

Judgment Sheet
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No.D-3268/2018

PRESENT:

Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Arshad Hussain Khan

Mst. Naeema w/o Abdul Rauf and Others

Vs.

Ms. Fehmida w/o Abdul Rasheed

Petitioners	Through Mr. Muhammad Ali Waris Lari, Advocate.
Respondents	Through Mr. Nisar Ahmed, Advocate
Official Respondents	Through Mr. Miran Muhammad Shah, Addl. A.G
Date of Hearing	01-09-2022

JUDGMENT

ARSHAD HUSSAIN KHAN-J., Through this constitutional petition, filed under Articles 4, 9, 199 and 203 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have mainly impugned the common order dated **13.04.2018**, passed by learned IIIrd ADJ, Karachi East, in civil revision applications No.57/2016 and 55/2017, with the following prayers: -

- a. To hold and declare that the orders in revision dated 13.4.2018 in consolidated Revision Application Nos. 57/2016 and 55/2017 are a result of misreading of the evidence besides is a negation with the prescribed principles of dispensation of justice and the lower revisional Appellate Court, the respondent No.12 did not apply its judicial mind into the actual controversy of the matter, hence is unjust, unethical and is ultra-vires of the Constitution and is no legal effect and or consequences whatsoever;
- b. To further hold and declare that the judgment dated 13.4.2018 is the result of misreading of the evidence and cannot be applied by any stretch of imagination into any manner to the present facts of the case and is therefore nullity in the eyes of law and cannot be executed by any means whatsoever, further this Honourable Court may be pleased to declare that the minors/co-respondents were never been allowed to be represented through any guardian ad-litem and failure on the part the Revisional Court below render the judgment/order as illegal, unlawful and ill-founded and does not carry any judicial sanctity but prove to be a fraud with the Court in all dimensions squarely and hence the same may graciously be set aside and decree drawn by suit No.463/2011 dated 5.4.2013 as well as Execution Application 23/2013 granted as prayed on 20.2.2014 by the same presiding officer be who holds the Court in the Revisional Jurisdiction as IIIrd Additional District Judge East at Karachi and on this score

alone, the impugned judgment / order dated 13.4.2018 is liable to be set aside and the judgment and decree in Civil Suit No.463/2011 may graciously be maintained and execution application remain allowed as it was earlier in the cause of justice;

- c. To order for the grant of injunction against the Respondents for the stay and suspension of the order dated 13.4.2018 and any directions for taking over the possession of property No.249, admeasuring 139.31 square yards situated at Mehar Abad Colony Jamshed Road Karachi may be hault and suspended till decision of this petition as well as to call the same to peruse it minutely so that the illegality thereto shall be well within the knowledge of this Honourable Court and further such orders, as this Honourable Court be pleased to specify in its orders;
- d. To call for the record and proceedings of Suit No.463/2011 and Execution Application No.23/2013 from the court of the learned IInd Senior Civil Judge, East, at Karachi and to call record and proceedings of Civil Revision Application No.57/2016 and 55/2017 from the court of the learned IIIrd Additional District Judge, East, at Karachi, to have a glance upon the entire record and proceedings of the courts below and for a full dress hearing of the instant petition which shall serve the cause of justice;
- e. To take a judicial notice that the alleged gift as stated by Mst. Fahmeeda proved to be a bogus document and proceedings u/s 476 Cr.P.C. have been properly logged against the concerned respondents;
- f. To further hold that respondents concerned without any reasonable and or probable cause have instituted malicious prosecution twice of the petitioners and letting them at the mercy of the circumstances and for such conduct duly proved in the trail by the competent court, the decree has properly been awarded;
- g. To further hold one counsel name Nisar Baloch happens to be at one point of time the counsel for the party and adversary at the same afterwards becomes the counsel for adversaries which is highly depreciated and is liable to be seen under the purview of the legal practioner and Bar Council Act as well as conduct / ethics and adequates of advocates as well as relevant rules and orders by the disciplinary committee of the Sindh Bar Council from time to time;
- h. To hold that the petitioners being the citizens of Pakistan are entitled for the fundamental guarantees enshrined in the Constitution as well as he is to be safe-guarded under the law of the land as applicable and for grant of such incidental and or ancillary relief which this Honourable Court may deem fit under the circumstances and shall specify the same in its orders.

