ORDER-SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Civil Revision No. 162 of 2016
Baba Sakhi Syed Muzamil Shah
Versus
Irfan Shakoor Chaudhry etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	20.02.2020	Mr. Nabeel Tahir Mirza Advocate for petitioner, Malik Qamar Afzal ASC for respondent No.1, Ms. Wajiha Pervez Advocate for respondents 2 to 4/ CDA.

Through the instant civil revision petition, petitioner assails orders dated 26.03.2016 & 07.04.2016 passed by learned Civil Judge 1st Class and learned ADJ, Islamabad-West, whereby application under Order XXXIX, Rules 1&2 CPC had been dismissed.

2. Precisely, facts relevant for disposal of instant civil revision petition are that petitioner/plaintiff filed a suit for declaration & permanent injunction to the effect that defendant No.1/respondent No.1 in connivance with defendants 2 to 4/respondents 2 to 4 started construction over the area, de-awarded by CDA only for the shrine and graveyard, measuring 216-Kanal, 11-Marlas, situated in revenue estate of village Bheka Syedan Islamabad. Along-with the suit, an application under Order XXXIX, Rules 1&2 CPC had also been filed which was duly contested by the respondents/defendants. The learned Trial Court after hearing both the sides, dismissed the application vide order dated 26.3.2016 while appeal against the same order also met the same fate vide order dated 7.4.2016, hence instant civil revision petition.

3. Learned counsel for petitioner contends that respondent No.1 in connivance with respondents 2 to 4 i.e. CDA, in violation of their own orders, constructed a house upon the suit plot; that they are resident of the area since the time of forefathers; that said Khasra Number had been excluded from the acquisition but despite that respondents had acquired possession illegally.

4. On the other hand, learned counsel for respondents resisted the revision petition, inter alia, stating that no jurisdictional defect has been pointed out by learned counsel for the petitioner and where jurisdictional defect has not been pointed out, it is considered that the jurisdiction has been exercised legally. That whatever is assertion of the petitioner, same could only be resolved by way of recording of evidence.

5. Heard the learned counsels for the parties and examined the record with their able assistance.

6. Record shows that petitioner has not produced any title document regarding suit property. As against this, respondent No.1 has a valid allotment letter with possession of suit property and due permission of constructions by the CDA, therefore, in presence of a valid title document coupled with possession in favour of respondent No.1, it cannot be said that concurrent observations of the two learned courts are based upon incorrect premises. Reliance is placed upon case law reported as ***Naik Muhammad. Vs. Muhammad Shabbir and others {2019 CLC (L) 164}***. When house had been constructed upon a plot which is duly allotted by the official respondents vide allotment letter dated 30.04.2015 and thereafter, being regulator approved site plan

regarding subject construction, same carries weight for the purposes of deciding application under Order XXXIX Rules 1&2 CPC. Court has to examine documents annexed with the plaint/written statement and arguments advanced by learned counsel for the parties. Obviously where document is on record then oral assertion shall give way to said document. The controversy raised herein by the learned counsel for the petitioner regarding connivance of official respondents with private respondents, status of petitioner qua the suit plot from ancestral times and other oral assertions, require recording of evidence on the issues. That when case falls within parameters of recording of evidence, then normally application for temporary injunction is not allowed. In this respect, reliance is placed upon case law reported as ***2018 CLC 2020 [Lahore]*** *titled* ***Nouman Azmat. Vs. S.A. Rehman & Sons through Proprietors and 6 others.***

7. Both the learned courts have properly evaluated the material placed on record. Hence, concurrent observations require no interference. Consequently, revision petition is dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail

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