

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Ex. No.137 of 1999

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of Official Assignee's Reference No.16/2017.
2. For hearing of CMA No.89/2017.
3. For orders as to non-prosecution of CMA No.490/2017.

16.04.2018.

Mr. Neel Keshav, Advocate for Decree Holder.

Dr. Ch. Waseem Iqbal, Official Assignee.

Ms. Rukshanda Waheed, State Counsel.

1. This Execution Application was though allowed vide order dated 21.5.2001, but is still pending for numerous reasons and time and again References have been placed by the Official Assignee pursuant to various orders and directions of this Court.

Learned Counsel for the Plaintiff/Decree Holder submits that an order was passed on 04.03.2010 when it was directed by the Court that the property in question may be attached and auctioned within one month without fail and such order has not yet been implemented. He submits that subsequently on numerous occasions the Official Assignee made attempts to auction the property; but one after the other, the objectors came before the Court and resisted such auction. He submits that various applications of the Intervenor were dismissed, whereas, the Decree Holder Bank is in possession of a Banking Decree and this Execution is for mortgaged properties. He submits that the Sale Deeds of the land in question are with the Bank and it has come on record that some forgery has been committed in the Revenue record, which has resulted in delay of the auction of the

properties. According to the learned Counsel when the property was mortgaged, the Judgment Debtor had a clear title and all subsequent events shall not come in the way of execution of the Decree. He submits that the present Reference is not based on correct facts and is to be discarded, whereas, orders for attachment and sale have already been passed including the order dated 4.3.2010, and the same may be implemented.

On the other hand, learned Official Assignee submits that time and again various exercises have been carried out pursuant to the directions of the Court and the present Reference is the outcome of all the enquiries and it has come on record that the Judgment Debtors' name was never available in the record of the Revenue Department. Learned Official Assignee has read out the Reference and submits that all Khatedars with specific entries in Form VII-A and B are shown in the record much prior to the Sale Deed of the Judgment Debtors, and therefore, the Reference be taken on record and this Execution be consigned as the property in question cannot be sold in this position.

I have heard the learned Counsel for the Decree Holder and the learned Official Assignee. When this Execution was filed, initially only one mortgaged property was mentioned and was sought to be auctioned i.e. all piece or parcel of land measuring 238 Acres or thereabout situated in Deh Babur Band Tal Thana Bula Khan, District Dadu at Nooriabad being Survey Nos. 401, 402, 403, 404, 405, & 406, (**"Property No.1"**) and subsequently another property was claimed through statement dated 2.3.2007 filed under Order 21 Rule 66(3) CPC i.e. land having Survey Nos. 387, 388, 389, 390, 391, 392 & 393 Total 200.05 Acres at Deh

Babur Band, Taluka Thana Bula Khan, District Dadu, Nooriabad, (**“Property No.2”**). However, it is not clear that how this property was added on the basis of a statement by the Decree Holder as it was never mentioned in the schedule of properties in the Execution Application. There were other properties as well which appears to have been sold and are not a matter of dispute presently.

Perusal of the Reference placed before the Court reflects that a detailed exercise was carried out by the learned Official Assignee with the assistance of the concerned Mukhtiarkar and Supervising Tapedar, Thana Bola Khan as well as the officials from the Bank and through contents of the Reference it reflects that at the time of execution of the Sale Deed, in 1990 there is no entry in the record of Revenue under the names of the Judgment Debtors. However, the learned Counsel for the Decree Holder insisted upon compliance of an order dated 4.3.2010, whereby certain directions were given to the Official Assignee on his Reference No.2/2009; but at the very outset it may be clarified that such orders in Execution Applications are passed on the basis of assistance provided by the Counsel for the parties, whereas, learned Official Assignee is also assisting the Court on the basis of such record and assistance. It is not that if once an order has been passed, which is either passed mistakenly or for lack of or proper assistance on the part of Counsel, the Court has undertaken to have it implemented it for the benefit of the Decree Holder, notwithstanding the fact that the very mortgage is disputed on the basis of record and subsequent developments brought on record. The Counsel for the Decree Holder shall also

be mindful of the other orders including orders dated 19.8.2005 which reads as under;