2. Briefly, the facts giving rise to the petition are that the present petitioners had filed a civil suit No.463/2011, inter alia, against respondents 1, 7 and 8 for declaration, damages under malicious prosecution, rendition of accounts & permanent injunction. The plea of the petitioners in the suit was that they were falsely implicated in two criminal cases lodged by present respondents 1, 7 and 8, which were ended up in their acquittal. Besides false implication in criminal cases, they were deprived of their lawful shares in the property bearing Plot No.249 admeasuring 139.31 sq. yds., situated at Mehar Abad Colony, Karachi, [**subject property**], left by Muhammad Basheer, which were occupied by respondents - Mst. Nasreen, Mst. Fahmeeda and Mst. Hameeda and were enjoying the rentals by letting out the ground floor of the subject property. The said suit was partially decreed ex-parte against which the plaintiff [present petitioners] preferred civil appeal No.70/2012, which was disposed of with the directions to the trial court to decide the case on merits. Upon remand, the trial court decreed the suit as prayed vide order and decree dated 06.04.2013 and 11.04.2013 respectively. Thereafter, Execution Application No.23/2013 was filed, which was allowed and writ of possession was directed in favour of the decree holder by order dated 20.02.2014. Meanwhile, Two Applications under Section 12(2) CPC, were filed by the present Respondent Nos. 1 & 2, against the ex-parte judgment and decree. These applications were subsequently dismissed separately by IInd Sr. Civil Judge, Karachi East, vide orders dated 22.04.2016 and 20.03.2017. Thereafter, civil revision applications No.57/2016 and 55/2017, filed by respondents 1 & 2, against the order and decree dated 06.04.2013 and 11.04.2013, were decided by a common order against the petitioners, vide order dated **13.04.2018**, passed by learned IIIrd ADJ, Karachi [East] with the directions to restore the possession of the subject property within 15 days to its previous occupants from whom they had taken over the possession under intimation to trial court; hence this petition.

3. In response to the petition, respondent No.1, Mst. Fehmida w/o Abdul Rasheed Khan, in her counter affidavit, available on the record, has stated that the concealment of facts and misrepresentation committed by petitioners with trial court where they filed civil suit No.463/2011 and got ex-parte judgment and decree in their favour. It

has been stated that respondent Nos. 3 to 6 were orphan minors, their father murdered, they had been dispossessed by the petitioners from the subject property through fraudulent ex-parte judgment and decree, which damaged their education. It has been further stated that while claiming declaration, rendition of accounts & permanent injunction, the petitioners did not implead the legal heirs namely; Muhammad Naeem, Mst. Farida, Muhammad Ahmar, M. Umar Farooque, Aresha and Areeba and got the ex-parte judgment and decree, which is a nullity in law as the same are based on fraud and concealment of facts. It has also been stated that respondents No. 1 to 8 of the petition have filed civil suit No.1741 of 2018 against petitioner No.1, which is pending adjudication before learned VIIIth Senior Civil Judge, Karachi East. It has been further stated that the grounds mentioned in the affidavit in support of application under Section 12(2) CPC of respondents No. 2 to 6 and both civil revision applications No.57 of 2016 and 55 of 2017 may be treated as part and parcel of the counter affidavit. Lastly, it is prayed that the petition may be dismissed with costs.

