Form No: HCJD/C-121

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.2150 of 2021

Muhammad Naeem Akhtar Malik and others

Versus

Haji Azad Khan and others.

Petitioners by:	Mr. Muhammad Khizar Ur Rashid, Advocate.
Respondents by:	M/s Syed Sibtain Raza Bukahri and Muhammad Sarfaraz Khan, Advocates on behalf of respondents Nos. 1, 6 & 7. M/s Ghulam Fareed Ch. and Farah Naz Awan on behalf of respondents Nos. 8 & 9.
Date of Decision:	14.07.2021.

TARIQ MEHMOOD JAHANGIRI, J: The petitioners have filed the instant writ petition with the following prayer:-

> ***"In the above circumstances, it is therefore, most humbly prayed that the writ petition may kindly be accepted, the impugned orders dated 06.01.2021, 31.03.2021 and 06.01.2021, 19.05.2021 may be kindly modified in terms of the applications of the petitioners and respondents in the interest of justice.***

It is further prayed that the proceedings of the consolidated suits before the trial court may also be stayed / suspended till final disposal of the instant writ petition.

Any other relief, which this Honourable Court may deem fit and proper, may also be awarded".

02. Precisely, the facts necessary for the adjudication of instant writ petition are that five civil suits are pending in the Court of learned Civil Judge 1st Class, Islamabad. Three suits were consolidated vide order dated 06.01.2021, whereas other two suits were also consolidated with the said suits vide order dated 31.03.2021. Description of the properties and the details of the parties etc. have been mentioned in detail in the impugned order dated 19.05.2021.

03. Learned counsel for the petitioners contends that orders of consolidation of the suits are totally against the law and ineffective against rights of the petitioners; suits are amongst different parties, hence the same cannot be consolidated; suit property of each suit is also different but the learned trial Court instead of conducting separate proceedings in the said suits, has consolidated the same; the impugned orders are very harsh and against the spirit of law, resultantly improper conclusion was made, hence

same are liable to be setaside. Learned counsel was asked to point out any illegality in the impugned orders and also provide the judgment of the Hon'ble Supreme Court of Pakistan in support of his contention, the learned counsel sought time for one day but has not provided any judgment of the superior Court in support of his contention

04. Conversely, learned counsel for the respondents Nos. 8 & 9 has controverted the arguments advanced by learned counsel for the petitioners and has stated that no illegality has been pointed out regarding the impugned orders, the same have rightly been passed, as the suit properties and the parties in the suits are almost the same and just in order to avoid the conflicting judgments, the suits have been consolidated and has prayed for dismissal of the instant petition. Learned counsel has relied upon cases reported as ***"PLD 2021 Baluchistan 59", "PLD 2016 Supreme Court 409", "2010 YLR 1430", "2010 YLR 1436" and "2006 SCMR 1262".***

05. Learned counsel for respondents Nos. 1, 6 & 7 has supported the stance rendered by the learned counsel for petitioners but stated that the petitioners

have not challenged the impugned orders for the reason best know to them.

06. Arguments advanced by the learned counsel for the parties have been heard and record has been perused with their able assistance.

07. Perusal of the record reveals that Malik Muhammad Ibrahim filed the suit for declaration and permanent Injunction titled as *"Malik Muhammad Ibrahim Vs. Haji Azad Khan"* on 26.08.2009, wherein he claimed himself to be the owner in possession of property measuring 02 Kanal and 05 Marlas falling in Khasra No. 761 on the basis of exchange mutation No. 2623 and he sought declaration qua his ownership. The suit titled as *"Muhabbat Khan Vs. Muhammad Naeem Akhtar"* is also with respect to the property falling in Khasra No. 761. Since Malik Muhammad Ibrahim has died, therefore, legal heirs of Malik Muhammad Ibrahim were impleaded as defendants. The suit titled as *"Haji Azad Khan Vs. Muhammad Naeem Akhtar & 8 others"* was filed on 21.01.2018, wherein the plaintiff also sought declaration to the extent that he is owner in possession of property measuring 01 Kanal and 08 Marlas falling in Khasra No. 1101/766/770 and land

measuring 05 Kanal and 07 Marlas falling in Khasra No. 761, and legal heirs of Malik Muhammad Ibrahim have been impleaded as defendants No. 1 to 7 in array of defendants. So these three suits were consolidated and the learned counsel for the petitioners has also supported that these three suits have rightly been consolidated.

