Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No.5365/2024
[Sabir Hussain vs. Abdul Hmeed and others]

Date	Order with signature of Judge

PRESENT:
Mr. Justice Zafar Ahmed Rajput
Mr. Justice Arshad Hussain Khan

Petitioner — Through Mr. Zakir Moosa, Advocate

Date of Hearing: 29.01.2025
Date of Order 29.01.2025

ARSHAD HUSSAIN KHAN, J: The petitioner through instant constitutional petition has challenged the order dated **20.09.2024**, passed by learned Additional District & Sessions Judge-IX Karachi [West] in Civil Revision Application No.33/2024, filed by the petitioner, and the judgment & decree dated **06.02.2024**, passed by VIth Senior Civil Judge Karachi [West] in Civil Suit No.2345/2022 whereby the said suit was dismissed.

2. Succinctly, the facts giving rise to the present constitutional petition is that the petitioner (Sabir Hussain) claims to have purchased the property viz. plot No.948, admeasuring 310 sq. yds., situated at Yousuf Goth, Baldia Town, Karachi (West), [the "**Suit property**"] from respondent No.2 (Muhammad Anwar) through a sale agreement dated 10.05.2022 and was put into the possession on the same day. Thereafter, he raised construction of boundary wall and installed iron gate on the suit property. However, when visited the property on 05.6.2022, he came to know that respondent No.1 illegally occupied the suit property. The petitioner though reported the matter to the local police and other notables of the area, however, the efforts did not yield fruits. Consequently, on 10.11.2022 the petitioner filed civil suit No.2345/2022 against the respondents/defendants under section 9 of the Specific Relief Act 1877 for Possession of Recovery of the suit Property before learned VIth Sr. Civil Judge, West, Karachi.

3. Upon notice of the case though Vakalatnama was filed on behalf of all the respondents/defendants, however, written statements were only

filed on behalf of defendants No.1 and 3. Whereas respondent/defendants No.2 was debarred from filing written statement. The stance of respondent/ defendant No.1 in nutshell was that he purchased the property from Mst. Murwared in the year 2007 and thereafter on the bases of the possession, on 26.11.2012 the suit property was allotted to him, vide Allotment Letter/Sanad issued by the Government of Sindh, Board of Revenue, Land Utilization Department and since then after raising the construction he was enjoying the possession. It is also the stance of the respondent that he has no concern if the plaintiff entered into any agreement with defendant No.2 and 3 and further if any alleged incident of dispossession took place. The defendant No.3, however, supported the stance of the plaintiff. Subsequently, the trial court on the divergent pleadings framed the issues, recorded the evidence of the parties and after hearing learned counsel for the parties dismissed the suit, vide judgment and decree dated 06.02.2024. Thereafter, the petitioner preferred Civil Revision Application No.33 of 2024 against the said judgment before IXth Additional District Judge Karachi [West] which was also dismissed, vide order dated 20.09.2024. The Petitioner impugned both the above judgments/orders in the present petition.

4. Learned counsel for the petitioner has contended that the impugned orders of both the courts below are bad in law as well as on the facts of the case. He has further contended that both the courts below while passing the impugned orders have failed to consider the evidence produced by the petitioner before the trial court. It is also argued that the courts below have also failed to consider the fact that the petitioner is lawful purchaser. Lastly, he has contended that the impugned orders are based on misreading and non-reading of the facts as such not sustainable and are liable to be set aside.

5. We have heard learned counsel for the petitioner and perused the record.

Section 9 of the Specific Relief Act 1877, provides that *if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him, may by suit recover possession thereof, notwithstanding any other title that may be set up in such suit*. The prerequisites of section 9 *ibid* are that:

i. The person suing must have been dispossessed;
ii. Such dispossession must be of immovable property;
iii. Such dispossession should be without consent and should be otherwise in due course of law; and
iv. The suit is to be brought within a period of six months from the date of dispossession.

It is by now well settled that the question of title either of the plaintiff or defendant cannot be raised or gone into in order to seek relief u/s 9 *ibid*[1]. Besides, the proceedings under the provisions of section 9 of the Act of 1877 do not constitute a bar against any of the parties suing to establish his title over the property[2]. The main object of this provision of law is to discourage the forcible dispossession and to provide quicker recovery of possession.

6 In the instant case, since the dispossession is alleged by the petitioner/plaintiff, as such, the initial burden was upon him to produce evidence that he was in possession of the property prior to the alleged incident of his illegal dispossession, however, he failed to discharge such burden and also failed to produce confidence inspiring evidence. In support of his stance though he produced sale agreement entered into between him and respondent/ defendant No.2, however, he neither produced any witness of the said sale transaction nor any witness of locality to corroborate that the petitioner was ever in possession of the suit property or raised any construction thereat. Further respondent No.2 who alleged to have sold the suit property neither appeared in the witness box nor any thing is available on the record to show that he was the owner of the property. On the contrary, respondent No.1 produced the evidence which supported his stance in the case. He produced sale agreement, allotment/Sanad issued by Government of Sindh, B.O.R. Land Utilization Depart, police enquiry report conducted under the directions of the concerned S.S.P. upon the complaint of respondent No.1 against the petitioner, which fully support the stance of respondent No.1.

Record also shows that the Nazir of the court pursuant to the directions of the trail court also carried out inspection of the site and

[1] Late Mst. Majeedan through Legal Heirs and another v. Late Muhammad Naseem through Legal Heirs and another [2001 SCMR 345].
[2] Canal View Cooperative Housing Society v. Javed Iqbal and another [PLD 2004 SC 20]

furnished his report alongwith photographs and statements of people of area/locality, which also corroborate the stance of respondent No.1.

7. From perusal of the impugned orders, it appears that the trial court has framed all the essential issues; recorded the evidence, and while giving its comprehensive findings on each and every issue has rightly dismissed the suit of the petitioner/plaintiff. Revisional court also affirmed the findings of the lower court. The petitioner has assailed the concurrent findings of facts arrived at by both the courts below through the impugned judgments by filing instant petition, and it is settled law that constitution petition does not lie against concurrent findings of facts.

8. As far as the contention of learned counsel regarding misreading and non-reading is concerned, learned counsel for the petitioner has assailed both the orders but he has not identified any misreading and non-reading of evidence in coming to the conclusion by both the courts below, not a single sentence from the evidence of either side has been referred to by learned counsel to assert that the two judgments suffer from any illegality on account of misreading and/or non-reading of evidence.

9. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice[3]. It may be observed 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 provided[4], and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled 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 supreme Court of Pakistan in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [2023 SCMR 1434]

[3] Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

[4] Shajar Islam v.Muhammad Siddiqu [PLD 2007 SC 45] & Arif Fareed v.Bibi Sara and others [2023 SCMR 413].

while dilatating scope of the constitutional jurisdiction of High Court has observed as under:

> "……if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by reevaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms."

10. In the instant case, the two courts below have given concurrent findings of facts against the petitioner, against which the petitioner has not been able to bring on record any concrete material or evidence, whereby, such findings could be termed as perverse or having a jurisdictional defect or based on misreading of fact. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated. The judgments impugned herein, in our view, are well reasoned and based on the evidence on the record and sound principles of law. In the circumstances, no case for interference is made out, hence the present constitutional was dismissed in limine by means short order passed on 29.01.2025 and above are the reasons thereof.

JUDGE

JUDGE

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