4. During the course of arguments, learned counsel for the petitioners while reiterating the contents of the memo of petition has contended that the order impugned in the present proceedings cannot be termed as valid and legal rather the same is a nullity in the eyes of law. He has contended that the judgment and decree passed by the trial court is on merits and since no appeal has been preferred against the said judgment and decree, the same has attained finality. He has further contended that the revision applications were allowed in favour of respondents while there was no proper appeal preferred by any respondents against the judgment and decree passed by the trial court, thus impugned order passed in revision applications is liable to be interfered with by this Court and is liable to be set aside. It is also argued that learned ADJ while passing the impugned order has miserably failed to take into consideration the fact that she herself had allowed the execution of the decree passed by the trial court and writ of possession was issued in favour of the present petitioners, as such, she should not have heard the revision application and should not have passed the contradictory order. It is contended that learned ADJ while passing the impugned order has also failed to consider the fact that the revision applications, ex-facie, were not maintainable as

applicants/respondents had failed to point out any irregularity and illegality in the orders dated 22.4.2016 and 20.03.2017 as well as in the judgment and decree, and or misrepresentation and fraud committed by the petitioners. He has further argued that it is a well settled principle of law that application u/s 12(2) CPC may be filed against any misrepresentation of the facts or any fraud has been committed or service has not been effected upon the parties but in the present case all the legal heirs were in the knowledge of the proceedings and they did not deliberately enter into proceedings and contest the matter. Resultantly, the suit was decreed ex-parte in favour of the petitioners and in absence of any appeal preferred against the said judgment and decree, execution was filed which too was allowed and the possession of the subject property was handed over to the petitioners. However, learned ADJ while allowing the revision applications of the present respondents restored the possession of the property to the respondents. Lastly, it is urged that this petition may be allowed and the petitioner's family may be saved from the consequences of illegal impugned orders, which results into miscarriage of justice.

5. In reply, learned counsel for the respondent while supporting the impugned order has contended that the petitioners obtained the judgment and decree by committing fraud, misrepresentation and concealment of facts as such the same was overturned by learned ADJ through the order impugned in the present proceedings. It is also contended that the petitioners filed civil suit No. 463 of 2011 for declaration, damages under malicious prosecution, rendition of accounts as well as permanent injunction and sought multiple reliefs under distinct laws as such the suit as drafted was not maintainable. In the suit the petitioners claimed damages for facing criminal trails maliciously initiated by Mst. Nasreen as such the liability if any in terms of malicious prosecution is imposed same shall be against Mst. Nasreen only. Whereas for the purposes of declaration, rendition of account and permanent injunction in respect of subject property left by [late] Muhammad Bashir, all his legal heirs, which is ten in numbers, were required to be impleaded as party to civil suit No. 463 of 2011, however, the petitioners impleaded only three legal heirs as party and obtained ex-parte judgment and decree. It is argued that petitioners while seeking the damages has also concealed the fact from the court

that criminal acquittal appeal bearing No. 135 of 2011 against the decision whereby the petitioners were acquitted by giving them benefit of doubt was pending before this Court. It is further argued that the learned trial court wrongly and in hasty manner without applying its judicious mind, did not go through the record and summarily dismissed both applications under Section 12(2) filed by respondents No.1 and 2 to 6. It is also argued that the case law relied upon by the trial court while dismissing both the applications were not applicable to the instant case as the same relates to summary suit and rent matters. It is argued that the respondents have already filed suit No. 365 of 2020 before this court for partition, shares and permanent injunction inter alia, against present petitioner No.1, which is pending adjudication. Lastly, it is argued that there is no any illegality and irregularity in the impugned order as such the petition may be dismissed with costs being not maintainable. Learned counsel, in support of his arguments has relied upon the case of *Ghulam Ali v. Ranjho Khan* [2007 MLD 1657], *Ajab Khan v. Faiz ullah and another* [2016 MLD 1519] and *Sultan alias Kaloo v. Haji Muhammad Khan and another* [2015 CLC 150].

6. We have heard learned counsel for the petitioner and the respondents as well as perused the record.

From the record, it reflects that the property bearing Plot No.249 admeasuring 139.31 sq. yds., situated at Mehar Abad Colony, Karachi, [subject property] duly registered, vide M.F. Roll No.1901 at the office of the Katchi Abadi Authority, Sindh Karachi, was owned by Muhammad Bashir who died on 30.01.2004 leaving behind six children namely; Mst. Naeema, Habib, Mst. Fahmeeda, Mst. Hameeda, Naeem and Mst. Fareeda. The legal heir namely Habib was murdered on 09.11.2005, leaving behind a widow namely; Mst. Nasreen and four children namely; Ahmer, Umar Farooq, Areesha and Areeba.

