

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

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

C.P No. D-1187 of 2018

Mr. Malik Altaf Javaid, Advocate for the petitioner.
Mr. Aziz Ahmed, Advocate for Chairman, Market Committee,
Respondents No.3 and 4.
M/s Husain Bakhsh Saryo and Ghulam Mustafa Katpar,
Advocates for Talha Naseem, Respondent No.5
Mr. Shaharyar Mahar, AAG

Date of hearing : 29.03.2022

ORDER

AHMED ALI M. SHAIKH, CJ. The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution impugning the order dated 06.02.2018 penned down by the learned III Additional District Judge, Malir (Respondent No.1) IN Civil Revision Application No.45 of 2017, concurring with the order dated 28.8.2017 passed by the II Senior Civil Judge, Malir, (Respondent No.2) dismissing his Applications made under Order I Rule 10 and Section 12(2) CPC.

2. Briefly facts of the case are that Respondent No.5 filed Civil Suit seeking specific performance of contract, declaration, possession, mense profits and permanent injunction against the Respondents No.3, 4 and 6. Though legal heirs of the Respondent No.6 were served but failed to appear and contest the Suit, which was decreed under Order XV Rule 1 CPC vide Judgment dated 02.12.2016. The Respondent No.5 Decree Holder filed Civil Execution No.01 of 2017, which vide order dated 17.04.2017 was allowed by the Respondent No.2. Thereafter, the Petitioner filed Applications under Order I Rule 10 and Section 12(2) CPC but the same were heard and dismissed by the Respondent No.2 vide order dated 28.8.2017. The said order was assailed in Revision but the Respondent No.1 dismissed the same also vide impugned order.

3. Learned counsel for the Petitioner submitted that the Courts below have committed gross illegality while not considering the petitioner's plea in its true perspective and passed orders contrary to the facts and settled principle of law. He submitted that the petitioner was in peaceful possession of the subject property but the Respondents No.1 and 2 failed to appreciate this aspect.

4. Learned counsel for the Respondent No.5 while supporting the impugned Judgment and Decree and the orders impugned herein submitted that the petitioner filed Applications under Order I Rule 10 and Section 12(2) CPC only after issuance of writ of possession and that too without annexing any supporting documentary evidence establishing his title or ownership etc. He pointed out that the petitioner on 26.09.2017 filed a civil suit No.Nil of 2017 against the Respondents No.3 to 6 but the same was dismissed vide order dated 21.10.2017 by the Respondent No.2. Against said Judgment/order the petitioner preferred a Civil Appeal but the same failed too and now a Civil Revision against said order is pending adjudication before this Court. He prayed that the petition being bereft of merits be dismissed.

5. Learned counsel for Chairman, Market Committee and the AAG adopted the arguments of the learned counsel for the Respondent No.5.

6. We have heard the learned counsel for the parties and perused the material available on record. Perusal of the Applications preferred by the petitioner in terms of Order I Rule 10 and Section 12(2) CPC and the orders passed thereon by the trial Court as well as the Revisional Court show that in support of his claim the petitioner has failed to annex any documentary evidence showing his title or ownership over the suit property. In this regard, the trial Court while declining the Applications under Order I Rule 10 and Section 12(2) CPC vide order dated 28.08.2017 has observed that:-

“Undeniably, the sole claim of the proposed intervener is based on verbal assertions without production of any proof of his right, title or interest in the suit property. The proposed intervener has also not annexed any proof of his possession/occupation over the suit property/shop alongwith the applications. There is a vague assertion in the application under order I rule 10 of CPC of purchase of suit property/shop by the applicant/intervener in the year 2009 without annexing any proof. Not even the name of the person from whom the property/shop was purportedly purchased and on which date was disclosed in the application filed for impleading him as necessary party. There is further no disclosure of any sale agreement through which, the proposed intervener purportedly purchased the suit property/shop. It is obvious that mere withdrawal of any complaint lodged against the proposed intervener by the defendant No.1 under the Illegal Dispossession Act does not confer any right, title or interest on him to be impleaded as a necessary or proper party in the suit without the same, having been established through cogent and material evidence, which is totally lacking here.” (emphasis added)

7. It also transpires from the record that after the passing of Judgment and decree in favour of the Respondent No.5, the petitioner filed a suit against the private respondents seeking specific performance etc. in respect of same property but could not succeed. The said order was challenged in Appeal, which was also dismissed as withdrawn vide order dated 19.01.2018 passed by the Respondent No.1. However, that order was assailed in Revision Application No.92 of 2018, still pending adjudication before this Court. Even these facts were not disclosed by the petitioner in the pleadings and only brought on record by the Respondent No.5 in his counter-affidavit.

For the foregoing reasons, we by our short order dated 29.03.2022 have dismissed the Petition.

Chief Justice

Judge