

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

CP No. D-2411 of 2013
R.A. No. 45 of 2008

BEFORE :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Petitioner: Abdul Latif through Mr. Irfan Ahmed Qureshi,
Advocate.

Respondent-3: Mst. Raeesa Begum through Mr. Mirza Naeem
Baig, Advocate

Date of hearing & decision: 04.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner has called in question the Judgment dated 6.9.2013 passed by the learned Vth Additional District Judge, Hyderabad in R.A. No. 14 of 2013 whereby the learned Judge dismissed the Revision and maintained the order dated 15.1.2013 passed by learned 1st Senior Civil Judge, Hyderabad on application under Section 151 CPC in Exeuction Application No. 29 of 1998 on the premise that both the Judgments are perverse and against the settled principle of law.

2. At the very outset, we directed the learned counsel to satisfy this court about the maintainability of this petition on the gorund that civil dispute between the parties is pending adjudication in Revision Application No. 45 of 2008 before the learned Single Judge of this Court.

3. Mr. Irfan Ahmed Qureshi, learned counsel for the petitioner has emphasized that while passing the judgment by the learned Revision Court failed and neglected to call recod and proceedings from the executing court so also not properly grasped the controversy between the parties whereby the plaint of the respondent No.3 explicitly disclosed in Suit No. 60 of 1995 with regard to share in the suit plot; he also averred that the learned trial court failed to consider the facts disclosed in the application under Section 151 CPC as well as prayer clauses of the suit and claim of respondent No.3 but

the respondent No.2 exceeded and passed order without jurisdiction. Per learned counsel as per report of City Surveyor Ward-G Taluka City Hyderabad submitted in Execution Application No. 29 of 1998 that the said plot was / is in possession of Judgment Debtor No. 2 and 3 and legal heirs of Judgment Debtor No.4 and three houses were / are constructed on the site of entire area 167 sq.yds which is not partitionable as per Decree; that on the report of City Surveyor the learned trial court directed to the Nazir to make auction proceedings in between the parties as the suit property was / is not partitionable after completing all the legal requirements as per law; he also submitted that in his application under Section 151 CPC he simply sought ascertainment of the value of the suit plot through City Surveyor Officer not for the entire building of the suit plot and thereafter the petitioner and other co-owners be able to pay the cost of the said plot as per share in the plot of the respondent No.3 as claimed / prayer in the suit; learned counsel referred the ground No.9 to 18 of the memo of petition and argued that the petitioner will be highly prejudiced if the fundamental rights of the petitioner are not enforced this Constitutional Petition. He prayed for allowing the instant petition.

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

5. At this stage we have been informed that civil litigation between the parties ended and culminated into the Revision Application No. 45 of 2008 pending adjudication before the learned Single Judge of this Court and the said matter is yet to be decided.

6. We are of the considered view that since Revision Application No. 45 of 2008 is pending adjudication before the parties as such no conclusive finding could be given in the present petition, hence the same is dismissed without prejudice to the rights of the parties pending adjudication in Revision Application No. 45 of 2008 which shall be decided in accordance with law. Office is directed to de-tag the Revision Application No. 45 of 2008 and the same be fixed according to roster.

JUDGE

JUDGE