

THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry &
Mr. Justice Abdul Mobeen Lakho.

Const. Petition No. D - 5968 of 2024

Const. Petition No. D - 5969 of 2024

Petitioner : Muhammad Kashif son of Ghulam
Muhammad [*In both petitions*] through
Mr. Muhammad Shafique Malik,
Advocate.

Date of hearing : 25-11-2024

Date of order : 25-11-2024

ORDER

Adnan Iqbal Chaudhry J. - C.P. No. D-5968/2024 emanates from an order allowing an Execution Application to enforce a decree for possession of immovable property. C.P. No. D-5969/2024 emanates from an order dismissing the Petitioner's application under section 12(2) CPC for setting-aside the same decree. Therefore, the fate of C.P. No. D-5968/2024 is tied to C.P. No. D-5969/2024.

2. The facts are that Suit No. 625/2017 filed by the Respondent No.1 (plaintiff) against the Respondent No.2 (defendant) was decreed on 29-03-2018 by the Senior Civil Judge-III Malir, declaring that the Respondent No.1 (plaintiff) was owner of House No. K-278, admeasuring 56 sq. yards, Survey No. 433, Deh Landhi, Karachi, and for recovering possession of a shop thereon from the Respondent No.2. Though Respondent No.2 entered appearance in the suit, he did not file written statement and thus the suit proceeded *ex-parte*. The suit was decreed on the strength of a registered sale deed dated 26-11-2014 held by the Respondent No.1, and on the record of a failed suit filed by the Respondent No.2 against the Respondent No.1 in respect of the same property.

3. The Petitioner emerged on 13.03.2019 with an application under section 12(2) CPC during execution of the impugned decree. He alleged that House No. K-278 was in fact Plot No. 374-C, situated in a *katchi abadi* managed by the KMC, called Mohalla Khulabad, Landhi, Karachi, which had been leased to him by the KMC; that he was in possession thereof since his forefathers; and therefore, the decree was obtained by fraud and misrepresentation. The trial Court framed issues, recorded evidence, but did not find that the decree was obtained by fraud or misrepresentation. The application under section 12(2) CPC was therefore dismissed *vide* order dated 08-10-2024. As a result, the Execution Application was allowed on 17-10-2024. Against both orders, the Petitioner preferred Revision Applications (Civil Revision Nos. 73 & 74 of 2024) before the District Judge, Malir, which too were dismissed by separate orders dated 21-11-2024; hence these petitions.

4. To determine whether House No. K-278 decreed in favor of the Respondent No.1, and Plot No. 374-C claimed by the Petitioner were the same plot of land, the trial Court appointed a local commission, which confirmed that the Petitioner was claiming the same plot as the Respondent No.1 (plaintiff) but under a different number. Upon the evidence, the findings of the learned trial Court were as follows:

“..... As per the Applicant/ Intervenor (Petitioner), the suit property is situated in Katchi Abadi and he has obtained lease in respect of the suit property from KMC but there is nothing on record to show that the plot is located in the area of KMC. The record shows that the Revenue Officials and KMC has submitted certain documents to the Commissioner which are available on record show that the suit property was initially allotted to one Ruqiya Bibi through Transfer Order executed by the Deputy Settlement Commissioner and Entry No.234 was kept in the relevant revenue register. As per KMC report, the KMC has executed the lease in respect of Plot No. 374/C in favour of Muhammad Kashif (Petitioner) on the basis of documentary evidence submitted by him. They further stated that the Plaintiff/Muhammad Amir Qureshi filed objections and stated to them that the present suit was pending before this Court, therefore, they have restricted Sub-Registrar from issuance of lease document. The record further shows that the Applicant/intervenor has submitted Sub-Registrar receipt at Exh: A-1/2 and tried to get lease in respect of the suit property on 26.11.2018 whereas, the Plaintiff has filed the instant suit in respect of the suit property on 12.08.2017 and the same was pending before this Court at that time. The Applicant has admitted in the cross examination that the

defendant/Danish is nephew of the Applicant/ Intervenor. It has also brought on record that the said Danish had earlier filed a Civil Suit No.74 of 2016 for permanent injunction against the Plaintiff in respect of the present suit property which was dismissed. Therefore, it cannot be ruled out the Applicant/Intervenor in collusion with the defendant has filed the present application. Moreover, the Applicant/ Intervenor further claimed that he is in possession of the suit property since 1985 and the Plaintiff was never remained in possession of the suit property but the Applicant/ Intervenor failed to produce any documentary in respect of the suit property to show that he was in possession of the suit property."

5. Learned counsel for the Petitioner submits that the finding that the plot did not fall in a *katchi abadi* under the KMC was incorrect as the Respondent No.1 himself had produced a lease of regularization issued by the KMC of Plot No. 374-C to the father of the Respondent No.1 in 1998, which then also belied his sale deed in 2014. Nevertheless, the fact of the matter remained that the burden was on the Petitioner to show that he was in possession of the plot at the time the Respondent No.1 had filed suit for the same. Even though the Petitioner claimed to be in possession of the plot from his forefathers, the documents produced by him, which comprised of a challan of ground rent and survey report issued by the KMC, and a receipt of registration fee for a lease, were all issued in November 2018, *i.e.* after the impugned decree dated 29-03-2018 had been passed in favor of the Respondent No.1. The alleged lease relied upon by the Petitioner was never registered. It is also not denied by the Petitioner that he was related to the Respondent No.2 against whom the decree was passed. Therefore, the finding that the Petitioner had come on the scene later only to frustrate the decree, was based on cogent evidence.

6. In view of the foregoing, where the Petitioner was unable to prove before the trial Court that the impugned decree was obtained by fraud or misrepresentation, we see no reason to interfere in writ jurisdiction. Both petitions are therefore dismissed *in limine*.

JUDGE

JUDGE

SHABAN*