08. Undeniably, the suits titled as *"Haji Azad Khan Vs. Brig Muhammad Wajid & 18 others"* (suit for partition, declaration and permanent injunction) and *"Haji Azad Khan Vs. Brig. Muhammad Wajid & 5 others"* (suit for declaration and permanent injunction) are with respect to properties falling Khasra No. 1107/771 which is different from Khasra No. 761 under adjudication in the three above mentioned suits but in order to understand the link between these two suits with the above mentioned three suits, it is necessary to go through the assertions made by Brig Muhammad Wajid etc. in their suit titled as *"Brig Muhammad Wajid Vs. Mst. Nasreen Begum & 32 others"* (suit for declaration, possession, recovery of rent and permanent injunction). The plaintiffs (Brig Muhammad Wajid & Abid) have asserted that they are lawful owners of

properties measuring 02 Kanal and 07 Marlas falling in Khasra No. 1107/771 but in the year 2002, the defendant No. 9 (Noor Jehan) / respondent No. 2 transferred land measuring 01 Kanal and 01 Marla through mutation No. 2623 in the name of her brother Muhammad Ibrahim in Khasra No. 771 and further transferred land measuring 14 Marlas in the name of Haji Azad Khan in the same Khasra number. The plaintiffs have specifically prayed for declaration to the effect that mutation No. 2623 dated 30.03.2002 be declared as null and void. So the controversy between the parties lies regarding mutation No. 2623 dated 30.03.2002 and Brig. Muhammad Wajid etc. have impugned the alienation of property vide mutation No. 2623, as well as its subsequent alienation in the name of Haji Azad Khan etc., whereas Haji Azad Khan etc. have sought declaration qua the same alienation in their separate suits, the parties and the properties in the suits are substantially same. When confronted, learned counsel for the petitioners has not raised any argument that what prejudice will be caused to the petitioners from consolidation of the suits.

09. The Hon'ble Supreme Court of Pakistan in a case titled as ***"Zahid Zaman Khan Vs. Khan Afsar" (PLD 2016 SC 409)*** laid down the principles for consolidation of the suits and it was observed as follows:-

> ***"It is settled law that it is the inherent power of the court to consolidate suits and the purpose behind it is to avoid multiplicity of litigation and to prevent abuse of the process of law and court and to avoid conflicting judgments.1 No hard and fast rule forming the basis of consolidation can be definitive and it depends upon the facts and the points of law involved in each and every case, obviously where the court is persuaded that the interests of justice so demand, consolidation can be ordered, provided no prejudice is caused to any litigant and there is no bar in the way of the courts to consolidate the suits"***.

10. Similar observation was made by the apex Court in a case titled as ***"Muhammad Yaqoob Vs. Behram Khan" (2006 SCMR 1262)***, wherein it is held that:

> ***"It is well-settled by a long chain of authorities that the consolidation of the suits can be ordered by the Court in exercise of its inherent powers. The consent of the parties is not the condition precedent for exercise of such powers. The purpose of consolidation is***

to avoid multiplicity of litigation to eliminate award of contradictory judgments and to prevent the abuse of the process of the Court".

11. It is well settled that *certiorari* is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of *certiorari* acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal. Reliance may be made to the following case laws:

(i) In a case titled as ***"Amjad Khan V. Muhammad Irshad (Deceased) through LRs (2020 SCMR 2155)",*** it is held by the Hon'ble Supreme Court that:

"It is by now a settled principle of law that the High Courts must not exercise their constitutional jurisdiction in order to interfere with the discretion exercised by lower courts unless the

same suffers from jurisdictional, factual or legal errors. In other words, such interference would be justified in cases where the impugned order has been passed without jurisdiction or is based on misreading or non-reading of evidence, or is not in accordance with the law. If none of these errors is present, the High Courts must not exercise their constitutional jurisdiction to interfere with the findings of lower courts merely because it reached a different conclusion as to the controversy than the latter. In this regard, reference can be made to a collective reading of Mst. Mobin Fatima V. Muhammad Yamin (PLD 2006 SC 214) and Nadira Shahzad V. Mubashir Ahmad (1995 SCMR 1419)."

(ii) In a case titled as ***"President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260)",*** it is held by the Hon'ble Supreme Court that:

"It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not

available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision."

12. Upshot of the above discussion is that consolidation of suits is just in order to avoid the contradictory judgments and for better administration of justice.

13. In view of above, no illegality has been found in the impugned orders, hence the instant writ petition is **dismissed being meritless**.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-