

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD

**C.P No.D-52 of 2021**

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on MA No.232 / 2021.
2. For orders on office objection.
3. For orders on MA No.233 / 2021.
4. For orders on MA No.234 / 2021.
5. For hearing of main case.

19.01.2021

Mr. Muhammad Hassan Chang, advocate for petitioners.

**ARSHAD HUSSAIN KHAN, J.** By means of this constitutional petition, the petitioners have prayed as follows:-

- A. *To direct the respondent No.10 (learned Senior Civil Judge Golarchi @ Badin) to proceed with the Old FC Suit No.225 of 2016/New FC Suit No.26 of 2017 in the light of the order dated 16.12.2020 passed in this Honourable Court in C.P No.D-701 of 2013 as proceedings of C.P No.D-701 of 2013 has no bearing effect to the civil proceedings.*
- B. *Costs of the petition may be saddled upon the respondents.*
- C. *Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioners.*

2. Briefly, the facts giving rise to filing of present petition are that the petitioners through a registered sale agreement dated 28.03.1997 have purchased agricultural land admeasuring 02.18 acres out of S.No.27 (07-15) situated at deh Ojhri, Taluka and District Badin [subject land] from respondent No.3 (Anis Ahmed), for a total consideration of Rs.25500.00; out of which, at the time of execution of the sale agreement, the petitioners paid an amount of Rs.20,00.00 whereas the remaining sale consideration of Rs.5500.00 was to be paid to respondent No.3 at the time of registration of sale deed. It is stated that respondent No.3 kept the petitioners on false hopes and instead of transferring the subject land in their favour, he in deceitful manner transferred the same in favour of his son Zeeshan Ahmed (respondent No.6). Consequently, the petitioners filed F.C. Suit No.225 of 2016 (Old) F.C. Suit No.26 of 2017 (New) for specific performance of contract and permanent injunction in the Court of learned Senior Civil Judge, Golarchi, Badin, which is pending adjudication. It is further stated that respondents No.1 to 6 collusively filed a Constitutional Petition bearing No.D-701 of 2013 [Re- Sultan Ahmed & another v. Member (Gothabad) & others]

before this Court in order to defeat the suit of petitioners. The respondent No.3 / defendant No.4 (Anis Ahmed) and respondent No.4 / defendant No.5 (Zeeshan Ahmed) upon notice of the petitioners' suit besides filing written statements they filed an application under section 10 CPC in the suit, praying therein for stay of the proceedings (Suit No.26 / 2017), on the ground of pendency of said constitutional petition (CP.D-701 of 2013). The petitioners / plaintiff contested the said application. Learned Senior Civil Judge, Golarchi, Badin after hearing the counsel for the parties vide its order dated 11.05.2019 while allowing the application stayed proceedings of the suit till final decision of said constitutional petition (CP. D-701 of 2013). It is also stated that the petitioners, after above said order of the Senior Civil Judge, approached this Court and filed an application under Order 1 rule 10 CPC in CP No.D-701 of 2013 for joining them as party in the case, however, this court after hearing the counsel for the petitioners / applicant, vide order dated 16.12.2020 dismissed the said application. In the order, it was observed that the interveners (petitioners herein) are neither necessary nor proper party, as the dispute between petitioners and respondents, the parties of said petition, could be resolved in absence of interveners. It has been stated that the present petitioners though have placed above order of this Court before the learned trial court; however the trial court is not willing to proceed with the matter which is clear violation of the order dated 16.12.2020. Hence the present petition.

**3.** Learned counsel for the petitioner while reiterating the contents of the memo of petition has contended that, the petitioners, in the given circumstances, are 'aggrieved persons' within the ambit of Article 199 of the Constitution of Islamic Republic of Pakistan and their fundamental rights guaranteed and protected under the Constitution, have seriously been infringed and as such the present petition is maintainable and petitioners are entitled to the relieves claimed in the present case. It is also contended that trial Court has wrongly stayed the proceedings of the suit, hence, the petitioners seek directions to the learned trial Court to proceed with the suit and conclude it without waiting for the outcome of the constitutional petition No. CP. D-701 of 2013 filed by respondents No.1 & 2 herein.

**4.** From the record, it appears that CP.D-701 of 2013 was filed by present respondents No.1 and 2, *inter alia*, against the present respondents No.3 and 4, challenging the order dated 03.09.2012 passed by Member (Gothabad), Board of Revenue, in case No. SROR-19/2011, much prior to filing the petitioners' civil suit and such an allegation of the petitioners with regard to the filing of collusive petition (CP.D-701 of 2013) just to protract petitioners' civil suit appears to be incorrect and misconceived.

5. Record further shows that the petitioners though had contested the application under Section 10 of CPC filed by respondents No.3 and 4 in the petitioners' suit however, they did not challenge the order passed thereon. Such action on the part of the petitioners clearly reflects that the petitioners have accepted the order and as such cannot seek direction in the present proceedings to the trial court to proceed with the matter. Besides this, the petitioners have also not challenged the order passed on their interveners application by this Court in CP.D-701 of 2013.

6. It is now well settled that High Court before exercising its extra ordinary jurisdiction under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973, must be satisfied about the non-availability or inefficacy of alternate remedy provided under the law, and if the High Court is satisfied or comes to the conclusion that the alternate remedy is expedient, effective then the High Court would be reluctant to exercise writ jurisdiction which is not meant to by-pass such authority or to render such hierarchy redundant and superfluous. The Honourable Supreme Court of Pakistan in case of Allah Bakhsh and another v. Muhammad Ismail and others [1987 SCMR], *inter alia*, has observed as under:-

"3. It is to be noticed that the petitioners had remedy before the Board of Revenue, but they did not avail it within the prescribed time. This by itself was sufficient for dismissal of the Constitutional Petition filed by them in the High Court."

7. In the above circumstances, we are of the view that the petitioners have not been able to show us any reasonable cause to abandon and by-pass the remedy available to the petitioners under the law, nor the learned counsel has been able to point-out any jurisdictional error or violation of any legal provisions by the respondents which can be interfered with by this Court in its extra-ordinary constitutional jurisdiction.

8. For what has been discussed above, the constitutional petition being not maintainable are **dismissed** in *limine* along with all listed applications.

JUDGE

JUDGE