

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 3133 of 2013

Date of hearing	Order with signature of Judge
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Hearing of case (priority)

1. For orders on CMA No.7243/2021 (XXII Rule 4 CPC)
2. For orders on CMA No.14250/2017 (XXII Rule 3 CPC)
3. For hearing of CMA No.9728/2013 (S/A)
4. For hearing of main case

22-03-2022

Petitioners' Counsel is called absent; however, Shabbir Ahmed, Petitioner No.1 is in attendance.

2. Through this Petition, the Petitioners have impugned order dated 20-09-2013, whereby the Revision Application filed by the Petitioners, against order of the Trial Court on an application under Order I Rule 10 CPC filed by the Respondents, has been dismissed.

3. We have perused the impugned order and the operative part of the said order reads as under:

“The position plain and simple before this court is that as per even applicants own version the respondent No. 14 and 15 namely Shahnawaz, and Parvez Ahmed are their real brothers and co-owners as they have challenged the mutation entry in favour of said respondents which is pending for adjudication before the appropriate forum. However admittedly the applicants/plaintiff did not implead the said real brothers/interveners/respondent No.14 and 15 in the subject suit. Though the prayer was mainly for permanent injunction against the defendants No.1 to 10 from interfering with the possession of the plaintiffs but in the main prayer for declaration it has been prayed that the plaintiffs/applicants being co-owners in the inherited suit land bearing survey No. 362 Pirjogoth municipal limits, Taluka Kingri district Khairpur are entitled to retain the possession of suit land till its partition and separate possession by them to the extent of their shares in it. This court is of the considered view that such prayer and assertion that plaintiffs/applicants are co-owners are entitled to retain possession, the other co sharers/ co-owners i.e respondent No. 14 and 15 being real brothers of applicants are found to be necessary and proper party, more so, as the said respondents in their subject application u/o 1 Rule 10 C.P.C have asserted to be in possession of the suit land. Without going to the veracity of the position as to possession which question can not to be determined by this court but even such assertion is found to bring the said respondents No.14 and 15 within the definition of necessary as well as proper party.

In the discussed circumstances the case law cited on behalf of the applicants is not found attracted. In (Mst. Ilyas Begum case PLD 2011 Karachi 281) the applicant/proposed intervener in the referred case, was found 10 have failed in taking steps before Housing Authority after the

transfer of plot in the year 1978 upto 2005 and beside limitation there were serious questions as to if his signature on transfer document in favour of plaintiff were forged. The principle held in Syed Aslam Shah case 1988 MLD 1596 is found to have no bearing on the present matter, in as much as it is not for this court in its limited revisional jurisdiction to look into the question as to if the suit property is urban property or not or if its transfer by Revenue authority is barred as per Land Revenue Act 1967 and as to if mutation is not title deed as held in Muhammad Ishaque case 2007 SCMR 1773. Nor it is the question before this court while deciding this revision application as to whether subject property is agricultural land or otherwise as held in Muhammad Hassan case 2007 SCMR 576. Hence the referred case law is not attracted for the simple question before this court i.e if the respondent No. 14 and 15 being real brothers have rightly been ordered to be impleaded by leaned trial court as necessary and proper parties, directing the plaintiffs to file such amended plaint.

As discussed earlier said respondents No. 14 and 15 are found to be necessary and proper party being admittedly real brothers and co-owners even as per the assertion made by the plaintiffs/applicants, even if the partition by Revenue authority, as asserted by said respondents (14 and 14) is not considered.

The impugned order is found to be so well reasoned and well discussed and there is nothing to call for interference by this court in its limited revisional jurisdiction. Consequently revision is dismissed.

There is no order as to cost.”

4. On perusal of the aforesaid order, it appears that the proposed Defendants, who have been joined on the application under Order I Rule 10 CPC, were at least proper parties, if not necessary parties as apparently they were co-sharers in the property; whereas, some mutation was recorded in their favour. In that case they ought to have been joined in the Suit notwithstanding that no direct relief was being claimed against them. On perusal of the prayer clause, it appears that if the same was granted, their rights might have been affected; hence, both the Courts below have come to a fair and just conclusion in accordance with law.

5. This Petition appears to be misconceived and is hereby **dismissed** with pending applications.

J U D G E

J U D G E

Abdul Basit