

Finances) Ordinance, 2001 filed by the appellant, whereby the learned Judge of the said Court after hearing the parties dismissed the said application having no merit.

2. Briefly stated facts as those emerge out of this appeal are that the respondent No.1 filed a Suit bearing No.821 of 2009 for recovery of Rs.77,14,940.83/- with future markup, costs of funds etc., under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 against the respondents No.2 and 3, which was decreed in favour of the respondent No.1 vide Judgment dated 24.01.2012 and Final Decree whereof was prepared on 16.02.2012. According to Section 19 of Financial Institutions (Recovery of Finances) Ordinance, 2001 the aforesaid suit was converted into execution proceedings and thereafter, the property under mortgaged with respondent No.1 was attached and consequently, was put into auction.

3. The appellant filed objections before the learned executing Court on the grounds that she is one of the legal heir of late Sajjad Zaheer and also real daughter of respondent No.3/judgment debtor (Mst. Fakhar Jahan). It is also pleaded that (before death of late Sajjad Zaheer) her late father purchased the immovable property bearing No.A-560, Sector No.11-A, measuring 240 square yards situated at North Karachi Township, Karachi from one Mrs. Shabana Siddiqui vide Sale Agreement dated 17.01.1985. A General Power of Attorney was also executed. Her father was murdered on 06.08.1988, however, judgment debtor (Mst. Fakhar Jahan) in connivance and collusion with Mst. Shabana Siddiqui got transferred the suit property in her favour vide Sale Deed dated 03.02.1990 as such

deprived her and other legal heirs of late Sajjad Zaheer from their legal and legitimate rights. It was prayed in the objection that the Court may investigate claim/dispute in respect of suit property to meet the ends of justice.

4. Application/objection under Section 19(7) of Financial Institutions (Recovery of Finances) Ordinance, 2001 filed by the appellant before executing Court was contested by the respondent No.1 and finally vide impugned Order dated 16.04.2016, the learned executing Court dismissed the said application, which order is being assailed through this appeal.

5. This appeal is at motion stage. It is *inter alia* contended by the learned counsel for appellant that the property under auction in satisfaction of the decree was initially purchased by late Sajjad Zaheer through an agreement of sale dated 17.01.1985 and it was fraudulently sold out by Mrs. Shabana Siddiqui to judgment debtor/respondent No.3 (Mst. Fakhar Jahan) on 03.02.1990 by registered sale deed and by doing so the interest of the objector in the property was affected. Learned Advocate further contended that a Civil Suit bearing No.404 of 2016 for declaration, cancellation, partition and permanent injunction, filed by the appellant is pending adjudication in this Court, wherein status-quo order operates with regard to not creating third party interest in the property as such, according to him, if sale proceedings are initiated, it would cause creation of third party interest. In support of his arguments, he draws our attention to Sale Agreement allegedly executed in between Mrs. Shabana Siddiqui and late Sajjad Zaheer alongwith General Power of Attorney dated 17.01.1985, copy of Sale Deed in between

Mrs. Shabana Siddiqui and respondent No.3 (Mst. Fakhar Jahan) dated 03.02.1990 so also photocopy of memo of plaint in Suit No.404 of 2016 available in case file by further contended that all these documents shows that fraud has been committed with the appellant as well as other legal heirs and when these facts were brought in the notice of executing Court, it did not take any step to investigate the claim of the appellant.

6. Arguments heard and record perused.

7. It appears from the record that Mst. Shabana Siddiqui being owner had sold out the suit property to judgment debtor/respondent No.3 (Mst. Fakhar Jahan) through registered Sale Deed dated 03.02.1990. On the basis of said registered sale deed, the judgment debtor (Mst. Fakhar Jahan) as guarantor and mortgagor of the suit property obtained loan as alleged by respondent No.1 (Habib Bank Limited) and when respondents No.2 and 3 failed, neglected and refused to pay the finance on its due dates as agreed by them and upon the above referred default, the respondent No.1 filed suit for recovery amounting to Rs.77,14,940.83/- against respondents No.2 and 3, which was contested by respondents No.2 and 3 and after hearing the parties counsel, learned Banking Court decreed the suit by its Judgment and Decree dated 24.01.2012 and 16.02.2012 respectively. Against the said judgment and decree, respondents No.2 and 3 have not filed any appeal as such, said judgment and decree, passed by the trial Court have attained finality.

8. It also appears from the impugned Order that in execution proceedings, the suit property was attached and then put into auction. It is pertinent to mention here that prior to filing objection

by present appellant, her brother Jamshad Sajjad, who is also son of the judgment debtor/respondent No.3, had also filed objections under Order XXI Rule 58, CPC read with Section 19(7) of the Ordinance 2001, however, the same were also dismissed by the trial Court on 28.01.2016. Neither copy of the objections filed by Jamshad Sajjad nor order on it have been appended with this appeal, whereby he made an attempt to suppress some material facts from this Court to reach just and correct conclusion; even though, the Order dated 28.01.2016 has also not been challenged by the said objector before any forum. Thus, the said order has also attained finality. Under the circumstances, it seems that the appellant, her brother and her mother were/are in collusion with each other in order to defeat the execution proceedings. It is settled law that he who seeks equity must come with clean hands and must be vigilant qua his rights. Reliance in this respect is placed in the case of **Inayat Khan and others ...vs... Allah Ditta and others** reported in **2007 SCMR 655**.

9. Reverting to the contention as raised by the counsel for appellant, it is suffice to say that documents annexed with this appeal are sufficient to assess bonafide of the objector and her interest in the mortgaged property. An unregistered Sale Agreement dated 17.01.1985 is the only document to which the objector is relying. It was executed in between Mrs. Shabana Siddiqui and late Sajjad Zaheer. Late Sajjad Zaheer had murdered on 06.08.1988 and on the basis of sale agreement ownership cannot be claimed. Alleged sale agreement does not confer any right, interest or title in the property as held in the case of **Wajid Ali Khan ...vs... Sheikh Murtaza Ali and 2 others** reported in **2003 SCMR 1416**. General Power of Attorney in favour of late Sajjad Zaheer had also lost its

importance after his death. The suit property was allegedly transferred in the name of the mother of the appellant by way of registered Sale Deed on 03.02.1990 about twenty six (26) years ago, which act prima facie appears to appropriate. Even otherwise, it is settled law that registered document had sanctity attached to it, and stronger evidence was required to cast aspersion on its genuineness. Reliance is placed in the case of **Mirza Muhammad Sharif and 2 other ...vs... Mst. Nawab Bibi and 4 others** reported in **1993 SCMR 462**.

10. It may be observed hereunder the law in every case the learned executing Court is not bound to hold regular inquiry by framing issues and providing opportunities to the parties to produce evidence rather Court is vested with the power to reject objections summarily in absence of prima facie proof and also where the collusiveness is found in between the appellant and judgment debtor. In the case in hand, learned executing Court rightly found collusiveness of the appellant with judgment debtor, which is even floating on the surface of the record. In view of the above, we find the impugned Order as perfectly legal, thus, the same is maintained. We, therefore, while upholding the impugned Order and finding no merits in this appeal, which is dismissed in limine alongwith listed application.

11. This appeal was dismissed in limine after hearing the learned counsel for the appellant and these are the reasons for the short order announced by us on 19.05.2016.

JUDGE

JUDGE