

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

C.P No.S— 132of 2021

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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1. For hearing of MA 432/2021
2. For hearing of main case

07.11.2023.

Mr. Mushtaq Ali Taggar, Advocate for petitioner

This petition assails concurrent judgments rendered in family jurisdiction and the same has been same has been disapproved by the Supreme Court in *Hamad Hasan*¹ and *Arif Fareed*².

Guardian & Wards application No.4 of 2019 was filed by a mother before Guardian Court-I Tando Allahyar seeking to be appointed as guardian of her minor children. Same was allowed vide order dated 22.10.2019. The Petitioner challenged the order in Guardian Appeal 02 of 2019, however, same was dismissed by the learned District Judge Tando Allahyar vide order 26.03.2021. It is contended that since no further provision of appeal is available to the petitioner, hence, this Court ought to assume jurisdiction and decide *the question of title to some immovable property* in writ jurisdiction.

It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided³, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law⁴ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned judgments are well reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that they could not have been rested upon the rationale relied upon. In so far as the plea for calling for and / or appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard⁵.

The petitioner remained at liberty to agitate any question of title to any immovable property by initiating appropriate proceedings in respect thereof, however, no case could be made out to assert any such claim in the guardianship proceedings. The issues framed by the court of first instance were also considered and it is demonstrated therefrom that no adversarial question of title to land was ever moot therein.

¹Per Ayesha A. Malik J in *M. Hamad Hassan vs. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

²Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

³Per Ijaz ul Ahsan J in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as PLD 2021 Supreme Court 391.

⁴Per Faqir Muhammad Khokhar J. in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.

⁵2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

This petition *prima facie* unjustifiably assails the concurrent findings of the statutory hierarchy in the writ jurisdiction of this Court; the same has been disapproved by the Supreme Court in *Hamad Hasan*⁶ and earlier similar views were also expounded in *Arif Fareed*⁷. Therefore, in *mutatis mutandis* application of the reasoning and ratio illumined, this petition is found to be misconceived, hence, dismissed with listed application.

Judge

A.Rasheed/stenographer

⁶Per Ayesha A. Malik J in *M. Hamad Hassan vs. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

⁷Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.