

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A.No.64 of 1992

DATE ORDER WITH SIGNATURE OF JUDGE

For orders on CMA-2453/2022

27.03.2025.

Mr. Abdul Hameed Bajwa, advocate for respondent No.4's legal heir Mumtaz Ali/applicant.

Mr. Muhammad Yousif Rahpoto, A.A.G.

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It is contended by learned counsel for the applicant that he has filed application under Section 12(2) CPC against the order dated 08.05.2009 whereby an application under Order-23 of Rule-1 CPC has been disposed of. The counsel has shown his serious concern that the compromise was neither signed nor instructed by respondent No.4(iv) namely Mumtaz Ali son of Mathino Shar, as such he has filed application u/s 12(2) CPC to set-aside the order dated 08.05.2009 whereby compromise has been effected and rights has been created amongs the parties. When the counsel is confronted with the order dated 08.05.2009 that the Court has not approved the compromise but the Revision Application was disposed of in terms of under Order-23 Rule-1 CPC, he could not satisfy the Court. For the sake of convenience, Order 23 Rule-1 & 3 CPC is reproduced as under:-

"1. Withdrawal of suit or abandonment of part of claim. (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as a Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

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3. Compromise of suit. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit."

Also, the contents of application u/o 23 Rule 1 CPC filed by petitioner No.2 bearing CMA-1478/2006 is reproduced hereunder:-

"It is prayed that this Hon'ble Court may be pleased to dispose of above Revision on the following terms and conditions of compromise reached between the applicant and Respondents, No.4.

1. That the Respondent No.4, (I to VI) being the L.Rs of Respondent No.4, Mathino (Original grantee of the (disputed land) have agreed that the land bearing S.No: 1524, 1525, 1526, on the northern side of the water course No. Ak 1, deh Akro-1 Taluka Newabshah, will be owned by the L.Rs of deceased Mathino and as well an area whatever of S.No.1527 on the northern side of the said water course will also be owned by the L.Rs: of deceased respondent No.4, and whatever area of S.No. 1527 on the southern side of the said water course will be owned by the petitioners, and both the parties will continue their possession thereon.

2. That the applicants can get restored the old S.No. 1454 and 1455, which are assigned the new S.Nos: 1528 and 1829 in the name of Applicant Maqsood Ahmed".

It may be observed that although in order dated 08.05.2009 it is written that application is allowed as prayed but the disposal order make it clear that it has been allowed under Order XXIII Rule-1 CPC and not as compromise under Rule-3 of Order XXII CPC.

Looking to the above facts and circumstances of the case, the instant application is dismissed.

JUDGE