

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-226 of 2024
(Lachhman Das Vs. Seth Harchand Rai & others)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before;
Adnan-ul-Karim Memon, J
Amjad Ali Bohio, J

Date of hearing & Order 26.08.2024

Mr. Ajay, advocate for the petitioner
Mr. Ayaz Ali Rajpar, A.A.G Sindh a/w Assistant Commissioner &
Mukhtiarkar, Taluka Mirpurkhas.
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ORDER

Adnan-ul-Karim Memon, J. The petitioner Lachhman Das, through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeks annulment of the impugned Order dated 16-08-2016 passed by learned District Judge, Mirpurkhas. An excerpt of the order is reproduced as under:-

“It is the claim of the applicants that, the suit premises is the property of the school by way of Resolution No. 2618 dated 3rd April, 1925 of Education Department Government of Bombay. It was the time when the Sindh was said to be part of Bombay. If it was so, then the applicants were under lawful obligation to have been heard before passing of judgment and decree by the learned trial Court, which is said to be a collusive one. The applicants have not been heard in that suit and then on coming to know of such judgment and decree, they filed an application U/S 12(2) of the CPC, therein were framed issues on point of cause of action and limitation by learned trial Court, ignoring the fact that; such application calls for its adjudication on point of fraud, misrepresentation of the facts and/or jurisdiction. No issue was framed on point of fraud or misrepresentation of the facts by the learned trial Court, as was alleged by the applicants in their application. In the absence of such issues the dismissal of the application of the applicants on point of the cause of action alone, that too without recording evidence of either of the party was un-justified, such order of learned trial Court could not be sustained

In view of above, the impugned order is set aside, learned trial Court is directed to re-caste the issues on application U/s 12 (2) CPC of the applicants by taking the above observation into consideration and then to provide a fair chance to all the concerned to lead their respective evidence on issues which are to framed so and then to decide such application on merits in accordance with law. The case law which is relied upon by learned counsel for the respondents being on distinguishable facts is hardly got a relevance with the controversy involved in the instant litigation.

The instant revision application is disposed of in the above terms with no order as to cost.”

2. Petitioner (landlord) claims ownership of the building through inheritance on the premise that the building was originally granted to

Dewan Tahal Ram by the government in 1928. Tahal Ram agreed to lease the building to the District Local Board Tharparkar for a school in 1934. Ownership of the building is transferred through inheritance to the petitioner. Rent disputes arose between the petitioner and the tenants. The petitioner filed lawsuits to collect rent and evict tenants who violated lease agreements. Tenants (respondents 6, 7, and 8) challenged the petitioner's ownership through an application in 2014. The application was dismissed by a lower court but allowed on appeal in 2016.

3. Learned counsel for the petitioner argued that the petitioner is the rightful owner of the building through inheritance. He further submitted that tenants have acknowledged ownership and paid rent in the past. He further submitted that the application challenging ownership is frivolous and filed to avoid rent payments. Learned counsel added that the appellate court allowed an application of respondents without considering documents not presented in the lower court. Learned counsel emphasized that tenants who were/are not parties to the original suit proceedings challenged the ownership of the petitioner without lawful justification by invoking the provision of section 12 (2) CPC and the appellate court ordered to provide a fair chance to all the concerned to lead their respective evidence on issues which are to be framed so and then to decide such application on merits under law. He prayed for a reversal of the appellate court's order by maintaining the lower court's decision.

4. Learned AAG has supported the impugned order and prayed for the dismissal of the instant petition.

5. The Assistant Commissioner present in court submits that the land was initially owned by Tahilram Basarmal, who sold it to Herchand Rai and Dhanrajmal in 1942. He added that the City Survey Nos. 757 to 760 were merged into City Survey No. 756 and the same land was transferred to Lachmandas in 1981 due to a Court decree, now the land is currently in possession of the Education Department and is used for the Government Boys Shah Waliullah High School.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. The respondent government claims that the suit premises belong to the school due to a 1925 resolution. Learned AAG argued that the Government of Sindh was not heard by the trial court as the suit proceedings were collusive. When they came to know about such fraud, the government of Sindh applied Section 12(2) of the CPC. The trial court framed issues related to cause of action and limitation but ignored the respondents' claims of fraud or misrepresentation. The court's dismissal of the application without addressing the fraud or misrepresentation claims and without hearing evidence was unjustified and this was the reason the appellate court set aside the order of the trial court with direction to the trial court to reframe the issues, considering the respondent' claims, and provide a fair opportunity to all parties to present evidence as such the order is perfect does not call for interference at this stage.

8. The respondent government has raised legitimate grounds for challenging the order under Section 12(2) of the CPC. The order, that granted the application, cannot be deemed illegal as it falls within the scope of the statute.

9. This Court's jurisdiction under Article 199 is limited. Generally, if an alternate remedy like an appeal is available, a writ petition cannot be used as a substitute. This rule, while not absolute, regulates the High Court's jurisdiction. The High Court may still exercise its constitutional jurisdiction in exceptional cases, such as when the impugned order is void or passed without jurisdiction. However, in the present case, the matter between the parties needs to be resolved and the final decision is to be made by the trial court therefore interfering at this stage is not called for.

10. This Constitution petition is dismissed with no order as to costs.

JUDGE

JUDGE