Mst. Naeema [daughter of Muhammad Bashir] and her children filed a civil suit bearing No.463/2011 against Mst. Nasreen widow of Habib and others for Declaration, Permanent Injunction, Rendition of Accounts, in respect of the property left by the deceased Muhammad Basheer as well as Damages for malicious prosecution owing to their false implications in two criminal cases. The aforesaid civil suit proceeded ex-parte and prayer clause of the same was granted

partially, vide judgment and decree dated 10.02.2012 and 15.02.2012 respectively. The Plaintiff assailed the judgment and decree in civil appeal No.70/2012, which succeeded, vide order dated 07.03.2012, with the directions to the trial court to decide civil suit No.463/2011 on merits, who proceeded with the civil suit and decreed the same as prayed, vide judgment and decree dated **06.04.2013 and 11.04.2013** respectively. Thereafter, Mst. Fahmeeda [daughter of Muhammad Basheer] Defendant No.2 filed application u/s 12(2) CPC, in the said civil suit No.463/2011 stating therein that Muhammad Basheer, during his life time, gifted her the subject property, however, the application was dismissed on 22.04.2016 and the dismissal order was assailed in civil revision application **No.57/2016**. Another daughter of Muhammad Basheer namely; Mst. Fareeda and others [children of (late) Habib son of (late) Muhammad Basheer] also filed application u/s 12(2) CPC, contending that the subject property actually belonged to [late] Muhammad Basheer, therefore, she and the aforesaid children should have been impleaded in civil suit No.463/2011 being their legal heirs, however, this application was also dismissed on 20.03.2017 and civil revision application bearing **No.55/2017** was filed against the said order. Subsequently, both the revision applications [57/2016 and 55/2017] clubbed together and were allowed by a common order dated **13.04.2018**, passed by learned IIIrd ADJ, Karachi East, which is impugned in this petition.

7. Before going into further discussion, it would be appropriate to reproduce the relevant portions of the impugned order hereunder for the sake of convenience:-

18. It is the matter of record that Civil Suit bearing No.463/2011 was proceeded ex-parte. I am surprised that while passing judgment and decree learned trial court did not see the merits of the case or even the prayer clause, however, while passing ex-parte decree Court is bound to see whether plaintiff is entitled to the relief asked for and if so to what extent. In this regard I am supported with the guidelines given in the case law cited as 2008 CLC 120 (Karachi). It is well settled principle that the court is bound to go through the contents of main petition and in support thereof the material placed on record. In this regard I am fully guided by the case law cited as NLR 1994 Civil 80, wherein it was observed.

“Unfortunately the subordinate courts while proceedings exparte against the defendants and in granting exparte decree in plaintiff’s favour do not apply their mind to the merits of the case. It has been time and again emphasized by the Superior Courts that even if the Court is to proceed exparte it is its duty

go through the allegation made in the plaint and in support thereof the material placed on file and give its decision thereon.”

19. No doubt applicants namely Muhammad Ahmar, Muhammad Umar Farooq, Areesha and Areeba were not party to the suit but there is no restriction on any person to approach court, whose right has been taken away by the judgment to get setting aside of such judgment and decree under Section 12(2) CPC on the ground of having obtained by way of fraud and misrepresentation. It is an admitted position that the applicants are co-sharers of the suit property, possession whereof has been obtained by the respondents by concealing their status / existence from the court. Applicants moved application u/s 12(2) CPC before the learned trial court which was dismissed and the same has been impugned here.

