

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Constitutional Petition No. D-2230 of 2010

Present:

Justice Zafar Ahmed Rajput
Justice Khadim Hussain Tunio

Petitioners : Mst. Irshad wife of Gul Muhammad Pathan, through Mr. Ghulam Dastagir Shahani, advocate.

Respondents : Zaman Shah s/o Ahmed Shah & six
No.1 to 7 others, through Mr. Bashir Ahmed Dargahi, advocate

Date of Hearing : 15.11.2017
Date of Order : 14.02.2018

ORDER

KHADIM HUSSAIN TUNIO-J:- The petitioner/plaintiff, through her attorney/son Imam Bakhsh, filed a civil suit bearing No. 25 of 1991 before the Court of Senior Civil Judge, Shikarpur against the respondents/defendants for declaration, possession and permanent injunction, claiming to be the exclusive owner of land bearing Survey Nos. 53, 54, 110, 114 and 115, admeasuring 20-8 acres, situated in Deh & Taluka Garhi Yaseen, Distract Shikarpur ("the Suit Land"), being inherited from her deceased father, which was also mutated in the record of rights in her favour. It was also alleged that since the petitioner/plaintiff that was a *Parida Nashin* lady, the suit land was looked after by her husband, the respondent/ defendant No.8. It was the case of the petitioner/plaintiff that in the year 1987, the respondents/defendant

No.1 to 7 illegally and forcibly occupied the suit land claiming to have been purchased from the petitioner/ plaintiff and her husband, the respondent/defendant No.8. The respondents/defendant No.1 to 7 contested the suit by filing their joint written statement on 18.10.1992, stating therein that the suit land was already in their possession as tenants and, subsequently, they purchased the same from the petitioner/plaintiff through respondent/defendant No.8 under separate sale agreements. The learned trial Court, after framing of issues and recoding pro and contra evidence of the parties decreed the suit in favour of petitioner/ plaintiff, vide judgment and decree dated 21.09.2005 and 26.09.2005, respectively. Against that, the respondent/defendant No.1 preferred First Appeal No. 09 of 2005, which was heard and dismissed by the learned IInd Addl. Distract Judge, Shikarpur, vide judgment dated 10.06.2009, which was subsequently, impugned by the respondent /defendant No.1 before this Court in Civil Revision No. 25 of 2009; which was allowed by the Single Judge of this Court and, setting aside the judgments passed by the two Courts below, dismissed the suit of the petitioner/plaintiff vide order, dated 18.01.2010, by observing that the plaint was filed by the petitioner/plaintiff through her attorney Imam Bakhsh and the power of attorney annexed with the plaint was a special power of attorney and conferred power on the attorney only in respect of suit of Badal v. Province of Sindh through Deputy Commissioner Shikarpur and others and there was no power whatsoever conferred in respect of any other litigation and institution of any proceedings. It is against that order, that the instant Constitutional Petition has been preferred by the petitioner/defendant No.1.

2. On 16.04.2010, when this petition was presented, the office raised objections on its maintainability as the impugned order was passed by the Single Judge of this Court under Civil Revisional jurisdiction, which was replied by the counsel that since no other efficacious, adequate and speedy remedy was available, the petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is competent.

3. Learned counsel for petitioner, while admitting that instant Constitutional petition is not maintainable against the impugned order passed by the Single Judge of this Court exercising civil revisional jurisdiction as the remedy lies before the Honourable Supreme Court of Pakistan in terms of Article 185 of the Constitution of Islamic republic of Pakistan, 1973, has contended that the impugned order was passed without considering the General Power of Attorney available on record; hence the petitioner being aggrieved by the impugned order filed this petition, which could be treated as a review application. He has further contended that the law permits conversion of one proceeding into another kind of proceedings in order to do substantial justice. In support of his contentions, the learned counsel has relied upon the case of Capital Development Authority, Islamabad through its chairman vs. Khuda Bukhsh and 5 others (1994 SCMR 771) and Mst. Arfa Arif vs. Mst. Kulsoom Naqvi (PLD 2000 Karachi 31).

4. Conversely, the learned counsel for respondents while supporting impugned order has maintained that the suit was filed by the petitioner through an unauthorized person and the circumstances of the case does not justify the conversion of this petition into a civil review application.

5. Heard the learned counsel for the parties and perused the material available on record.

6. It is an admitted position that the instant petition is not maintainable in law. The only question requires our consideration is that whether the circumstances of the case justify the conversion of this petition into a civil review application, under Order XLVII C.P.C. In this regard, the only contention of the learned counsel for the petitioner is that *the impugned order was passed without considering the General Power of Attorney available on record*. The record reveals that the learned Single Judge of this Court in his order has observed, by reproducing the contents of the special power of attorney annexed to the plaint, that the plaintiff conferred power on her attorney only in respect of suit of Badal v. Province of Sindh through Deputy Commissioner Shikarpur and others and there was no power whatsoever conferred in respect of any other litigation and institution of any proceedings. The learned Single Judge also observed that the respondent No.1 had taken specific plea in para No.3 of his appeal that the power of attorney did not authorize the attorney to institute any proceedings but no finding was recorded on this point by the Appellate Court. Hence, the contention of learned counsel for the petitioner that the impugned order was passed without considering the General Power of Attorney being contrary to the facts and record is bereft of reasons. We are, therefore, of the view that there appears no justification to convert this petition into a civil review application. The case-law referred to by the learned counsel for petitioner being on distinguishable facts is not applicable in the present case.

7. For what has been discussed above, this Const. petition being not maintainable in law is dismissed, accordingly, with no order as to costs.

