

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

C. P. No. D-149 of 2022

Present:

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

Petitioners : Rizwan Ahmed Shaikh & others
through Nadeem A. Farooqui,
Advocate.

Respondents : Nemo.

Date of hearing : 14.04.2022.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order made on 16.12.2021 by the learned Additional District Judge-VI/Model Civil Appellate Court-Ext., Karachi Central, dismissing Civil Revision Application No.53/2021 filed by them against the Order of the learned XIth Senior Civil Judge, Karachi, Central, dated 03.03.2021, whereby their Application under Order I Rule 10 CPC filed in Civil Suit No.108/2018 was dismissed.

2. The backdrop to the matter is that the Petitioners had apparently filed a Suit for Declaration and Specific Performance on the basis of an Oral Agreement said to have been entered into between them and Mst. Razia Begum in respect of an immovable property, thereby eliciting a declaration that the Oral Agreement held the field and bound the Parties, along with a direction that the defendant be directed to execute a sale deed and hand over the original title documents.

3. Then, after the lapse of approximately three years, the Petitioners moved the underlying application under Order 1 Rule 10 CPC seeking the addition of Mst. Razia Begum's three sons as defendants, with it being alleged that they had sought to intermeddle in the transaction by making certain demands whilst threatening that they would enter into an alternate transaction in the event that the Petitioners did not accede thereto. That application and the ensuing Revision came to be dismissed, as aforementioned, with the relevant excerpt from the order of the Revisional Court reflecting the reasoning of the forum reading as follows:-

“4. After hearing the arguments of learned counsels for both the sides I have gone through the case file. Record reveals that applicants/plaintiffs filed suit for declaration, specific performance and permanent injunction against respondent in respect of property constructed, over Plot No.L-507, Sector 11-E, U.P. Society, North Karachi, Karachi. It is contended by the applicants that respondents had assured the applicants that they would be given preference over other sellers, whenever they would sell subject property. During pendency of said suit applicants filed application with the prayer to implead propose defendants alleging therein that respondents intend to sell the subject property to them. It is contended by the learned counsel for applicants that respondents are trying to create third party interest and they may be restrained only by impleading propose defendants in the proceeding. Such argument hardly appeals a prudent mind. I am afraid as to how impleading propose defendants may be helpful for the just and fair decision. There is no cavil to the proposition that the provisions of order 1 rule 10 of the Code are invoked in circumstances when just and fair decision is not possible. There is nothing on record that without impleading propose defendants just and fair decision is not possible. I have gone through the impugned order which does not suffer from any jurisdictional defect warranting interference by this court. Having found no merits instant revision application is hereby dismissed with no order as to costs of the proceedings.”

4. On query posed, learned counsel for the Petitioners conceded that the alleged Oral Agreement in respect of the said property on which the claim of the Petitioners was founded had taken place only between them and Mst. Razia Begum, but nonetheless sought to argue that the proposed Defendants ought to be impleaded as Party to the Suit, as they were seeking to assert a stance that was adverse to the interest of the Petitioners and contrary to their understanding with the original defendant.
5. In our view, that contention is not well founded in light of the nature of the Suit. The Petition thus appears to be misconceived and devoid of force.
6. That being so, we hereby dismiss the Petition *in limine*, along with any pending miscellaneous applications.

JUDGE

CHIEF JUSTICE

Karachi.

Dated: