

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
C.P.No.D-1276 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of MA-5776/17
3. For hearing of main case.

10.10.2019.

Mr. Amir Ali Memon, advocate for petitioner.
Mr. Muhammad Ismail Bhutto, Additional Advocate General.
None present for respondents No.1 and 2.
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The facts in brief necessary for disposal of instant constitutional petition are that; on withdrawal of rent application, the petitioner filed a suit for possession and recovered arrears of the rent worth Rs.52,80,000/= in respect of plot No.P-4 (0-50) situated at National Highway Site Area Kotri, against respondent No.1. It was decreed under judgment dated 17.03.2011 by learned Senior Civil Judge, Kotri. Subsequently, on filing of an application u/s 12(2) C.P.C. such decree was set-aside by learned Senior Civil Judge, Kotri vide his order dated 10.01.2017 by making a conclusion that; it has been obtained by petitioner by practicing fraud and making misrepresentation of the facts, in order to deprive the respondent No.2 of his valuable rights. Such order of learned Senior Civil Judge, Kotri was impugned by the petitioner by preferring a Civil Revision Application. It was dismissed by learned District Judge, Jamshoro vide his order dated 29.03.2017. It is in these circumstances, the petitioner has brought the instant constitutional petition before this Court challenging the orders of learned trial and Revisional Courts.

2. It is contended by learned counsel for the petitioner that learned trial and Revisional Courts have taken into consideration the facts beyond pleadings while passing the impugned orders, those orders being illegal are liable to be set-aside, as according to him no fraud or misrepresentation of the fact was made by the petitioner while obtaining the subject decree. By contending so, he sought for setting aside of the impugned orders of learned trial and Revisional Courts. In support of his contention he has relied upon cases of ***Sardar Ali vs Mst. Sardar Bibi alias Sardaran (2010 SCMR 1066)***, ***Abdul Hameed vs Mehmood and others (2001 SCMR 1316)***, ***Muhammad Tariq and others vs Mst. Shamsa Tanveer and others (PLD 2011 Supreme Court 151)***, ***Muhammad Nawaz alias Nawaza vs Member Judicial Board of Revenue and others (2014 SCMR 914)***, ***Amjad Ikram vs Mst. Asiya Kausar and 2 others (2015 SCMR 1)***, ***Habib Bank Limited vs Dr. Munawar Ali Siddiqui (1991 SCMR 1185)***, ***Braganza vs BP Shipping Limited and another (2015 SCMR 742)***, ***Messrs Memy Industries Ltd. and others vs Federation of Pakistan through Ministry of Commerce and others (2015 SCMR 1550)***, ***Merck Sharp & Dohme Corporation through Authorized Signatory vs Ferozsons Laboratories Limited through Chief Executive/Director/Secretary/Manager/Principal Officer (2016 CLD 1)***, ***Zahid Iqbal vs Hafiz Muhammad Adnan and others (2016 SCMR 430)***, ***Maqsood Ahmed and others vs Member, Board of Revenue, Punjab, Lahore and others (2007 SCMR 399)***, ***Shahid Pervaiz vs Ejaz Ahmad and others (2017 SCMR 206)***, ***Muhammad Anwar and others vs Mst. Ilyas Begum and others (PLD 2013 Supreme Court 255)*** and in case

of Malik Bahadur Sher Khan vs Haji Shah Alam and others (2017 SCMR 902).

3. Learned A.A.G by supporting the impugned orders of learned trial and Revisional Courts has sought for dismissal of instant constitutional petition by contending that it was collusive decree, which has been rightly set-aside by learned trial Court.

4. We have considered the above arguments and perused the record.

5. The litigation was confined by the petitioner only to the extent of the respondent No.1 (who appears to be brother of the petitioner), who impliedly with no loss of time by way of submitting written statement consented for the passing of the decree in favour of the petitioner. On coming to know of such decree, the respondent No.2 by way of making an application U/s 12(2) C.P.C sought for setting aside of it, by submitting therein that; it has been obtained by the petitioner by practicing fraud and making misrepresentation of the facts as according to him an area of 11000 sq.feet of the subject land has been rented out to him by the petitioner at the rate of rupees ten thousand per month, for period of 30 years, under an agreement of lease. On that application, the issues were framed and after due course of law, subject decree was set-aside by learned trial Court, by impleading the respondent No.2 as a party in the very suit for its disposal on merit which was impugned by the petitioner by way of preferring an appeal. It has been dismissed by learned Revisional Court, with very cogent reasons. Such orders of learned trial and Revisional Courts could not be declared to be illegal

only for the reason, that; those have been passed against the petitioner. Indeed, by setting aside the subject decree learned trial and Revisional Courts have provided fair chance to both the parties to have determination of their respective rights as per the mandate, contained by Article-10(A) of the Constitution of the Islamic Republic of Pakistan, 1973.

6. The case laws which is relied upon by learned counsel for the petitioner is on distinguishable facts and circumstances. In none of the case law, so relied upon, the decree for possession and recovery of rent obtained collusively by joining the person other than tenant / lessee was maintained by the Hon'ble apex Court.

7. Based upon above discussion, the instant constitutional petition fails and it is dismissed accordingly with no order as to costs.

JUDGE

JUDGE