

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No. 65 of 2001.

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DATE

ORDER WITH SIGNATURE OF JUDGE

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For orders on CMA-1055 of 2018.

22.02.2019.

Mr. Tahir Nisar Rajput, Advocate for the applicants.

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Heard learned counsel for the applicants.

Through instant application u/s 12(2) read with section 151 C.P.C, the applicants have prayed that the judgment dated 10.04.2018, passed by this Court be recalled.

A perusal of the judgment passed on 10.04.2018, shows that it was passed after hearing both parties at full-length and it covers all relevant facts, evidence as well as material documents available on record.

This Revision was disposed of vide judgment dated 10.04.2018 with the following operating part:-

“14. It is admitted fact that the appellant has no right or title in the subject plot except through a “Malba” purchase agreement reproduced on page 229, however, to the contrary rights of the respondent Ishtiaque have been cemented after the registered sale deed transaction having taken place, giving attention to the details where the said plot was purchased from an attorney who was duly registered and the sale deed was effected after the expiry of 07 years, therefore, the limitation of Article-5 of the lease could not apply in the case.

15. As to the averments of learned counsel for the applicant that no consent was obtained from H.M.C. I am of the view that the appellate Court has rightly attended to this issue in the judgment where in fact the appellate Court has chosen to declare H.M.C order dated 13.07.2000 as illegal, upholding the sanctity of the transaction taken place between Muhammad Azeem Yousuf Zai and the respondent Ishtiaque Ahmed through the former’s attorney.

16. In the given circumstances, I do not see any reason to interfere with the judgment of the appellate Court. Accordingly, this revision is dismissed and judgment of the appellate Court is maintained. Additional Registrar of this Court is directed to oversee handing over of possession of the subject plot No.46/A, to the respondent No.1’s legal heirs within 15 days and submit a compliance report.”

Section 12(2) C.P.C. provides as under:-

“12. (2) Where a person challenges the validity of a judgment, decree or order on the pica 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.”

In simple words, Section 12(2) CPC, speaks of the principle that if a decree, order or judgment is obtained by fraud, misrepresentation, or where question of jurisdiction has risen, such order, decree or judgment shall be challenged through an application in the same court and no other separate suit shall lie. No pointation is made as to allegation that what fraud or misrepresentation has been made by the respondent. There is no question of jurisdiction error either. The fact is to the contrary. This case is marred with illegal designs of the applicant.

In these peculiar circumstances, I reach to the conclusion that applicants have failed to point out any error in the said judgment.

In view of above, CMA-1055 of 2018, made by the applicants for recalling the judgment dated 10.04.2018, is clearly ill founded, mischievous and contrary to law and fact. The disturbing reality is that the property of the private respondent was occupied by the applicants illegally without any locus standi over decades and he is still not willing to part away with it, in utter disregard of this Court's and appellate Court's judgments.

Accordingly, the instant application (CMA-1055 of 2018) is dismissed.

File be consigned to record.

JUDGE