

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-8628 of 2018

Date Order with signature of Judge

Present
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Agha Faisal

Mehmood Ali.....Petitioner

V E R S U S

Mst. Azra & others.....Respondents

Mr. Naveed Ali, Advocate for the Petitioner.
Mr. Muhammad Ramzan, Advocate for Respondent No.1.

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Muhammad Ali Mazhar, J: This petition has been brought to challenge the order dated 12.03.2018 passed by IIIrd Senior Civil Judge at Karachi-West in Execution Application No.01/2016 in Civil Suit No.366/2005 and the order dated 05.12.2018 passed by IXth Additional District & Sessions Judge at Karachi-West in Civil Revision No.19/2018.

2. The brief facts as narrated in the memo of petition are that the respondent No.1 filed a civil suit bearing No.366/2005 in the civil court for the recovery of documents and permanent injunction which was decreed vide judgment and decree dated 20.07.2009. The petitioner challenged the above judgment and decree in Civil Appeal No.94/2009 but the appellate court maintained the judgment and decree and dismissed the appeal on 01.04.2010. The same petitioner challenged the order in Civil Revision No.115/2010 which was also dismissed on 23.09.2016 by this court.

3. The learned counsel argued that the impugned orders are based on misinterpretation of law. It is a matter of record that first the decree was passed on 20.07.2009 and there was no

status-quo order passed by the appellate court for suspension of the original decree, but the respondent No.1 filed the execution application much after the prescribed period of limitation. The execution application was to be filed within three years but the subsequent application can also be filed under Section 48 CPC but here the first execution application was also hopelessly time barred, therefore, both the orders impugned in this petition are liable to be set aside.

4. The learned counsel for respondent No.1 referred to revisional order passed by the learned single Judge of this court in Civil Revision Application No.115/2010 and he argued that in the revisional order the learned single Judge modified the decree with the directions to return the title documents of the suit property within fifteen days with further caution that if he fails to return the same the respondent may file execution application and coercive measures may be adopted for the recovery of the documents through the court. He concluded that since the decree was modified, therefore, the assertion raised by the counsel for the petitioner that execution application was time barred is misconceived.

5. Heard the arguments. The learned counsel himself admitted that the suit was decreed and the appeal filed against the original judgment and decree was also dismissed thereafter he filed Revision Application No.115/2010 in this court. The learned single Judge, after jotting down the controversy dismissed the revision application. Paragraph 7 of the revisional order is reproduced as under:

“In view of the above facts, the Revision Application is dismissed. The decree is modified to the extent that the applicant shall return the title documents of the suit property to the respondent within 15 days, if he fails to return the same under proper acknowledgment to the respondent, the respondent may file an execution application and coercive measure may be adopted for recovery of the documents through the Court.”

6. Admittedly, the revisional order modified the original decree with further directions to the applicant to return the original title documents within fifteen days failing which the respondent may be able to file execution application and all coercive measures may be adopted for the recovery of documents through the court. After modification of the decree in the revisional order, the principle of merger will be applicable. The order of the revisional court has merged in the judgment and decree of the trial court as well as the appellate court and since the petitioner failed to comply with the directions given in the revisional order, the respondent No.1 was left with no other option but to file the execution application in terms of the directions contained in the revisional order. Though the learned counsel is opposing the execution application on the ground that no execution application was filed against the original decree within the limitation period as provided under Article 181 of Limitation Act, but on the query raised by this court he admitted that the revisional order was not challenged in the Supreme Court nor any review application was filed before the same learned single Judge with regard to the modification of decree. In fact under the order of revision the learned single Judge has not extended the limitation but he only modified the decree, therefore, for all intent and purposes after modification of the decree, which was never challenged by the petitioner, there was no obstruction or hindrance against the respondent No.1 to file execution application on the well settled propositions that the order of the revisional court has merged into the order of trial court and the appellate court. Vide order dated 17.09.2019 we directed the petitioner to deposit all title documents of the property in question with the Nazir of this court and according to the Nazir report the petitioner has submitted certain documents which are mentioned in the statement submitted by the petitioner and his Advocate on 20.09.2019. Since no cogent grounds were raised for interference in the impugned orders, therefore, we dismissed

this petition by our short order dated 12.11.2019. Above are the reasons.

The Nazir is directed to transmit the documents deposited with him by the petitioner in compliance of the order dated 12.03.2018 to the court of IIIrd Senior Civil Judge at Karachi-West in Execution Application No.01/2016 against the proper receipt and acknowledgment and the fate of documents will be considered by the executing court in the pending execution application in accordance with law.

Judge

Judge

Karachi.
Dated 19.11.2019.

Asif