

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

R.A No.137 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

1. For orders on office objection
2. For orders on CMA 2049/2024
3. For hearing of main case

18.11.2024

Mr. Muhammad Aamir Qureshi Advocate for Applicant.

The Applicant has preferred the instant Revision Application under Section 115 CPC, seeking to impugn the Order made on 29.03.2024 by the Additional District Judge-II Tando Muhammad Khan, dismissing Civil Appeal No.45/2023 filed by him against the underlying Order made by the Senior Civil Judge-II Tando Muhammad Khan on 21.08.2023, rejecting the plaint of F.C. Suit No.31 of 2023.

As it transpires, the plaint was rejected as F.C. Suit No.87/2021 had earlier been filed by the present Respondent No.1 in respect of the same property and been decreed on 15.07.2022 in view of the admission by one of the Defendants, with the matter having been proceeded *ex parte* as against the present applicant, who then challenged the same through an Application under Section 12(2) CPC, culminating in its dismissal and a subsequent Revision also meeting the same fate. The operative part of the Order of the Appellate Court reads as follows:

“5. The proceedings under section 12(2), C.P.C. are in the nature of a declaratory suit claiming declaration to the effect that a decree passed by a civil court was a result of fraud and misrepresentation. The effect of this amendment i.e. 12(2), CPC is that a civil suit is not competent to seek relief on the ground covered by subsection (2) of section 12 CPC. Here in this case appellant/plaintiff Ubaidullah prior to filing of suit that's plaint was rejected with subject order of instant appeal filed application under section 12(2) CPC before the trial court and challenged the sanctity of order and decree dated 15-07-2022 passed in F.C. Suit No. 87 of 2021 filed by Ghulam Murtaza, the respondent No. 01 herein against him on the plea of fraud and misrepresentation. His application of section 12(2) CPC was dismissed by the trial court with order dated 15-12-2023, he assailed that order through revision application No. 06 of 2024 that was also fixed today and dismissed on merits.”

The correctness of the facts noted by the *fora* below are borne out by paragraph 4 of the plaint filed by the applicant, which reads as follows:

“4. That the plaintiff came to know about the impugned order and decree passed in F.C.Suit No:87 of 2021 on 19-12-2022 when the Revenue officials along with police came at the suit land and tried to dispossess the plaintiff from the suit land where the Revenue officials disclosed that this Honourable court has issued writ of Possession regarding the suit land. Thereafter the plaintiff through his advocate perused the file of F.C.Suit No:87 of 2021 and came into the knowledge of impugned order and decree dt:15-7-2022 and Registered sale deed bearing Reg: No:840 dt:18-5-2020 obtained by the defendant No:1 in collusion with defendant No:2 and Revenue officials through fraud and misrepresentation of facts by giving wrong and incorrect address of plaintiff as the plaintiff is illiterate person and he does not read newspaper and all modes of service were not applied to the correct address of the plaintiff hence had no knowledge of that suit and the defendant No:1 illegally and fraudulently succeeded in obtaining the order and decree dt:18-5-2022 in the absence of plaintiff. Therefore, the plaintiff after coming to know about such fraud moved/filed the application U/S 12(2) R/W Section 151 CPC before this Honourable court on 22-12-2022 which is pending.”

Under the circumstances, no case for interference stands made out, with the Revision Application being found to be misconceived and being dismissed *in limine* accordingly along with the other miscellaneous application.

JUDGE