

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

C.P No.D-100 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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PRESENT:

Mr. Justice Nadeem Akhtar

Mr. Justice Arshad Hussain Khan

1. For orders on office objection.
2. For hearing of main case.

12.01.2021

Mr. Muhammad Nawaz B.Jamali, advocate for petitioners.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

ARSHAD HUSSAIN KHAN, J. The petitioner through instant constitutional petition challenging the order dated 28.10.2019 passed by learned District Judge Badin/Model Civil Appellate Court, Badin, in Civil Revision No.29 of 2019 whereby the civil Revision of the petitioners, preferred against the order dated 27.08.2019, passed by learned Senior Civil Judge, Matli, on the petitioners' application under Article 59 of Qanoon-e Shahadat Order,1984, filed in FC Suit No.95 of 2016, was dismissed has sought the following reliefs:

- A. *To declare that the order dated 27.08.2019 passed in F.C Suit No.95 of 2016 on application article 59 of Qanun-e-Shahdat read with section 151 CPC and order dated 28.10.2019 passed by District Judge/MCAC Badin in Civil Revision No.29 of 2019 are not according to law and are liable to be set aside.*
- B. *To allow the application under article 59 of Qanun-e-Shahdat read with section 151 CPC and direct the learned trial Court to send the registered sale deed bearing jeryan No.231, registered No.220 dated 10.04.1989, available in R&Ps of file of F.C Suit No.95 of 2016 at Ex- Nos. 30, 56 and 83 and oral statement of sale dated 30.06.1992 at Ex- Nos. 38 & 86 to hand writing and thumb impression expert after obtaining the signatures and thumb impressions of respondents No.6 for opinion according to law."*

2. Precisely the facts necessary for adjudication of instant petition are that respondent No.5 / plaintiff filed a F.C. Suit No.95 of 2016 before the court of Senior Civil Judge Matli, Sindh, *inter alia*, against the present petitioners for declaration, cancellation, possession, mense profit and permanent injunction, in respect of land admeasuring 03-09 Acres out of S.No.218, situated in Deh Sando Tapo Dasti Taluka Matli, Sindh [subject land]. Upon service of the notice, present petitioners being defendants No.5 and 6 filed their written statements. Thereafter, issues were framed and respondent No.5 / plaintiff after examining his witnesses closed the side of his evidence where after the petitioners started examining his witnesses, however, after examination of four witnesses, he moved application under Article 59 of Qanun-e-Shahdat Order 1984, read with section 151 CPC seeking opinion of handwriting expert in respect of the signatures and thumb impression of respondent No.5 / plaintiff on the registered sale deed produced by the petitioners in the case on the ground that the plaintiff during his evidence denied his signature on the said sale deed. The said application was contested by respondent No.5 / plaintiff. Learned senior civil Judge after hearing the learned counsel for the parties, vide his order dated 27.08.2019 dismissed the application. The petitioners then impugned the said order before the learned District Judge Badin in Civil Revision No. 29 of 2019. Learned District Judge Badin after hearing the counsel for the parties vide its order dated 28.10.2019, while maintaining the order of senior Civil Judge dismissed the Civil Revision. The petitioners have challenged the above said orders in the present petition.

3. Learned counsel for the petitioners, *inter alia*, has contended that the orders impugned in the present petition are bad in law in as much as the same were passed without application of the judicial mind. Further contended that since respondent No.5 denied the execution of sale deed in his evidence, therefore, it is necessary for just and proper decision of the matter to send it for opinion of handwriting and thumb impression expert. Further contended that there is no time period provided for filing such type of application even such application can be moved at the appellate stage for additional evidence. It is also urged that the orders impugned are not sustainable in law and as such the same are liable to be set aside. Lastly, contended that the petitioners having no other remedy have invoked

the constitutional jurisdiction of this court and as such are entitled to the reliefs claimed for.

