

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

C.P No.D-2346 of 2019

**BEFORE: Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry**

Petitioner : Through Mr. Altaf Sachal Awan,
Advocate.

Respondents No.2 to 4 : Through Mr. Ayaz Ali Rajpar, Asst.
Advocate General, Sindh.

Date of Hearing : 10.11.2021
& order

ORDER

ADNAN-UL-KARIM MEMON, J:- Through the instant petition, the petitioner is asking for setting aside the order dated 12.09.2019 passed by the learned 4th Addl. District Judge, Shaheed Benazirabad in Civil Revision No.23 of 2019 and order dated 24.04.2019 passed by the learned 1st Senior Civil Judge, Nawabshah in F.C Suit No.432 of 2016 whereby the application under Section 12(2) CPC filed by the petitioner was dismissed.

2- Learned counsel for the petitioner states that the impugned orders passed by the learned Courts below are not in accordance with law as the respondent No.1 by making misrepresentation of facts fraudulently got ex-parte judgment in his favour; that the trial Court as well as appellate Court did not consider the fact that the respondent No.1 is not the owner of the suit property; that now the Executing Court is going to dispossess the petitioner from the suit property who is the real and exclusive owner; that the petitioner has already approached the Executing Court by filing the objection which has yet not been decided. He lastly prayed for setting aside the impugned orders of both the Courts below.

3- Conversely, learned Asst. A.G states that the decree passed by the learned trial Court is not against the petitioner as the number of the suit property mentioned in the plaint is different from the property of petitioner, therefore, petition may be dismissed.

4- We have heard the learned counsel for the parties and gone through the record. It bears from the record that the learned trial Court has passed the ex-parte judgment on the premise that inspite of receiving notice by the son of the petitioner he had not come before it which resultantly goes against him. However, the petitioner against the said ex-parte judgment approached the said Court by filing an application under Section 12(2) CPC, wherein it has been observed by the appellate Court that since the suit property does not belong to the petitioner hence, he has no right or title to the same. Thereafter, the petitioner challenged the said order before the appellate Court in Civil Revision Application which was too dismissed on the same pretext.

5- Upon asking as to how the ex-parte decree is affecting the petitioner when he has no concern with it, learned counsel for the petitioner has no satisfactory answer with him; however, he states that petitioner would be satisfied if the Executing Court is directed to decide the objection filed by the petitioner before it in accordance with law. Learned A.A.G has no objection to this proposition.

6- In view of the above, petition stands disposed of in terms of statement of learned counsel for the petitioner. Let the learned Executing Court take appropriate decision on the objection filed by the petitioner, if any, in Execution Application No.03 of 2018 in accordance with law.

JUDGE

JUDGE

Hafiz Fahad