20. While deciding application under section 12(2) of the Civil Procedure Code, the Court has to see whether the impugned order, judgment or decree passed in a suit at the back of an applicant has taken away his/her right to contest the claim of the plaintiff. If a person's rights are being infringed in proceedings in which he was either not made a party or even if was made a party was not fully served with the summons and therefore was not given the opportunity of being heard with regard to his claim in the subject matter of dispute. Once the applicant establishes this, it is sufficient reason to grant him / her the relief provided under Section 12(2) of the Civil Procedure Code. Besides that, suppression or concealment of relevant facts is a kind of fraud and it has been termed as jugglery which has no place in equitable and prerogative jurisdiction. Even no limitation runs against fraud as held in 2016 YLR 1233 Lahore and 2016 CLC 115 Peshawar. Frivolous and vexatious litigation based on suppression of facts has serious consequences for administration of justice and it subverts course of justice for other bona fide litigants by clogging judicial system and give rise to mistrust of legal system. In this regard I am fully guided with the case law cited as 2015 CLC 34 Islamabad, wherein it has been held that;

“Court has duty to protect its process from being abused, which is in the nature of fiduciary duty which court owe towards public and bona fide litigants.... Obstinate litigants causing abuse of process of court undermine public confidence in administration of justice and course....being conscious of such onerous duty, courts cannot show leniency when its process is abused despite the fact that grace and magnanimity is its essential attributes.”

21. It is admitted position that most of the co-sharers were not made party in Civil Suit No.462/2011 which was decreed ex-parte. This fact itself establishes commission of fraud, misrepresentation and concealment of facts, entitling applicants to the relief provided under section 12(2) of the Civil Procedure Code. In view of the above opinion I am guided by the case law cited as PLD 2010 Karachi 336, wherein it was held that ;

“Intent and object of S.12(2) CPC---Application under S.12(2) CPC -----Applicant's right to subject matter of dispute---proof---Such application would not proceed as a regular suit---Court while deciding such application would see whether impugned judgment / order /decree had been passed at applicant's back and had taken away or infringed his rights to contest plaintiff's claim-----Before acceptance of

his application and his joining as party to suit, neither applicant would be bound to establish in absolute terms his entitlement in subject-matter in dispute nor could he contest plaintiff's claim thereto---Only after acceptance of application and revival of suit, respective rights and entitlements of parties in subject-matter in dispute would be determined-----Principles.”

22. On the basis of above discussion, it is established that respondents played fraud, misrepresentation and concealment of facts, not only with the trial court, while obtaining the judgment and decree in their favour, but with the executing court also, while getting possession of the suit property. It is well settled principle that fraud vitiates the most solemn of the proceedings and no party should be allowed to take advantage of its fraud. When an application under section 12(2) of the Civil Procedure Code is granted and decree is set aside, then every change that had taken place pursuant to such decree also stands nullified even if title in favour of any person was created in terms of such decree, then it also falls to the ground, the moment the decree is set aside. Therefore, while allowing the application filed under section 12(2) of the Civil Procedure Code, Court would not only be setting aside an order, judgment or decree, but at the same time would also be nullifying every change that taken place on account of such order, judgment or decree. A party may have got the order, judgment or decree executed in his favour from the court which order, judgment or decree is subsequently set aside under the provisions of section 12(2) of the Civil Procedure Code. In such eventuality, the parties have to be relegated to the position where they were before such order, judgment or decree was passed and this is logical consequence of grant of application under section 12(2) of the Civil Procedure Code. In other words, it is nothing but the fall out effect of nullifying the order, judgment or decree under the provisions of section 12(2) of the Civil Procedure Code.

23. In view of above discussion, impugned orders passed by learned trial court on applicants' applications under section 12(2) CPC are set aside and the judgment and decree dated 06.04.2013 and 11.04.2013, respectively, is hereby set aside. Resultantly, all the proceedings following the said judgment & decree stands vitiated in view of guidelines given by the superior court in case law cited as PLD 2017 SC 1.

24. After relegating parties to the position, they were before the judgment, it is necessary to scrutinize the plaint as learned applicants' counsel has raised objection to the maintainability of suit on account of claiming two reliefs under distinct statutes as being revisional court this court is fully empowered to look into and take cognizance of any jurisdictional defect committed by the learned trial court in view of the guidelines given in case law cited as 2017 CLC 664.

