

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

I.A. No. 84 of 2018

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Agha Faisal.

Sultana Saleem & another.....Appellants

Versus

M/s. B.R.R Guardian Modaraba & others.....Respondents

Date of hearing 19.11.2019

Mr. Mahmood Habibullah advocate for the appellants.

Mr. Abid Hussain advocate for the respondent No.1

Mr. Sohail Hameed advocate for the Auction Purchaser.

Muhammad Ali Mazhar, J: On 06.09.2018 learned counsel for the appellants argued that learned Banking Court No.1 wrongly dismissed an application under Section 12(2) C.P.C. filed in suit No.06 of 2006. He further argued that the appellants are the legal heirs of Mst. Bano Begum who was the owner of property No. 891-892, Bock-II, KDA, Scheme No.16, F.B. Area, Karachi and the respondent No.4 being brother of the appellants mortgaged this property after her death fraudulently as attorney of other siblings but no power of attorney was executed by the present appellants in his favour. In the execution proceedings the writ of possession was issued, therefore, keeping in mind the urgency claimed by the appellants, we ordered that subject to deposit of pay

order in the sum of Rs. 35,00,000/- as tentative amount to the satisfaction of Nazir, the Banking court shall not execute writ of possession till next date of hearing. However, we had clarified in the order that this deposit shall be without prejudice to the right of auction purchaser and this arrangement is made for the purpose of stopping of only writ of possession till next date of hearing but the right of appellants, if any, shall be considered on its own merits.

2. Heard the learned counsel for the appellants and respondents. The learned counsel for the respondent No.1 and the counsel for the auction purchaser pointed out mutation order dated 29.09.2003 issued by City District Government which shows that the property in question was mutated in the name of seven brothers and they executed power of attorney in favour of respondent No.4 and all such persons also conferred the power to mortgage the said property by their attorney i.e. respondent No.4 and after that this property was mortgaged by their attorney who is also one of the co-owners of the said property as mentioned in the mutation letter. We raised a query to the learned counsel for the appellants that since the present appellants are not co-owners of the property according to the mutation letter, then what wrong was committed by the learned Banking Court if it has dismissed the application under Section 12(2) as apparently there was no fraud floating on the surface except that the appellants are claiming their inherited share which have been allegedly deprived by their brothers which is a

private affair between the brothers and sisters but apparently before the court and the financial institution, the facility was accorded on the basis of mutation letter and other title documents including the power of attorney issued by the co-owners in favour of the respondent No.4.

3. After arguing at some length, learned counsel submits that no application was filed in the Banking Court under Order XXI Rule 89 or 90 C.P.C. that has also been observed by the learned Banking Court in the impugned order, therefore, he submits that this appeal may be disposed of with the permission to the appellants to move an application under Order XXI Rule 89 or 90 C.P.C in the Banking Court.

4. After hearing learned counsel for the appellants and respondents, we have reached to the conclusion that since the appellants' counsel wants to move an application under Order XXI Rule 89 or 90 of the CPC, therefore, present appeal is disposed of accordingly. Let him file the same subject to all just exceptions. The amount deposited with the Nazir in pursuance of the order dated 06.09.2018 may be refunded back to the depositor subject to proper verification and identification and interim orders are recalled.

JUDGE

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