

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

CP No. D- 51 of 2021

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Date of hearing
& decision:

10.11.2021

Petitioner:

Mst. Shahnaz Bibi through Mr. Arif Ali Bhatti,
Advocate

Mr. Abdul Hameed Bajwa, Advocate for
respondents

Mr. Allah Bachayo Soomro, Addl. A.G.

ORDER

ADNAN-UL-KARIM MEMON, J: - The petitioner through instant petition seeks removal of encroachment made by respondents 1 and 2.

2. Mr. Arif Ali Bhatti learned counsel for the petitioner has argued that petitioner is residing in Kamora Colony Camp No.2 Nawabshah along with her family; that while constructing her house, respondents 1 and 2 made quarrel with her husband and illegally installed a gate in middle of the street, passing by the side of petitioners house; and, thereby closed the entire street of petitioner and neighbours; the petitioner moved an application under Section 133 Cr.P.C. before Civil Judge and Judicial Magistrate, Nawabshah who called report from respondent No.6 and SHO PS A-Section Nawabshah; however, respondents 1 and 2 approached the petitioner through nekmards and compromised on the assurance that they will remove the gate but they did not do so, hence the husband of petitioner filed F.C. Suit No. 47 of 2015 which is pending; subsequently husband of petitioner also filed another F.C. Suit No. 91 of 2019 which was later on withdrawn but in retaliation respondent also filed F.C. Suit No. 92 of 2019 wherein report was called by learned IIIrd Senior Civil Judge, Nawabshah from Mukhtiarkar, Nawabshah who categorically reported that respondent No.1 has closed the street and has merged

the area of street in his own area, therefore, respondents 1 and 2 withdrew the suit; subsequently petitioner moved application to respondent No.3 for removal of encroachment who forwarded the same to Mukhtiarkar Revenue Nawabshah for necessary action, but the Mukhtiarkar did not take action; thereafter the petitioner moved from pillar to post but the encroachment was not removed, hence under the dismal circumstances, the petitioner has approached this court for removal of encroachment.

3. We have heard learned counsel for the parties and have gone through the record of the case, including the above sub judice proceedings with their assistance.

4. After going through the pleadings of the parties it appears that disputed questions of facts are involved in this matter in respect of ownership to the extent of the subject street, and, the learned trial Court has already rejected the plaint of the husband of the petitioner in F.C. Suit No. 47 of 2015 vide order dated 20. 10 2021; besides the petitioner's earlier petition bearing C.P. No. D-1009 of 2020 has already been dismissed vide order dated 13.10.2020 thus on the similar cause of action no further proceedings could be undertaken in the light of the principle of constructive res-judicata.

5. Instant petition stands dismissed along with pending applications, if any.

JUDGE

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