25. Perusal of the plaint of civil suit No.463/2011 shows that plaintiffs have sought declaration, permanent injunction rendition of accounts in respect of property left by deceased Muhammad Basheer as well as damages for malicious prosecution, owing to their false implication in two criminal cases. The plaint apparently seems to be suffering from misjoinder of parties. It is so ambiguous as to which plaintiff sought relief from which defendant. Plaintiffs No.2 & 3 Defendant No.4 and 5 have no concern with the suit property in pursuance of claim regarding declaration, injunction and rendition of account in suit property but they have been impleaded, however, six

(6) co-sharers, being necessary parties were not impleaded. Admittedly, defendants No. 2 to 7 have no concern with the issue of damages under malicious prosecution, but they have been impleaded, however, two major jurisdiction defects are as follows :-

1. Plaintiff contains two causes, i.e. legal share in the property left by late Muhammad Bashir, and the damages for malicious prosecution. No doubt, law provides separate procedures to deal with both the above-mentioned claims that also before separate courts. The former is administered under the Succession Act, which is dealt in a summary manner, while the latter is governed by the Law of Tort, which emphasizes parties to lead evidence. Superior courts bar suit having multiple causes which are triable by different court. In this regard I am fully guided by the case law cited as 2009 CLC 432 Karachi.
2. Suit for damages under malicious prosecution is maintainable after conclusion of trial of the criminal case. During pendency of criminal acquittal appeal, damages can neither be sought nor granted.

26. It is well settled principle that appellate court while deciding appeal exercises all the powers of trial court and can reject plaintiff under order VII, rule 11 CPC, hence the plaintiff in civil suit No.463/2011 is hereby rejected under order VII, rule 11 CPC. It is worth mentioning that four (04) out of ten (10) co-sharers in the suit property were bereaved of their father due to his un-natural demise [by murder]. Hence they are orphans and usurping share of orphans in any manner has been deprecated by the Divine Injunctions of the Holy Quran in Surah Al-Nissa, verse 02 as follows :-

“to orphans restore their property, nor substitute (your) worthless things for (their) good ones; and devour not their substance by (mixing it up) with your own, for this is indeed a great sin.”

27. Admittedly respondent No.1 is real paternal aunt (Phuppi) of applicants No.2,3,4 & 5, who are orphans and were in occupation of suit property at the time when possession was taken away from them with police aid. Respondents seem to have bypassed all the moral, ethical, legal and religious directives while snatching the shelter of orphans. It is well settled principle that courts are required to do substantial justice, hence, respondents are directed to restore the possession of suit property within fifteen (15) days, to its previous occupants from whom they had taken over the possession, under intimation to the trial court. In case of failure of above compliance, applicants may obtain police aid from the executing court at the first instance. The above findings will, however, not affect the legal right of any of the co-sharers of the property left by late Muhammad Bashir, who may approach the proper forum.

In view of the above findings both the Revision Applications stands allowed.”

8. From perusal of the plaintiff of suit No.463 of 2011, it appears that the reliefs sought by the petitioners (plaintiffs) in the suit were two-fold; (i) recovery of damages for malicious prosecution and (ii) claim

of inheritance shares and accounts in the subject property being one of the legal heirs of deceased Muhammad Bashir.

Insofar as the recovery of damages claimed on account of malicious prosecution is concerned, an action for malicious prosecution is appropriate only when the judicial system has been misused. In order to claim damages for malicious prosecution it is well settled position of law that the plaintiff has to prove (i) that he was prosecuted by the defendant (ii) that the prosecution ended in the plaintiff's favour (iii) that the defendant acted without reasonable and probable cause and (iv) that the defendant was actuated by malice. All these elementary set of circumstances have to be accumulated and if any of them is found lacking, the suit must be failed.

