

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.S-529 of 2025

[Abdul Samad & others v. Sher Muhammad & others]

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objections.
2. For hearing of main case.

18.05.2026.

Mr. Abdul Samad, Advocate for Petitioners.

ORDER

Adnan Iqbal Chaudhry, J.– Petitioners have challenged order dated 09.10.2023 [impugned order] passed by the Additional District Judge, Shaheed Benazirabad allowing Civil Revision No. 26/2022 filed by Respondent No.1, thereby allowing his application under Order I Rule 10(2) CPC for striking him off as a defendant in Suit No. 60/2021 filed by Petitioners.

2. Before the trial Court, the ground taken by Respondent No.1 (defendant No.4) for striking him off under Order I Rule 10(2) CPC was that he was not a necessary party to the suit for possession filed by the Petitioners as he was not in possession of the suit property. That application was dismissed by the trial Court by observing that the Petitioners/plaintiffs had pleaded that defendant No.4 (Respondent No.1) was instrumental in their dispossession from the suit property in collusion with the other defendants. However, by the impugned order passed on the Revision Application of Respondent No.1 (defendant No.4), the learned Additional District Judge struck him off on the ground that he did not claim any right or interest in the suit property.

3. In the case of *MCB Bank Ltd. v. Sajida Naqi Riaz* (2019 CLC 1371) it was observed by a Division Bench of this Court that:

“Under Sub-Rule (2) of Rule 10 of Order I CPC, the power of the Court to strike out parties, be that on an application or suo moto, is circumscribed by the words “improperly joined”. Therefore, the purpose of an order for striking out parties under Order I Rule 10(2) CPC is primarily to address mis-joinder of parties and that too as a step towards adjudication, and not to be the formal expression of adjudication by itself, which is to be done by way of a decree.”

In other words, the provision for striking-off a party in Order I Rule 10(2) CPC is not intended to be used for summary dismissal of a suit against a defendant.

4. In the subject suit, it is pleaded by the Petitioners/plaintiffs that Respondent No.1 (defendant No.4) was instrumental in their dispossession from the suit property. In that regard, they have also prayed for damages against him. These averments have yet to be tested by evidence. Therefore, the fact that the Respondent No.1 did not claim any right or interest in the suit property, was besides the point at this stage.

5. For the foregoing reasons, the petition is allowed. The impugned order dated 09.10.2023 passed by the Additional District Judge-IV, Shaheed Benazirabad in Civil Revision No.26/2022, is set-aside, and the order dated 31.05.2022 passed by the learned trial Court in Suit No.60 of 2021 is restored.

Petition is disposed.

JUDGE

Hafiz Fahad