JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO. 252 OF 2018

IQBAL HASAN CHOUDHARY

VS

SYED MUSHIR HASSAN NAQVI AND OTHERS

Petitioner by : Mr. Manzoor Hussain, Advocate.

Respondents by : Syed Asghar Hussain Sabzwari, Advocate for the Respondent No.1.
Rana Tanvir Ahmed Khan, Advocate for the Respondent No. 5/CDA.

Date of hearing : 11.2.2025

MUHAMMAD AZAM KHAN, J.

1. The Petitioner has filed the instant Revision Petition under Section 115 of the Code of Civil Procedure, 1908 **("CPC")** against the Order dated 26.5.2018 **("Impugned Order")** passed by learned Civil Judge 1st Class (East), Islamabad **("Trial Court")** whereby the Application under Order I, Rule 10, CPC filed by the Respondent No. 1 has been allowed.

2. The brief facts giving rise to file the instant Revision Petition are that the Respondents No. 2 to 4 sold out their 3/5 share in Plot No.A-16 (P&V) CDA Scheme No. II, Park Road Chak Shehzad, Islamabad **("Suit Plot")** to the Petitioner against sale consideration of Rs.15,000,000/- (fifteen million only) through a Sale Agreement dated 27.02.2007 **("Sale Agreement")**. The Petitioner paid Rs.1,000,000/- to the Respondents No. 2 to 4 as an advance money through two pay orders. Thereafter Respondents No.3 & 4 appeared in the office of Capital Development Authority **("CDA")** and got transferred their share in favor of nominees of the Petitioner namely Faisal Iqbal and Sajid Iqbal (sons of the Petitioner). The Respondent No. 2 did not appear in the office of the Respondent No. 5/CDA for transfer of her share in the name of the Petitioner on which the Petitioner filed civil suit for Specific Performance and Perpetual Injunction **("Suit")** against the Respondents Nos. 2 to 5. When the Petitioner/Plaintiff produced his oral and documentary evidence and matter was fixed for final

arguments, the Respondent No.1 filed Application under Order I, Rule 10, CPC which was accepted by the learned Trial Court vide the Impugned Order. Being aggrieved of the Impugned Order, the Petitioner/Plaintiff has filed the instant Revision Petition.

3. The learned counsel for the Petitioner/Plaintiff submits that the Impugned Order has been passed without due consideration of the relevant record; that the learned Trial Court acted beyond its jurisdiction, thereby committing material irregularity; that Respondent No. 1 has no connection with the Sale Agreement executed between the Petitioner/Plaintiff and Respondents Nos. 2 to 4, and as such, Respondent No. 1 is neither a necessary nor a proper party to the Suit; that Petitioner/Plaintiff's claim pertains solely to the shares of Respondents Nos. 2 to 4, and an effective decree can be passed in favor of the Petitioner/Plaintiff without the involvement of Respondent No. 1, particularly in light of the fact that Respondent No. 5/CDA has transferred the shares of Respondents Nos. 3 and 4 to the nominees of the Petitioner/Plaintiff; that Impugned Order has been passed in an arbitrary manner and is based on conjectures and surmises, rather than on established facts or legal principles. In view of the foregoing, the learned counsel for the Petitioner/Plaintiff prayed that the instant Civil Revision Petition may be allowed and the Impugned Order may be set aside.

4. The learned Counsel for the Respondent No. 1 submitted that the Suit Plot is the property of the predecessor of Respondent No. 1. The Respondent No. 1 is the legal heir of Majeed Naqvi, who was the actual owner of the Suit Plot. Prior to that, the Suit Plot was owned by one Rasheed Naqvi, who passed away, and the plot subsequently devolved upon the brothers and sisters of the principal allottee, who died issueless. It was further argued that the Respondent No. 1, as the legal heir of Majeed Naqvi, has a share and interest in the Suit Plot. The learned Counsel emphasized that the Impugned Order was passed after considering the facts and the record of the case, and that the learned Trial Court issued a well-reasoned order. In light of these points, it is asserted that there is no illegality or irregularity in the Impugned Order. The learned Counsel, therefore, prayed for the dismissal of the present Civil Revision Petition.