In the said criminal cases no doubt, the petitioners and other co-accused were acquitted by a court of competent jurisdiction from the charge of murder etc., but mere their acquittal would not confer any right on them to sue respondent No.1, 7 and 8 (defendants 1 to 3) for damages on the basis of malicious prosecution as from perusal of the referred judgments, passed in the said sessions cases, it clearly transpires that the present petitioners were acquitted from the charges by giving them benefit of doubt. When a criminal court acquits an accused, it passes an order by arriving at a definite conclusion that the criminal prosecution is falsely lodged and the accused is falsely implicated or it may, by extending benefit of doubt, acquit an accused. In the latter case, the charge could not be considered as mala fide but fails due to some defective investigation by the police or for any other reason connected therewith. The petitioners were acquitted on the basis of benefit of doubt and not on the ground that the petitioners proved their innocence before the trial court. The suit for damages can only be decreed when all the ingredients as mentioned hereinabove are successfully established, which is lacking in the instant case. Mere acquittal of the petitioners in the aforesaid criminal cases, by extending them benefit of doubt, is not sufficient by itself to establish a case for malicious prosecution against respondents (defendants 1 to 3). Furthermore, it is an admitted position that the suit was filed during pendency of the acquittal appeal, which fact has been concealed by the petitioners in the plaint. On the contrary, in para 18 of the plaint it has been stated that "The defendants admittedly did not challenge the

acquittal order dated 15.01.2011 in an appellate forum, hence the acquittal order dated 15.01.2011 attained finality”. It is a settled proposition of law that an appeal against an acquittal wherever such is provided by the procedure is in substance a continuation of the prosecution. Reliance in this regard can be placed on the case of Kalavati v. State of Himachal Pradesh [AIR 1953 SC 131] and Abdul Malik and others v. The State and others [PLD 2006 SC 365]. In the circumstances, during pendency of the acquittal appeal it cannot be said that the trial was finally terminated. On this count alone the suit was not maintainable.

9. Insofar as the relief claimed in respect of inheritance shares and accounts is concerned, it is the law that when the parties are legal heirs of a deceased person and they are contesting for their shares in the property left by the deceased, in such a situation any one of the legal heirs can file a suit for “administration or partition” of the properties of the deceased or file an application under Section 278 of the Succession Act, 1925 for grant of ‘Letter of Administration’ in respect of the properties of the deceased. Law provides the mechanism for the proceedings of ‘administration and partition’ which is summary in a manner as ‘short cause matter’ and not as long cause for years and years because the provision is aimed to give the entitled persons their due right as early as possible for which they are legally entitled, which is not possible in regular suit. In the present case since the petitioners also sought their inheritance shares and accounts in the subject property as such they had to file a separate suit for administration or partition by impleading all the legal heirs of deceased Muhammad Bashir, which is admittedly 10 in numbers, however, the petitioners chose to file a regular suit for their claim of inheritance along with the claim of damages for malicious prosecution that too only against three legal heirs. On this ground also the suit was not maintainable. Moreover, perusal of the impugned order dated 13.04.2018 shows that the Revisional Court has discussed and considered all the factual and legal aspects of the matter. Hence, in view of the above legal position as well misstatement and misrepresentation committed by the petitioners, we are of the opinion that the learned Revisional Court has rightly passed the impugned order.

10. As regards the objection raised by the petitioners in respect of the legality and maintainability of the impugned order on the ground that learned IIIrd ADJ herself had allowed the execution of the decree passed by the trial court and writ of possession was issued in favour of the present petitioners, as such, she should not have heard the revision applications and should have not passed the contradictory order, first of all, it is to be noted that there is nothing available on the record, which could show that such objection was raised by the petitioners before the learned Revisional Court at the time of hearing of revision applications, secondly; from the perusal of the record it appears that it is the judgment and decree dated 06.04.2013 and 11.04.2013 respectively, which were set aside being obtained through fraud and misrepresentation, were passed by some other judge and not by the same judge who had passed the order in the revision applications. Furthermore, learned ADJ had allowed the execution in a routine manner being Sr. Civil judge, posted there at the relevant time, as such, she was not disentitled to hear the revision applications, which were preferred against the orders passed on their applications under section 12 (2) CPC.

11. In view of the above facts and circumstances, no illegality and incorrectness have been found in the impugned orders, as such there appears no justification for exercising discretionary and extraordinary constitutional jurisdiction in the matter in hand. Consequently, this petition being devoid of merit stands dismissed.

Before parting with the judgment, we may observe that the suit for administration in respect of the subject property, if pending adjudication, shall be decided without being influenced by any of the observations made in the present judgment.

JUDGE

Karachi:
Dated: 11.10.2022

JUDGE