4. Learned Additional Advocate General Sindh, appearing on behalf of respondents No.1 to 4, while supporting the impugned orders, opposed the petition. Whereas none appeared on behalf of respondent No.5 despite having notice of this case.

5. We have heard the learned counsel for the petitioners as well as learned Additional Advocate General, Sindh and have perused the material available on the record.

6. From the record, it appears that suit No.95 was filed by respondent No.5 / plaintiff in the year 2016, *inter alia*, for cancellation of alleged sale deed, which was stated to have been executed between the parties in the year 1989 and as such, the petitioners cannot claim that they came to know the denial of the execution of sale deed by respondent No.5 / plaintiff only from his evidence, which were made basis of filing the application for the opinion of the handwriting and thump impression expert. Thus, filing of such interlocutory application at fag end of the trial more particularly when the evidence of the parties is almost concluded amounts to delay the trial of suit, which cannot be allowed in an ordinary course specially when the parties had the sufficient time and opportunity to bring evidence on the record to support their stance in the case. Moreover, even if any opinion of the expert is obtained, it is not incumbent upon the trial Court to accept the same. Reliance in this regard can be placed on the case of *Khadim Hussain Kutrio and another v. The State and others* [2019 P.Cr. L.J 1001] decided by a learned Division Bench of this Court, wherein it was, *inter alia*, has held as under:-

“16.Even a report of expert is an opinion under the law and it is not binding upon the court. Undoubtedly, the opinion of handwriting expert is relevant but it does not amount to conclusive proof, as the evidence of expert is a very weak type of evidence and the expert's evidence is only confirmatory or explanatory of direct or circumstantial evidence and the confirmatory evidence cannot be given preference where confidence inspiring evidence is available. More particularly, in a number of judgments, the Hon'ble apex Court has held that in the presence of direct evidence, expert evidence carries no legal value. In this respect, reliance may be placed on case titled as 2006 SCMR 193 (Mst. Saadad Sultan and others v. Muhammad Zahoob Khan and others), PLD 1976 SC 53 (Yaqoob Shah v. The State)

and 2015 SCMR 284 (Qazi Abdul Ali and others v. Khwaja Aftab Ahmed).”

7. From the perusal of the impugned orders, it appears that learned courts below, after hearing the counsel for the parties and taking into account the material facts as well as relying upon the reported judgments of this Court, have passed speaking orders on the petitioners’ application. In the circumstances, the concurrent orders impugned in the instant proceedings may or may not be strictly in accordance with law, but it cannot be said that the same have been passed without jurisdiction. Suffice is to say that there is no illegality or gross irregularity and infirmity in the concurrent findings of both learned courts below; more particularly, the impugned orders are not passed without jurisdiction. Learned counsel for the petitioners has also failed to point out any error and or any illegality, infirmity or jurisdictional error in the impugned orders, which could warrant interference by this Court in extra ordinary jurisdiction of High Court.

8. It is now a well-established that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the frame work of Constitution, and if there is any error on the point of law committed by the courts below or the tribunal or their decision takes no notice of any pertinent provision of law, then obviously this court may exercise Constitutional jurisdiction subject to the non-availability of any alternate remedy under the law. This extra ordinary jurisdiction of High Court is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the courts or tribunals below passed in violation of any provision of law or as a result of exceeding their authority and jurisdiction or due to exercising jurisdiction not vested in them or non-exercise of jurisdiction vested in them. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in the aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. So far as the exercise of the discretionary powers in upsetting the order passed by the Court below is concerned, this Court has to comprehend what illegality or irregularity and or violation of law has been committed by the courts below, which caused miscarriage of justice. Reliance is

placed on the case *Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others* **[2015 PLC 259]**.

9. For the reasons stated above, we find no justification for exercising discretionary and extraordinary constitutional jurisdiction of this Court in the matter in hand. Consequently, the writ petition being devoid of merit stands dismissed.

JUDGE

JUDGE

Abdullah Channa/PS