

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

R.A.No. 215 of 2016

1. For hearing of CMA 2248/2016.
2. For hearing of main case.

Date of hearing: 19.10.2020.

Date of order: 19.10.2020.

Mr. Aqeel Ahmed Siddiqui, Advocate for applicant.
Barrister Jawad Ahmed Qureshi, Advocate for respondent.

ORDER

ZULFIQAR AHMAD KHAN, J: This revision application arises out of the impugned judgment dated 09.05.2016 and decree dated 14.05.2016 passed by learned 09th Additional District Judge, Hyderabad in Civil Appeal No.97 of 2014. The appellate Court through its` judgment referred above, maintained the judgment dated 11.11.2014 and decree dated 15.11.2014 passed by the trial Court.

During the course of arguments of learned counsel for the parties, the contention of learned counsel for the applicant was that the respondent Mst. Zuhra Bano who claimed her possession of property in question subject to two sale agreements dated 29.08.1994 and 02.11.1994 with Anwar Hassan was illegal and fraudulent and she filed a suit for specific performance, this contention was however, completely devoid of any merit since the possession of the property in question was already handed over to the respondent under section 53(A) of Transfer of Property Act.

I have had an opportunity to go through the judgment impugned and various annexures provided by the applicant. It is matter of record that issue

in dispute has properly been discussed by the Courts below and observations on the same discussed by the trial Court.

Since possession the respondent was admitted, the sale deed dated 16th July 2009 handed down to the applicant by Mst. Anjum Nisar and her children was rectified to show that possession of property was not handed over to the applicant. Irony of the case is that when the applicant preferred F.C. Suit No.148 of 2010 seeking performance of these agreements with Mst. Anjum and her children, he did not even make them as a respondent/party therefore, no version that she has already sold out the said property to the present respondent remained un-questioned. Both the Courts below have dilated upon the impact of Section 53(A) of Transfer of Property Act. Appellant / plaintiff entered into transaction with Mst. Anjum and her children knowingly that the possession of property was not to be handed out to them. The Courts at both the forums have protected the claim of respondent by virtue of Section 53(A) of Transfer of Property Act. The contention of the learned counsel that how a joint property in the name of two brothers namely Nisar and Anwar was sold out by the surviving brother Nisar on his behalf and on behalf of widow and children of late Nisar does not hold any water at this stage, as no such complaint came from the widow or her children who had already sold the subject property to the respondent Mst. Zuhra Bano and give possession thereof, and once again proceeded to sell the same without possession to the appellant. As a matter of fact, they could enter into such transaction as many times as they choose as long as possession of the property is not disturbed and the respondent who is occupier in terms of Section 53(A) of Transfer of Property Act to remain protected. Learned counsel for the applicant has utterly failed to satisfy this Court as to any illegality or irregularity in the judgments passed by both the Courts below.

Being cognizant of the fact that in the exercise of revisional powers, it is not the duty of the High Court to enter into the merits of the evidence as it has

only has to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of the revision, and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order. That's why if someone invokes the jurisdiction under S. 115, C.P.C. he must show not only that a jurisdictional error has been committed by the court below, but also that the interests of justice call for interference by the High Court, as the powers of the court under S. 115 of the Code are purely discretionary, which are to be exercised in the interests of justice alone where the High Court could legitimately hold that the court below had exceeded its jurisdiction or had refrained from exercising a jurisdiction vested in it or it acted illegally or with material irregularity in the exercise of that jurisdiction, i.e. committed an error of procedure or of a mandatory procedure and that such an error had resulted in failure of justice. The words 'acted illegally' have been interpreted to mean *acting in breach of some provisions of law* and the words 'acting with material irregularity' are interpreted to mean *committing some error of procedure and in the course of proceedings, which is material in the sense that it may have affected the ultimate decision.*

A review of the judgments of the courts below shows that neither any of these courts decided the case perversely, nor it could be said that they acted illegally or with material irregularity in the exercise of their jurisdiction. Where a lower court passes an order in exercise of its jurisdiction, the High Court is not to interfere with it in revision unless the order (being sought revision), if allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury, which is not the case at hand. In the absence of any defect in the concurrent findings of both the Courts below, interference of High Court in civil revision as held by Apex Court in **2006 SCMR 50**, amounts to improper exercise of revisional jurisdiction.

In the given circumstances in the light of the above cited judgment of the Apex Court and other judgments delivered on the same point being **2006 SCMR 1304** and **2010 CLC 528**, the instant revision preferred against concurrent findings of the Courts below for the reasons detailed, merit no consideration and the same is accordingly dismissed alongwith pending application(s).

JUDGE

Tufail