

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

CP No. D- 1977 of 2019

**BEFORE**

Mr. Justice Aftab Ahmed Gorar  
Mr. Justice Muhammad Faisal Kamal Alam

Date of Hearing & Decision : 28.01.2020

Petitioner : Mst. Kousar Sikandar through  
Mr. Rao Faisal Ali, Advocate

Respondent No.4 : Tipu Sultan through Mr. Arbab Ali Hakro,  
Advocate

: Mr. Allah Bachayo Soomro, Addl.A.G.

**JUDGMENT**

**MUHAMMAD FAISAL KAMAL ALAM, -** In the present petition, Petitioner has challenged the two orders dated 25.7.2019 passed in the Civil Revision Application No. 08 of 2019, maintaining the order dated 13.4.2019 passed by the learned Trial Court in F.C. Suit No. 132 of 2017.

2. Relevant facts are that present Petitioner has filed the above *lis* against present Respondents seeking declaration and injunction, primarily against the present official Respondents in respect of proceedings pending before present Respondent No.1 about a landed property situated in Deh 21-Jamrao Taluka Sinjhor District Sanghar. After filing of Written Statement before the trial proceeding, Issues were framed by the Court on 6.12.2017. In the intervening period present Petitioner has filed an application under Order 14 Rule 5 of Civil Procedure Code, praying that issues No.1 and 2 be struck out, because they do not concern the averments of the plaint of present Petitioner and no relief has been sought against present Respondent No.4 (Tipu Sultan) who is real brother of the husband of present Petitioner.

3. Mr. Rao Faisal Ali, learned counsel for the Petitioner, has argued that the issues framed by the learned Trial Court, a copy whereof is at page 51, has unnecessarily enlarged the scope of the above *lis* and the entire suit can be decided effectively and completely, even if both Issues No.1 and 2 are struck off/ deleted.
4. Mr. Arbab Ali Hakro, Advocate for Respondent No.4 has controverted the above submissions of Petitioner's counsel, and has stated that issues are framed from the pleadings of all the parties and particularly those material averments, about which the parties to a suit proceeding are at variance.
5. Arguments heard record perused.
6. Plaint and written statement which are available in the present record have been perused. Even though the present Petitioner in her plaint has mainly challenged the proceedings *sub judice* before the official Respondents, but, fact of the matter is, that private Respondents No.4 has specifically taken a stance in paragraph 4 of his written statement (at page 63 of the File) that the share of one Ghulam Muhammad in the land in question was not sold to present Petitioner but through fraud and collusion (as alleged), a mutation entry No. 80 was effected.
7. Both the Issues 1 and 2, which the present Petitioner wants to be deleted / struck out, directly relate to the facts pleaded in the written statement. It makes no difference, if the Petitioner has not sought any relief against the present private Respondent No.4 in the above suit, as argued by the Petitioner's counsel, because the fact remains that the entitlement of present Petitioner has been questioned by the present Respondent No.4 in his written statement by pleading specific facts. Parties are at variance on this significant aspect of the controversy and above Issues were correctly framed.

**Secondly**, Petitioner and all the other parties to the suit proceedings shall get ample opportunity to prove their respective claims and defence. No prejudice can be caused to any one, particularly the Petitioner, from the existing issues framed by the learned Trial Court.

**Thirdly**, both the impugned orders of learned Trial Court and Revisional Court have properly appreciated the arguments of parties to the proceeding and their reasoning to dismiss the Application under Order 14 Rule 5 of C.P.C., are proper. Both the impugned orders do not suffer from any illegality or material irregularity and have correctly appreciated the legal position in this regard.

8. Consequently, the present Petition is devoid of any merit and is dismissed. It is expected that learned Trial Court may conclude the trial and pronounce a judgment preferably within two months from today.

9. The above are the reasons for the short order of 28-1-2020, dismissing the present constitutional petition.

JUDGE

*JUDGE*