

ORDER SHEET  
HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

**R.A No.165 of 2014**

(Suleman versus Murad Ali and 06 others)

DATE	ORDER WITH SIGNATURE OF JUDGE
<b>Applicant:</b>	<b>Through Mr. Muhammad Arshad Pathan advocate</b>
<b>Respondent:</b>	<b>Through Noor Ahmed Memon advocate</b>
<b>Respondent No.2-5:</b>	<b>Through Wali Muhammad Jamari Assistant Advocate General</b>
<b>Date of hearing:</b>	<b>29.10.2021</b>
<b>Date of decision:</b>	<b>19.11.2021</b>

**O R D E R**

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**ADNAN-UL-KARIM MEMON, J:** This Civil Revision Application is arising out of order dated 27.5.2014 passed by learned Additional Sessions Judge Umerkot on application of the appellant under Section 23 Rule 1 (2) CPC moved in Civil Appeal No. 02 of 2005, whereby the appellant sought withdrawal of F.C. Suit No.32 of 2000, with permission to file afresh, the learned Judge while allowed appellant *Murad Ali* to withdraw old-Suit No. 20 of 1998 (new No. 32 of 2000) with permission to file afresh. For convenience sake as an excerpt of the order dated 27.5.2014 is reproduced as under:-

“Appellant and his advocate are present. Incharge District Attorney for official respondents is also present. Appellants advocate moved application to allow him to withdraw the suit with permission to file fresh fruit for same subject matter if there would be any interference in the rights of the appellant/plaintiff.

The learned Incharge District Attorney extended his no objection. I have heard learned advocate, appellants advocate placed reliance on authority reported in PLD 2003 Supreme Court 979, since the parties has settled their dispute, and statement has also been filed by the Mukhtiarkar Samaro dated 22.5.2014 that disputed entry would be maintained and note thereon will be deleted after disposal of this appeal, hence Incharge District Attorney extended no objection. Therefore in view of the case law cited by appellants advocate, plaintiff/appellant is allowed to withdraw the suit No. 20/1998 (old), 32/2000 (new) with permission to file fresh suit, if Mukhtiarkar failed to comply with his statement. Hence this appeal has become infructuous, therefore, dismissed. Parties are left to bear their own costs.

2. The applicant being aggrieved by and dissatisfied with the aforesaid order filed instant Revision Application, inter alia, on the ground that the appellant who has already lost F.C. Suit No. 32 of

2000 before trial Court vide Judgment dated 23.12.2004 and Decree dated 30.12.2004 and beneficiary of the dismissal of aforesaid suit was the applicant being actual owner of the suit property. It is urged by learned counsel for the applicant that after disposal of the appeal reversing the order of Trial Court dated 23.12.2004, whereby the Suit filed by the private respondents was dismissed; has adversely affected the right and interest of the applicant in the subject property, obtained through sale deed, as well as by way of judgment dated 23.12.2004 and decree dated 30.12.2004 passed in F.C Suit No.32 of 2000. Learned counsel emphasized that through impugned order the Appellate Court has virtually set-aside the Judgment and Decree of the trial court by allowing application under Order 23 Rule 1(2) CPC which is against the spirit of law. Per learned counsel, it would be more appropriate to remit the matter to learned District Judge Umerkot to decide C.A. No. 2 OF 2005 within the four corners of law on merits.

3. At this stage, we asked learned counsel representing the private respondents as to how respondent No.2 could invoke the jurisdiction under Order 23 Rule 1(2) CPC before the appellate court when he had already lost the subject Suit in favour of applicant and the only remedy was to challenge the same before the appellate Court on merits, rather asking for withdrawal of Suit which had already been dismissed. Learned counsel has no answer to support the impugned appellate order, however, he insisted for dismissal of the instant Revision Application on the premise that the appellate Court was satisfied before allowing the application under Order 23 Rule 1(2) CPC and the appellate Court has equal powers as to learned trial Court, which is the continuation of proceedings, thus the order of learned trial Court dismissing the Suit of respondents merged into the order of appellate Court, thus no illegality was committed to exercise such power.

4. I have heard learned counsel for the parties and perused the material available on record.

5. It appears that respondent No.1 had filed F.C. Suit No.32 of 2000 which was dismissed by learned Senior Civil Judge Umerkot vide judgment dated 23.12.2004 and decree dated 30.12.2004 against which respondent No.1 preferred Civil Appeal No. 02 of 2005.

In the said appeal, notices were issued and the parties contested the matter; however, in the meanwhile respondent No.1 invoked the jurisdiction under Order 23 Rule 1(2) CPC which was allowed vide order dated 27.05.2014.

6. The prime question involved in the matter is whether the appellate Court could allow the aggrieved party to withdraw the Suit which was already dismissed. Primarily, the answer is no as the judgment and decree could only be set aside by the learned appellate Court. Thus, allowing the private respondents to withdraw a dismissal suit is against the basic spirit of Order 23 Rule 1(2) CPC which does not cater to such eventuality.

7. The Hon'ble Supreme Court in the recent Judgment has held that Section 115 C.P.C empowers the High Court to satisfy and reassure itself that the order of subordinate court is within its jurisdiction; the case is one in which the court ought to exercise jurisdiction and in exercising jurisdiction, the court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of trial which affected the ultimate decision. If the High Court is satisfied that aforesaid principles have not been unheeded or disregarded by the courts below, it has no power to interfere in the conclusion of the subordinate court upon questions of fact or law. In the case of *Atiq-ur-Rehman Vs. Muhammad Amin* (PLD 2006 SC 309), the Honorable Supreme Court has held that the scope of revisional jurisdiction is confined to the extent of misreading or non-reading of evidence, jurisdictional error, or illegality of the nature in the judgment which may have a material effect on the result of the case or the conclusion drawn therein is perverse or contrary to law but the interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction.

8. In view of the facts and circumstances of the case, I am of the considered view that the order dated 27.5.2014 passed by learned Additional District Judge, Umerkot in C.A. No. 02 of 2015 is not sustainable in law, therefore, is set aside; resultantly the matter is remitted to learned District Judge, Umerkot, to decide the subject

appeal afresh after hearing the parties on merits within one month from the date of receipt of the order.

9. This Revision application stands allowed in the above terms.

**JUDGE**

Sajjad Ali Jessar