5. Despite Publication none is in attendance on behalf of the Respondents Nos. 2 to 4 as such the said Respondents are proceeded against ex-parte.

6. I have heard the learned counsel for the parties and have also perused the relevant record with their able assistance.

7. Facts as gleaned from the averments of the pleadings are that Suit Plot was in the name of Syed Rasheed Hassan Naqvi, and after his death, the said plot devolved upon his children namely Syeda Farhat Qaseem/Respondent No. 2, Syeda Feroza Tehseen/Respondent No. 3, Syeda Rahat Taskeen/Respondent No. 4, Majeed Naqvi and Khursheed Naqvi. The Petitioner/Plaintiff purchased the shares of Syeda Farhat Qaseem/Respondent No. 2, Syeda Feroza Tehseen/Respondent No. 3 and Syeda Rahat Taskeen/Respondent No. 4 daughters of Syed Rasheed Hassan Naqvi for sale consideration of Rs.15,000,000/- through the Sale Agreement. The Petitioner/Plaintiff paid Rs.100,000/- through Pay Order No. SP/G12852 dated 2.2.2007 and Rs.900,000/- through Pay Order No. SP/G-012992 dated 27.2.2007 and in such a way, the Petitioner/Plaintiff paid Rs.1,000,000/- to the Respondents Nos. 2 to 4 equally as an advance money which was acknowledged by the Respondents Nos. 2 to 4. The Respondents Nos. 3 and 4 fulfilled their commitment by appearing in the office of Respondent No. 5 (CDA) and obtaining the Transfer Form in favor of the Petitioner/Plaintiff's nominees, Faisal Iqbal and Sajid Iqbal, both sons of the Petitioner/Plaintiff. They also recorded their statements for the transfer of their respective shares in the Suit Plot, after receiving the remaining balance of the sale consideration. Consequently, the Respondent No. 5/CDA duly transferred the shares of the Respondents Nos. 3 and 4 in the names of the Petitioner/Plaintiff's nominees. Whereas, the Respondent No. 2, who was equally bound by the commitment, failed to appear in the office of the Respondent No. 5/CDA to complete the transfer proceedings.

8. The Petitioner/Plaintiff instituted the Suit against the Respondents Nos. 2 to 5 in May 2014. The Respondent No. 2 made her appearance before the learned Trial Court through counsel on 3.9.2014. However, she failed to file her written statement by 20.11.2014, despite being granted an extension of 78 days. Consequently, the learned Trial Court struck off her right to file the written

statement. Subsequently, the Respondents Nos. 3 and 4 failed to appear, and as a result, the learned Trial Court proceeded ex-parte against them on 25.10.2014. Only Respondent No. 5/ CDA filed written statement. The Petitioner/Plaintiff presented both oral and documentary evidence, and when the matter was scheduled for final arguments, the Respondent No. 1 filed an Application under Order 1, Rule 10, CPC. This Application was accepted by the learned Trial Court through the Impugned Order, which necessitated the Petitioner/Plaintiff to file the instant Civil Revision Petition.

9. The Respondent No. 1 is the son of one of the co-sharers, namely Majeed Naqvi, who was impleaded as a necessary and proper party to the Suit by the learned Trial Court. This was based on the ground that, following the death of Majeed Naqvi, the Respondent No. 1, along with the other legal heirs, became a co-sharer in the Suit Plot. It is pertinent to note that, pursuant to Section 9, Chapter 6 of the CDA Property Manual Law, 'A jointly owned property can be transferred by one of the co-allottees to the extent of his share without the consent of other co-allottees.' It should also be highlighted that, in paragraph 5 of the Impugned Order, the learned Trial Court has erroneously stated that, according to the rules of CDA, a share in the plot cannot be sold without the prior consent of the other co-sharers.

