

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 110 of 2007

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

17.05.2022

For orders on MA 7800/10
For orders on MA 412/07
For hearing of main case

Mr. Yasir Hussain Malik, Advocate for Petitioner
Mr. Rafiq Ahmed Dahri, Asstt: A.G.

This constitutional petition against the concurrent findings of two courts below is pending since 2007. It appears that on the strength of a sale deed registered on 6.9.2003 the petitioner preferred an application under Section 12(2) CPC against an alleged collusive Judgment and Decree dated 6.12.2005 in a Suit No. 02 of 2004. The application under Section 12(2) CPC was filed along with an application under Order I Rule 10 CPC. The crucial application under Section 12(2) CPC was dismissed on the strength that an order under I Rule 10 CPC has already been passed; this could hardly be a reason that could be assigned for dismissing an application under Section 12(2) CPC. There is no provision of becoming a party in a disposed of matter and an application under Section 12(2) CPC has to be heard independently without the applicant of becoming a party in a disposed off matter; however, without application of mind the application under Section 12(2) CPC was dismissed on 8.5.2006 which was challenged by the petitioner in R.A. No. 05 of 2006 which too met the same fate and in the ultimate para the Additional District Judge, observed that the applicant was watching the proceedings as a notice was served upon Muhammad Iqbal who is son of the applicant. Again this could hardly be a reason to maintain the order of the trial court which requires an independent application of mind as to whether there was any fraud or misrepresentation. Since the property has already been devolved upon the applicant and there has to be an independent trial. There

is no independent findings as to the prayers of the suit wherein some inheritance on the strength of being legal heirs was claimed. Without commenting further as to the validity of the Decree we set-aside the orders of two courts below passed on an application under Section 12(2) CPC as well as on an application under Order I Rule 10 CPC as disclosed in the order dated 6.12.2005 and remand the case to the trial court for hearing an application under Section 12(2) CPC either by recording evidence or summarily as deem fit and property under the circumstances of the case.

The petition in the above terms stands disposed of.

JUDGE

JUDGE

karar_hussain/PS*