

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C.P No. D-649 of 2019

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Petitioner : Azhar Hussain, through Tariq
Mehmood A. Khan, Advocate.

Respondent No.1 : Qamar Ali, through Muhammad
Wasif Riaz along with Hafiz
Muhammad Suleman, Advocates.

Respondent No.2 : Sub-Registrar Landhi, through
Abdul Jalil Zubedi, Assistant
Advocate General, Sindh.

Date of Hearing : 13.09.2021

ORDER

Yousuf Ali Sayeed, J - Through this Petition under Article 199 of the Constitution, the Petitioner has impugned the Order made on 14.03.2018 by the IIIrd Senior Civil Judge, Karachi East in Civil Suit No. 1004 of 2012, whereby the Applications filed by the Petitioner under Order 18 Rule 17 CPC and Order 6 Rule 17 CPC respectively were simultaneously dismissed, as well as the Order dated 11.01.2019 made by the IInd Additional District Judge Karachi East whereby Civil Revision No.49/2018 preferred against such dismissal met the same fate.

2. Succinctly stated, the Petitioner had filed the Suit against the Respondents Nos. 1 and 2 seeking Declaration, Specific Performance and Permanent Injunction in respect of property bearing Shop No.26, Sector ST-7-37-K measuring 03 (three) square yards out of a total area of 17.33 sq. yards, situated at Landhi, Township, Karachi, and after the evidence was recorded, had then preferred the aforementioned interlocutory Applications seeking the recall and reexamination of the Petitioner's attorney as well as certain amendments to the plaint to the extent of the title and the addition of a prayer.

3. While the Petitioner professed to be aggrieved as regards the dismissal of both those Applications, with the Revision having been preferred and proceeded accordingly, learned counsel stated upon commencement of his submissions that the Petition was only being pressed against the Orders of the fora below to the extent of the Application under Order 6, Rule 17 CPC. Proceeding in that vein, he argued that the Application had been dismissed by the learned Civil Judge without proper application of mind and without properly considering the law on the subject. He contended that the Revisional Court had then failed to appreciate that the lower forum had fallen into error, and that the concurrent decisions required correction by this Court in exercise of its Constitutional jurisdiction through the matter at hand.
4. Conversely, learned counsel for the Respondent No.1 submitted that the Orders dated 11.01.2019 and 14.03.2018 were in consonance with law and did not warrant any interference. He accordingly sought dismissal of the Petition.
5. While considering the matter, we have observed that the amendments sought by the Petitioner were that the title of the plaint be changed to that of a "Suit for declaration, Possession, Specific Performance and Permanent Injunction" and that Prayer (a)(i) be added so as to elicit a direction against the Respondents Nos.1 & 2 "To handover the possession of two Feet of subject property to the plaintiff out of the area 3.5 Feet, as the plaintiff is already in possession of 1.5 Feet approximately."

6. No reasons or grounds were disclosed in the accompanying Affidavit other than it being broadly stated therein that the plaintiff would suffer irreparable loss unless the Application were granted. Furthermore, what is striking is that it had been pleaded in the body of the plaint that the Petitioner was in possession of the Suit Property since the time of execution of the sale agreement. The relevant paragraphs of the plaint, being paragraphs 4 and 9, read as follows:

“4. That after receiving the above said sale consideration amount from the Plaintiff, the Defendant has delivered the vacant, unqualified and peaceful possession of the suit property to the Plaintiff and since then the Plaintiff is enjoying the peaceful possession and lawful occupation over the suit shop.”

“9. That the Plaintiff is enjoying peaceful possession and lawful occupation right over the suit shop since execution of sale agreement and execution General Power of Attorney, and the Plaintiff time and again has approached and contacted with the Defendant for execution of proper registered documents in respect of suit shop in the name / favour of Plaintiff but the Defendant remained prolonging the matter on one pretext or the other.”

7. Needless to say, the proposed amendments were not in congruity with Paragraphs 4 and 9 of the Plaint and could not conceivably be countenanced in the absence of any amendment being sought to that foundational aspect of the claim.
8. As such, no case for interference in the Orders under reference stands made out, and the Petition, being bereft of force, stands dismissed accordingly.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: