

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SMA No.29 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No.1913/2017. (U/S 151 CPC)

25.01.2018

Mr. Khawaja Shoaib, Advocate for Petitioner.
Mr. S. Muhammad Kazim, Advocate for Respondent.
Rasheed Muhammad Qureshi, C.E.O of Al-Mehran Builders.

Through this application, the Petitioner seeks direction to the Nazir of this Court to obtain the original title documents of the Subject Property, which are in possession of Silk Bank Ltd. Notice was issued on this application and Counsel for the Bank has affected appearance and submits that the property was mortgaged by borrower with them, however, the outstanding payment has been made but they have been asked by the borrower not to release the documents as they have a dispute with the deceased mortgagor, whereas, a Banking Suit is also pending before the Banking Court.

It appears that this Succession petition was granted on the basis of certified true copy of the property as according to the petitioner the original documents were lost and police report to that effect was lodged on 5.3.2016 (after death of deceased). At the request of the Counsel for the Petitioner, after grant of Letter of Administration in the name of the Petitioner, the Court directed the Nazir of this Court to take necessary steps for mutation of the Suit Property in the name of legal heirs as expeditiously as possible. It further appears that when Nazir approached the

Military Estate Office (though no final report of Nazir is on record), he was informed through letter dated 10.10.2017 that the property in question was mortgaged by the deceased after obtaining permission to mortgage from them on 25.2.2005. It further appears that the deceased had also executed a mortgaged deed and a memorandum of deposit of title deed with the bank, whereas, the case of the borrower is that they have paid off the liability, but the deceased owed certain amounts to the borrower company and for that he had given his documents for mortgage.

In such circumstances, I am of the view that this Court under its testamentary & intestate jurisdiction does not possess any such jurisdiction to order the Nazir of this Court to obtain the original documents from the Bank. The property after expiry of deceased may have devolved to his legal heirs, and for that the Succession Petition has already been allowed as an indulgence on the basis of certified copy of the property documents, whereas, the petitioner instead of furnishing surety had asked the Court to order Nazir to effect the transfer / mutation which was also acceded to. But when the original title documents of the property in question are not available and under mortgage, the petitioner must seek its independent remedy as may be available in law, including before the Banking Court (if the suit is pending) or the Civil Court, or as may be advised in accordance with law, but not in this jurisdiction. Listed application cannot be granted and is accordingly dismissed.

J U D G E

Ayaz