

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

Before:-
Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

CP No. D- 43 of 2018
(Samuel Parvaiz V/s Province of Sindh and others)

CP No. D- 44 of 2018
(Syed Muhammad Hassan V/s Province of Sindh and others)

CP No. D- 1840 of 2019
(Mst. Zahida Usman V/s Province of Sindh and others)

Date of hearing
& decision: 27.11.2019

M/S. Abdul Razaq Dasti & Zafar Ali Vighio, advocate for petitioner(s)
Mr. Allah Bachayo Soomro, Addl.A.G.

ORDER

ADNAN-UL-KARIM MEMON J, - The instant Constitution Petitions, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, have been filed by the Petitioner(s), seeking direction to respondents 2 and 3 to remove the mortgage entry from the record and issue Sale Certificate in respect of their lands.

2. Petitioner(s) has premised his case that he owns agricultural land total area 32-00 acres in Kaari Chhan, Taluka Sinjhorro District Sanghar. On the said land, the petitioner obtained loan from National Bank of Pakistan, Sinjhorro Branch, such mortgage entry was kept on record and after payment of loan payment and clearance certificate issued by the said Bank, respondents 2 and 3 not removing the mortgage entry made in the revenue record.

3. Mr. Allah Bachayo Soomro, Addl.A.G has submitted that the petitioner has to approach the Revenue authorities for the aforesaid purpose and not this Court.

4. We have heard the parties at length and perused the material available on record.

5. Article 199 of the Constitution, inter alia, provides that the High Court may exercise its powers thereunder only "*if it is satisfied that no other adequate*

remedy is provided by law". It is well-settled that if there is any other adequate remedy available to the aggrieved person, he must avail and exhaust such remedy before invoking the Constitutional jurisdiction of High Court, whether such remedy suits him or not. In our view, the doctrine of exhaustion of remedies envisaged in Article 199 prevents unnecessary litigation before the High Court.

6. When a statutory forum is created by law for redressal of grievance in a revenue statute, writ jurisdiction cannot be entertained ignoring the statutory dispensation, as this Court is not a statutory forum of appeal in revenue hierarchy.

7. Case of the petitioner appears to be wholly misconceived and the instant petition is not maintainable on the grounds that prima-facie the petitioner has approached this Court for removal of mortgage entry and issuance of sale certificate in its writ jurisdiction without first exhausting the remedy provided to him by law. Needless to say that Constitutional jurisdiction of this Court cannot be invoked if any adequate remedy is available and the same is not availed / exhausted by the petitioner. Moreover, while exercising powers under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, this Court cannot travel into any factual controversy. Though learned counsel for the petitioner has tried to explain that petitioner is owner / co-sharer in the subject property and all the documents attached with the petition are genuine, this could only be done after making extensive enquiry and investigation with regard to her assertion and the documents furnished by her. In view of the above, learned counsel has failed to satisfy that how the instant petition is maintainable under Article 199 of the Constitution.

8. Before parting with this case, we cannot resist ourselves in observing that because of cases like this, which on the face of it is not maintainable, precious time of this court is consumed which could have been conveniently utilized in hearing and deciding genuine cases / disputes pending disposal. Therefore, office is directed not to entertain such petitions for issuance of sale certificate wherein (a) petitioner has not approached the competent forum in accordance with law ; (b) petitioner's application for such purpose is pending before the competent forum ; and / or, (c) any factual controversy with regard to the subject land and/or co-sharer is involved, or any litigation in respect thereof is sub-judice before any forum.

9. This petition thus is found to be misconceived and not maintainable and is accordingly dismissed along with the pending application(s). However,

petitioner will be at liberty to avail and exhaust their remedy, if any, as provided under the law.

JUDGE

JUDGE

Karar_hussain/PS*