

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

C.P No. D-1014 of 2023

Dated Order with signature of Judge.

Fresh case

1. For order on Misc. No.4766/2023
2. For order on office objection No.18
3. For order on Misc. No.4767/2023
4. For order on Misc. No.4768/2023
5. For hearing of main case.

20.02.2023

Mr. Fiaz Ahmed Abro, Advocate for the Petitioner

YOUSUF ALI SAYEED, J.- The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution impugning the Order dated 25.01.2023 made by the VIIth Additional District Judge (MCAC) Karachi South, dismissing Civil Revision No.139 of 2022 filed by the Petitioner against the earlier dismissal of his application under Order VII Rule 11 CPC in Suit No.441 of 2022 before the XIVth Senior Civil Judge, Karachi South, vide Order dated 28.09.2022.

The backdrop of the matter is that the aforesaid Suit had been filed by the Respondent No.1, claiming co-ownership of an immovable property and impugning the lease deed in favour of Petitioner. In that backdrop the underlying application under

Order VII Rule 11 came to be filed, with it merely being stated therein that the contents of Plaint did not disclose a cause of action and that the Suit was barred by virtue of Section 56 of Specific Relief Act, 1877. That application was dismissed, with the relevant excerpt from the order of trial Court reading as follow:-

“Heard learned counsel for defendant No.1 and plaintiff and perused the record. Record reveals that plaintiff is mother of defendant No.1. Original title documents are on the name of defendant No.1. Perusal of title documents available on record reveals that the said documents are registered on the name of defendant No.1 on the basis of possession as mentioned in the said documents as “LEASE FOR PLOT BY REGULARIZATION OF UNAUTHROIZED POSSESSION” while plaintiff has produced property tax in shape of form PT-I and utility bills of suit property on record along with his plaint as annexure P and P/4 respectively which show that suit property was in possession of deceased husband of plaintiff namely Abdul Ghani who paid utility bills and property tax of suit property. Meaning thereby that the actual possession holder of the suit property was deceased husband of plaintiff namely Abdul Ghani. Hence, question of actual possession holder of suit property and reality of registration of title documents on the name of defendant No.1 shall be determined after recording evidence of the parties. Therefore, case is made out for evidence at this stage. Further so far claim of possession of plaintiff without title is concerned it is settled law that suit for possession without title documents is barred by law. However, in present suit plaintiff has prayed for possession along with declaration and cancellation of title documents of defendant No.1 on the basis of inheritance of alleging that said title documents is issued by concerned in favour of defendant No.1 illegally and fraudulently as discussed hereinabove. In above situation, present claim of possession along with other prayers as discussed hereinabove is not barred by law. However, the case law relied upon by the learned counsel for defendant No.1 contained different facts and circumstances and does apply on facts and circumstances of present suit.”

The Order appears to be based on valid reasons, and on query posed to learned counsel for the Petitioner as to what illegality or perversity afflicted the same, no cogent response was forthcoming. Furthermore, when queried on the stage of the Suit, he stated that the matter was at a stage where issues had already been settled. Under the circumstances, we see no cause for interference and while granting the application for urgency, we accordingly dismissed the Petition in *limine* along with other listed applications.

JUDGE

CHIEF JUSTICE