

IN THE COURT OF WAJID ALI
ADDITIONAL DISTRICT JUDGE, HARIPUR AT GHAZI.

Civil Revision No.	8/CR
Date of Institution	07.04.2023
Date of Decision	26.07.2023

Mir Afzal Khan s/o Umar Khan and 05 others residents of
Garhi Mera, Tehsil Ghazi District Haripur.
(Plaintiffs/Petitioners)

Versus

Mst. Zaheen Akhtar widow of Muhammad Ayub and one
other, residents of Garhi Mera, Tehsil Ghazi District
Haripur.

(Defendants/Respondents)

Zahid Iqbal s/o Dilawar Khan and three others, Garhi Mera,
Tehsil Ghazi District Haripur.

(Proforma Respondents)

JUDGMENT

26.07.2023

This Civil Revision Petition is directed against the
judgment and order dated 14.03.2023 of learned Civil
Judge-I, Ghazi in Civil Suit No. 25/1 instituted on
15.04.2023 whereby the application for conducting DNA
test was dismissed.

2. It is prayed that the impugned judgment and order be set-aside and the application be accepted.
3. Parties are referred to with their original status in the suit.
4. Plaintiffs approached the learned trial court through the particularized suit that defendant No. 02 i.e. Muhammad Balaj Khan s/o Zahid Iqbal is the adopted child of his deceased brother namely; Muhammad Ayub s/o Umar Khan and his wife i.e. Defendant No. 01 namely; Mst.


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Zaheen Akhtar; that his brother who passed away on 17.06.2018 died issueless thus Defendant No. 02 has no nexus with the legacy of his brother; that Form-B issued by NADRA showing Defendant No. 02 as son of their brother is against the law and facts and ineffective upon the rights of plaintiffs; that the plaintiffs are the Shari/legal heirs of late Muhammad Ayub; that the inclusion of Defendant No. 02 through Form-B in the legacy of his deceased brother is against the law and facts. The plaintiffs approached the defendants to redress their grievances but to no avail, hence the instant suit.

5. The learned trial court summoned the defendants. The Defendants No. 01 & 02 through common written statement and defendant No. 03 through his separate written statement contested the suit of the plaintiff. The Defendants No. 05 & 06 had submitted joint wakalatnama with Defendants No. 01 & 02 however their counsel submitted application for withdrawal of wakalatnama and now Defendants No. 01, 02 & 03 are contesting the suit.

6. During proceedings of the case, plaintiffs filed an application for conducting Deoxyribonucleic Acid (DNA) test which was contested by the opposite party. The learned trial court after hearing the parties dismissed such application. Plaintiffs being aggrieved with the findings of

learned trial court have preferred this Civil Revision Petition; it was contested by the respondents.

7. Arguments heard and record perused. The learned trial court has mainly turned down the application on the ground that the suit of the plaintiff is still at a preliminary stage and the application is premature before recording of other evidence. It was further observed that the DNA test at such initial stage would damage the dignity of Defendant No. 02. Such observations of the learned trial court are quite correct as the parties in any case are bound to prove their case primarily on the basis of their own evidence and if at some stage the court deems it appropriate then such option of DNA test may be resorted to. However, before recording of other evidence, straightaway conducting DNA test does not seem to be proper course.


8. I may observe that as per record, the Defendant No. 02 Muhammad Balaj Khan is aged about 06 years which at the time of institution of suit was even less than 05 years old however he has been made party to the suit as defendant without adopting the procedure as provided under Order XXXII of the CPC. This aspect of the matter was although ignored by the plaintiff and even the defendants have not raised such objection but equally the court is responsible who failed to take notice of this important legal aspect of this matter. Therefore, it is

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expected that the learned trial court will also address this matter according to Order XXXII of the CPC, 1908.

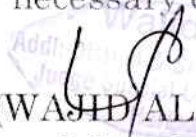
9. With these observations, there is no illegality, material irregularity or any jurisdictional error in the impugned judgment and order of learned trial court to be susceptible for interference by this court in its revisional jurisdiction. Thus, the instant Civil Revision Petition being devoid of merits stands dismissed. Costs shall be borne by the petitioners. File be consigned to the record room after necessary completion, compilation and scanning while record be returned to the quarters concerned.

Announced
26.07.2023


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Certificate

Certified that this judgment consists upon (4) pages and each page has been signed by me after necessary correction.


(WAJID ALI)
Additional District Judge
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