The Official Assignee has submitted his Reference dated 29.09.2004 in which he has disclosed that the Mukhtiarkar, Thana Bola Khan is consistently taking a stand that the land in question does not belong to Farid Qadir Tawakkal, Judgment Debtor No.8. **In view of the above situation, the learned Official Assignee has stated that the land in question which is started to be mortgaged with the D/H, cannot be sold. Mr. Neel Keshav, Counsel for the D/H seeks time to ascertain further facts and also to obtain instructions from the D/H. Adjourned to a date in office.**

Again order dated 19.1.2006 is relevant and reads as under;

Kazi Abdul Hameed Siddiqui, advocate holding brief for Mr. Neel Keshav, advocate for decree-holder requests for adjournment on the ground that the later is busy in the Hon'ble Supreme Court.

Record shows that the Official Assignee has submitted his report dated 29.9.2004 in which he has stated that the mortgaged property in Thana Bula Khan did not belong to Farid Kadir Tawakal as Mukhtiarkar Thana Bula Khan has informed through number of letters that the revenue record of Deh Babar Bank Taluka Thana Bula Khan since 1985 to-date does not show entry in favour of Farid Kadir Tawakal. Though such report is available on record since 29.9.2004 but Mr. Jamil Siddiqui the law officer of decree holder, who is present states that some enquiry is being conducted by the decree holder itself. He is however, not aware with the nature of enquiry that is being conducted by the decree holder. He further states that no proceedings on the basis of the report of Official Assignee has been initiated by the decree holder either against the bank officials found involved in taking of apparent forged and fabricated sale-deed or against the barrower. It is strange that the decree holder so far has taken no steps whatsoever protecting its interest. Be that as it may, the decree holder should take further steps for the disposal of this execution application.

Now after passing of such orders, if subsequently an order was passed on 4.3.2010, for attachment and sale, without overruling these above and other orders, perhaps, in my view such order ought not to have been passed in this manner, and even if it has been passed mistakenly, the Decree Holder has no

right to seek its enforcement as if the Court is always bound by such orders. When on the very initial stage, it had come on record that the title of judgment debtor is defective; this Execution Application could not have proceeded further. In these execution proceedings, the Court is not empowered to probe and ensure that the title of the Judgment Debtors was perfect; rather it is the responsibility of the Bank to ensure at the time of creating mortgage, that the property is clean with its title and the person, who has mortgaged, was the lawful owner with all supplementary powers and authority to mortgage the same. The Sale Deeds of both properties of the Judgment Debtors in question placed on record do not clearly reflect that the Vendors who executed the Sale Deeds, were owners of these properties in what manner. In one Sale Deed in respect of Property No.1, the Vendor namely *Muhammad Moosa S/o Mottan Khan* has stated that he acquired the property through inheritance. There is no disclosure as to from whom he inherited it; nor any assistance has been provided to the Court to this effect. Similarly in the second Sale Deed dated 18.02.1990, in respect of Property No.2 executed by one *Ali Sher S/o Jumo Khan*, it has not even been disclosed that as to how this land was owned by the Vendor. The Sale Deeds being relied upon by the Bank do not properly disclose the chain of pedigree of the Vendors, whereas, various owners claim these properties and their names are available in the Revenue Records. As per record, the title does not seem to be clear, and therefore, this executing Court cannot proceed further. It is not that this executing Court is disputing the mortgage of the property nor the bonafides of the mortgager, but at the same time, once after various investigations and enquiries by the Official Assignee, it has come on record that

title is apparently defective, therefore, this execution cannot proceed any further. It may also be observed that by saying so this Court is not even otherwise confirming and or disputing the title and ownership of the Interveners or for that matter, of other(s) who are claiming the same land as it is not within the domain of this Court. The defects lie in the title / mortgage of the decree holder, and that has come on record from very inception, and now through these proceedings such title cannot be perfected by the Executing Court.

In view of such position, the Official Assignee's Reference No.16/2017 is taken on record and this Execution stands disposed of and is consigned to record.

2-3. None has appeared. Accordingly, both these applications are dismissed for non-prosecution.

J U D G E

Ayaz P.S.