

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

R.A No. 190 of 2010

Date Order with signature of Judge

For hearing of Main case.

08.02.2016

Applicant and his counsel called absent. Diary reflects that since 11.10.2013 matter was repeatedly fixed: 08.11.2013, 12.12.2013, 20.02.2015, 17.04.2015, 15.05.2015, 17.09.2015 for *regular hearing* but nobody was in attendance on behalf of applicant.

Though such *negligent* attitude of the applicant is sufficient to fall a consequence of dismissal but since instant revision was admitted for regular hearing and a *revision* is always subject to patent and glaring illegality or *material irregularity* causing *serious prejudice* which the Court itself can examine hence, it would not be just and proper to dismiss this application in non-prosecution.

Further, the Court(s) cannot force a party to address arguments but *at the best* could provide an opportunity to do so because the aim of law is to provide opportunities and not to delay or defeat the *justice* in name or shade of such right. (2010 SCMR 1119). Accordingly, I have examined the available material *carefully* in search of ***‘jurisdictional defect or material illegalities/irregularities’*** resulting into *miscarriage of justice* because existence thereof *only* can justify interference in *‘revisional jurisdiction’* which is narrower and is not equated to that of appellate jurisdiction where whole case becomes *open*. Reference may be made to judgments, reported as MUHAMMAD IDREES versus MUHAMMAD PERVAIZ [2010 SCMR 5] and NOOR MUHAMMAD versus Mst. AZMAT-E-BIBI [2012 SCMR 1373].

Let's have a look at the relevant portion of the judgment passed by appellate court so as to know facts of matter and illegalities or jurisdictional defects if any. The operative part reads as:

“The pleadings are to prove by the plaintiff. In the instant case, he has failed to prove that the suit property is in his exclusive possession and has gifted to him by his late father. **This is the practice of the plaintiff to bring suit against the one of his brothers or sisters with the prayer of permanent injunction.** It is on record that the **plaintiff had filed another suit No. 282 of 1995 in the Court of IX Civil Judge where his brother and alleged attorney of other brothers and sisters appeared in the Court and submitted a statement whereby undertook that he would not dispossess the plaintiff from the suit property,** however, from the perusal of the order produced by the plaintiff himself it reveals that there is only one defendant Haji Muhammad Zaman Gabol who had filed an statement and he was also a brother of the plaintiff, and there is nothing on record to establish that the said Haji Zaman had appeared on behalf of other brothers and sisters being their attorney. It is also mentioned in the order dated 16.07.1995 that he resolved his right to claim his share along with other legal heirs in the subject property belonging to their deceased father and they would not dispossess the plaintiff from the suit house otherwise then in accordance with law. **Thus, it is clearly transpires that this is a matter of inheritance, validity of oral gift and the appellant claiming gift made to him by his late father. The practice of filing suit for permanent injunction by the appellant has become a routine.** Primarily it was for him to have filed a suit for declaration of his title to the suit property and then ancillary relief of permanent injunction can have been claimed.

The permanent injunctions are to be issued under Section 54 of the Specific Relief Act, which is to be granted to prevent the breach of an obligation existing in favour of the applicant whether expressly or by implication. The existence of obligation is condition precedent for the issuance of permanent injunction which is discretionary in nature. The obligation likely to be breached must be a legal obligation. An applicant for the injunction must establish a legal right and then show an actual or threatened invasion of that legal right by the particularly person against whom he wishes to claim an injunction. Accordingly to Section 56, clause (i) of the Specific Relief Act when equally efficacious relief can be obtained by any other usual mode of proceeding except in case of breach of trust and clause (j) when the conduct of the applicant disentitles him then injunction is to be refusal. **Similarly in the case, the appropriate relief available to the plaintiff was to file a suit for declaration of his legal or character and then may have claimed ancillary relief perpetual injunction.** The conduct of the applicant in this case is also very doubtful he has not approached the Court with clean hands, thus was not entitled to the grant of injunction according to the clause (j) of the Section 56 of Specific Relief Act.’
(Underlining is supplied for emphasis).

The above findings *prima facie* are in line with Order II rule 2(1) of the Code which insists that *suit shall include the whole of the claim* so also Section

54 and 56 of the *Specific Relief Act*. There could be no denial to the legal position that a '*preventive relief*' should be with reference to some title which *prima facie* lacking. Further, it needs no *judicial verdict* that one in *possession* even *unauthorized* be not removed without due course of law and the one dispossessed *otherwise* has a remedy within meaning of Section 9 of Specific Relief Act. Thus, I am of the clear view that concurrent findings of the two courts below are legal and in due exercise of jurisdiction hence the revision petition fails which is dismissed accordingly.

SAJID

JUDGE