

## IN THE HIGH COURT OF SINDH AT KARACHI

H. C. A. No. 347 of 2019

[Naseem Ahmed Malik and others *versus* Saeed Iqbal and others]

**Present:**

**Mr. Irfan Saadat Khan, J.**

**Mr. Muhammad Faisal Kamal Alam, J.**

Date of hearing : 05.10.2020 and 09.10.2020

Appellant : Naseem Ahmed Malik and 2 others, through Mr. S. Ali Ahmed Tariq, Advocate.

Respondents : Saeed Iqbal and another, through Mr. Muhammad Shahid Qadeer Suharwrdy, Advocate.

### **ORDER**

**Muhammad Faisal Kamal Alam, J.:-** Through the present Appeal, Appellant has called in question the order dated 02.09.2019 (the “**Impugned Order**”) passed in Suit No.444 of 2016 (preferred by present Respondents), *whereby*, C.M.A. No.5499 of 2018, filed by present Appellant (Defendants in the said *Lis*) under order VII Rule 11 of Civil Procedure Code, 1908 (“**CPC**”), for rejection of plaint, was dismissed.

2. Mr. S. Ali Ahmed Tariq, Advocate for Appellant, has argued that the Impugned Order has not considered all the aspect of the case, particularly, that earlier all the issues raised in the present *Lis*, has been decided by the compromise decree passed in earlier Suit No.04 of 1996.

3. On the other hand Mr. Muhammad Shahid Qadeer, Advocate for the Respondents, has argued that till date compromise decree has not been honestly implemented. He submitted that distribution of inheritance has been delayed by present Appellants for one reason or the other and that is

the new ground and cause of action for filing the above subsequent *Lis*. He further contended that provisions of Order VII Rule 11 of CPC are not attracted to the facts of present case. He has relied upon the following case law\_

1. 2009 S C M R page-1268  
[*Peer Dil and others v. Dad Muhammad*];
2. 2016 Y L R pager-89  
[*Shah Rasool and others versus Maulana Ghulam Rahim and others*];
3. AIR 1959 Patna 331  
[*Santa Narain Tewari versus Saran Narain Tewari and others*]
4. Arguments heard and record perused.
5. Undisputed fact is that parties hereto have settled their respective claim by virtue of a Compromise Decree dated 16.04.1997 passed in earlier Suit No.04 of 1996 (*available at page-117 of the Appeal file*). Main grievance of Respondent No.1 (Saeed Iqbal, who is Plaintiff of above present *Lis*), is that the said compromise decree since was not implemented, hence he was compelled to file the present proceeding. As an evident, a letter of 12.06.2015 was referred, which was issued to present Respondent No.1 by Defence Officers' Housing Authority (DHA) informing him about mutation done in favour of parties hereto in respect of the properties mentioned in the said correspondence. From this correspondence, it appears that some of the properties mentioned in the compromise decree, *particularly*, a commercial plot together with construction thereon, bearing No.14C – Sunset Lane - V, Phase-II Extension and Plot No.M 48/4, Khayabn-e-Itihad, Phase-VII, DHA, Karachi, were not transferred as required in the compromise decree and DHA has asked the Respondent No.1 to comply with the requirements. It is pleaded in the plaint of latest *Lis* that amicable settlement was not possible. The

present record does support the stance of present Respondent No.1 that all the properties mentioned in the compromise decree had not been transferred / mutated as envisaged in the above compromise decree. Nothing contrary to this has been placed on record by the learned counsel for the Appellant, particularly, Mutation / Transfer orders issued by the concerned authorities (if any), in favour of Appellants and Respondents and other legal heirs who are mentioned in the above Compromise Decree, in order to dislodge the claim of Respondent No.1 and to show that Compromise Decree has been executed.

6. The rule laid down in the case law cited by the learned counsel for the Respondent No.1 is applicable to the facts of present case. If a compromise decree is either violated or one of the parties through their inaction attempts to frustrate the compromise, then those beneficiaries whose interest is prejudiced, can file a fresh proceeding. The present compromise decree should have been executed and implemented long time back because it relates to distribution of inheritance amongst legal heirs, which is to be given preference over ordinary matters, being a requirement and command of Sharia Law.

7. Consequently, no illegality is found in the Impugned Order and hence the same is maintained. Accordingly, the present Appeal is dismissed. It is expected that the learned Single Bench seized of the matter, may decide the *Lis* expeditiously.

8. Parties to bear their respective costs.

**Judge**

**Judge**

Karachi, dated: 17.11.2020.

Riaz / P.S.