Courts below do not call for any interference under the constitutional jurisdiction of this Court. Consequently, instant petition being devoid of any legal substance stands **dismissed**.

JUDGE

Hafiz Fahad