10. The father of the Respondent No. 1 was not included by the Petitioner/Plaintiff in the panel of defendants in the Suit, nor was any relief sought from him. The Suit was filed specifically against the three sisters of Majeed Naqvi, from whom the Petitioner/Plaintiff claims to have purchased their respective shares. The Petitioner/Plaintiff asserts that the Suit has no connection to the share of Majeed Naqvi, which devolved upon his legal heirs after his death.

11. The learned Trial Court has accepted the Application filed by the Respondent No. 1 under Order 1, Rule 10, CPC, deeming him a necessary and proper party to the Suit. However, the Respondent No. 1, being a co-sharer of the Suit Plot, is not a necessary party, as no relief is sought by the Petitioner/Plaintiff against him. The Petitioner/Plaintiff's claim is directed solely against Syeda Farhat Qaseem/Respondent No. 2 and not against the predecessor of the

Respondent No. 1. While the Respondent No. 1 is not a necessary party, he can be considered a proper party, as his presence in the Suit as a defendant would not prejudice the Petitioner/Plaintiff. To illustrate, in a case where a plaintiff files a suit for title against a defendant regarding a shop or house, and a tenant resides in the property, the tenant, though not a necessary party, is considered a proper party. Similarly, in the present case, while the Petitioner/Plaintiff has no claim against the Respondent No. 1, he is a proper party due to his co-ownership of the Suit Plot, but he is not a necessary party.

12. In a civil suit, the distinction between a necessary party and a proper party is significant and is defined under CPC:-

> 1. **Necessary Party:** A necessary party is one whose presence is essential for the court to effectively adjudicate the matter. Without the necessary party, the court cannot proceed with the case, and any decree passed would be ineffective. This is supported by the ruling in *Muhammad Yasin Khan Sherpao v. Rawat Busal (Private) Limited* where it was held that a person may be added as a party to a suit when he ought to have been joined and is not joined, meaning that without this party, the suit cannot be completely adjudicated. [*Manoo and others versus Province of Sindh and others,* **1997 MLD 2549**].
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> 2. **Proper Party:** A proper party, on the other hand, is one whose presence is not essential for the court to adjudicate the matter but is necessary for a complete and final decision on the questions involved in the proceedings. The presence of a proper party is important to avoid multiple litigations and contradictory results, as highlighted in the case of *Jamilur Rahman v. Muhammad Asghar* where it was noted that even if a party is not necessary, their involvement can help in resolving all disputes effectively. [*Jamil ul Rehman versus Muhammad Ashgar and others,* **1968 PLD 1076**].

In summary, while a necessary party is crucial for the court's ability to make a binding decision, a proper party is one that, while not essential, contributes to a more comprehensive resolution of the issues at hand.

13. The learned counsel representing the Respondent No. 1 informed the Court that another suit, titled *Syed Qaisara Nigar & Another v. CDA & Others*, seeking declaration, specific performance, and mandatory injunction, concerns the Suit

Plot, has been filed by the Respondent No. 1 and his mother which is pending before the learned Civil Judge, Islamabad. In that suit, the Petitioner/Plaintiff's sons, Faisal Iqbal and Sajid Iqbal, are arrayed as defendants at serial Nos. 24 and 25.

14. For what has been discussed above, this Court is of the view that the Respondent No.1 is not a necessary party but he is a proper party to the Suit as keeping him in the panel of defendant will not harm the Petitioner/Plaintiff's interest, as he is co-owner in the Suit Plot.

15. The above analysis demonstrates that the Petitioner/Plaintiff has failed to identify any jurisdictional defect, legal infirmity, or illegality that would have a material impact on the outcome of the case. Furthermore, the conclusion reached by the learned Trial Court is neither perverse nor contrary to the law, and does not warrant interference by this Court. Therefore, in light of the foregoing observations, the instant Civil Revision Petition is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

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