

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

Date	Order with signature of the Judge
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Present:

**Mr. Justice Muhammad Iqbal Kalhoro.**  
**Mr. Justice Muhammad Osman Ali Hadi.**

C.P.No.D-2230 of 2016

Hidayatullah & another ..... Petitioners

Vs.

1<sup>st</sup> ADJ Central at Karachi & others ..... Respondents.

**04.03.2025.**

Mr. Muhammad Ramzan, Advocates for petitioners  
Syed Hussain Shah, AAG.  
None present for respondents.

**ORDER**

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**MUHAMMAD IQBAL KALHORO J:** This petition impugns an order passed by learned 1<sup>st</sup> Additional District & Sessions Judge, Karachi Central dismissing Civil Revision No.41/2015 filed by petitioners against an order dated 11.08.20215 passed by learned VI-Senior Civil Judge, Karachi Central dismissing an application u/s 12(2) r/w section 151 CPC moved in Civil suit No.588/2009 re-Islam Zada & others Vs. Hidayatullah & others.

2. As per record, respondents filed a civil suit for declaration, possession, mesne profits and permanent injunction against petitioners which was decreed exparte vide judgment and decree dated 04.11.2010 and 24.11.2010. The case of the respondents was that their late father had purchased suit property viz. Plot/House No.E-291, new No.E-95, measuring 260 Sq. yds situated Block-R Katchiabadi North Nazimabad from one Syed Alam on 05.05.1969. He handed over a portion of the property to father of Petitioners/defendants for his residence without any rent or profit with an understanding to return the same as and when required. Thereafter, father of respondents/plaintiffs went to Iran. After some time, when he came to Pakistan, he found that apart from petitioners/defendants, some other persons were in occupation of the property. He asked them to vacate but they refused, hence the suit.

3. Applicant No.1/defendant No.1 after service appeared but failed to file a written statement. The remaining respondents /defendants were served but they failed to put up their appearance and file their written statement. They were declared exparte and the suit was finally decreed exparte. The record

further reflects that after *ex parte* judgment and decree, applicants filed applications u/s 21 rule 58 r/w section 151 CPC and u/s 18 rule 18 r/w Order 26 rule 9 CPC. First application was dismissed, second application was however, allowed. Against the said order, CMA and Civil Revision were filed but the same were also dismissed. Finally the petitioners filed an application u/s 12(2) CPC which was dismissed and subsequently the civil revision challenging the same has been dismissed by impugned order.

4. Learned counsel for petitioners has argued that suit was filed against a dead person, hence it was not maintainable; the summons were not properly served upon the petitioners, hence the impugned orders are bad in law and liable to be set aside.

5. On the other hand, learned AAG has supported the impugned orders.

6. We have heard the parties and perused the impugned order. Learned two courts below have attended to all the relevant facts and have traced entire history of service upon the petitioners, their failure to contest the suit either by filing a written statement or confronting the plaintiffs on merits. Findings of the courts below are supported by the reasons and the relevant evidence establishing service on the petitioners/defendants. It is recorded that an advocate had appeared on behalf petitioner/defendant No.1 and filed his power. But thereafter, neither he appeared nor filed any written statement.

7. Against remaining petitioners/defendants, summons were issued and served, which fact is supported by the bailiff's report; yet pasting was ordered which was complied with. Finally, the publication by way of substitute service was made on petitioners/defendants, yet they failed to respond and record their appearance in the court. After *ex parte* judgment and decree, petitioners filed applications for setting aside the same but they failed to nudge the court and get a relief in this respect. It is clear that in the wake of *ex parte* judgment and decree, various applications were filed by plaintiffs but in vain, as they failed to persuade the court about genuineness of their claim. Finally, the petitioners filed an application u/s 12(2) CPC pleading fraud and misrepresentation but failed to establish the same through any *prima facie* evidence or to explain that why the defendants did not appear before the court after having been served, particularly petitioner/defendant No.1 on whose behalf some advocate had appeared and filed power.

8. Nothing in conflict with the same has been presented here to form a different opinion. Therefore, We do not find any illegality in the impugned

orders. Besides, the exercise of constitutional jurisdiction is discretionary in nature, unless some illegality on the face of record is pointed out, the discretion cannot be exercised in favour of petitioners. Learned counsel except pleading that the suit was filed against a dead person, regarding which he failed to file any proof, has pleaded nothing to attract discretionary jurisdiction in his favour. More so, no material illegality in the impugned orders has been pointed out to justify exercise of constitutional jurisdiction in favour of the petitioners. We, therefore, find no merits in this petition and accordingly dismiss it.

The petition stands disposed of in the above terms alongwith pending applications.

JUDGE

JUDGE

A.K