

IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

CP No.D-2534 of 2019

Fresh Case

1. For orders on Misc. No.11522/2019 (exemption)
2. For hearing of main case.

06.10.2021

Mr. Nasir Rizwan Khan, Advocate for the petitioner.

ORDER

AHMED ALI M. SHAIKH, CJ.- By means of instant Petition, Petitioner has assailed the order dated 13.02.2019 rendered by the learned IV Additional District and Sessions Judge, Karachi Central, in Civil Revision Application No.10 of 2017 whereby he affirmed the order dated 23.12.2016 passed by the learned II Senior Civil Judge in Execution application No.06 of 2010 (Civil Suit No.234 of 2008), dismissing an Application under Section 12(2) read with Section 151 CPC, filed by the Petitioner.

2. Factual matrix of the case in hand is that Respondent No.1 filed Civil Suit No.234 of 2008 (the “**Suit**”) against Respondent No.2 seeking specific performance of a sale agreement in respect of property bearing No.264, Block No.1, Liaquatabad, Karachi, measuring 41.10 square yards (the “**Property**”). During pendency of the Suit, Respondents No.1 and 2 filed a joint application in terms of Order XXIII Rule 3 CPC and the trial Court decreed the Suit in terms of the compromise vide Judgment dated 31.05.2008. The Respondent No.1 Decree Holder filed Execution Application No.10 of 2008, which was allowed vide order dated 25.11.2008. On 18.2.2009 an application on behalf of the Respondent No.1 was filed seeking registration of sale deed through Nazir of the Court, which application was also allowed on 18.02.2009. However, on 30.9.2009 the said Execution Application was dismissed for non-prosecution as Counsel for the Decree Holder made a statement that he

is not in contact with her. Thereafter on 05.04.2010 the Respondent No.1/Decree Holder filed fresh Execution Application which was numbered as 06 of 2010. The executing Court allowed the said Application as well vide order dated 18.5.2011. Later, the Respondent No.2/Judgment Debtor filed an application under Section 151 CPC not to issue writ of possession in the Execution Application, which was decided by the trial Court vide order dated 06.03.2013 directing the Nazir of the Court for complying the Judgment and Decree subject to deposit of balance sale consideration and in compliance thereof the Nazir executed Sale Deed dated 14.10.2013, copy available at page 287 of the file.

3. It also appears that in October, 2013, Petitioner filed an application under Section 12(2) read with Section 151 CPC (the "**Application**"), on the premise that the decree was obtained by way of fraud and collusion as he is lawful owner, in possession of the Property since 2012 by virtue of sale deed executed in his favour by the Respondent No.2. The trial/executing Court after framing two issues and recording evidence of the parties turned down the Application vide order dated 23.12.2016, which was also affirmed by the Revisional Court vide order dated 13.02.2019, impugned herein.

4. Learned counsel for the Petitioner submitted that the impugned order was passed in post-haste and mechanical manner without applying judicial mind. He further submitted that the Respondent No.2 concealed the material fact that the physical possession and original documents of the Property are with the Petitioner by virtue of sale deed dated 15.11.2012 executed in his favour. However, to a question posed the learned Counsel frankly conceded that the sale deed in favour of the Petitioner was executed in 2012 while the Suit filed by the Respondent No.1 was decreed by way of compromise in 2008. He further submitted that In the Counter-affidavit, filed before the trial Court the Respondent No.2/Defendant while rebutting the allegations of fraud on his part and given no objection to the grant of the Application, pointed out that the Respondent No.1 filed two Applications one under Sections 193, 476 PPC read with Section 78 of Qanoon-e-Shahadat Order and the other under Order XXXIX Rules 1 and 2 CPC read with Section 4 of the Contempt of Court Act, which were dismissed by the trial Court.

5. We have heard the learned counsel for the Petitioner and scanned the material available on record. The learned counsel during hearing conceded that the sale deed in his favour was executed by the Respondent No.2 much after the compromise decree passed in the Suit. Even otherwise, he has filed the Application on 29.10.2013 while the sale deed in favour of the Respondent No.1 was executed by the Nazir, after Court orders i.e. on 14.10.2013. However, the trial Court after framing two issues, recording evidence and hearing arguments dismissed the Application. The learned IV Additional District Judge, Karachi Central, vide impugned order 13.02.2019 also affirmed the findings of the trial Court.

6. The Petitioner has also annexed photocopy of plaint in Civil Suit No.39 of 2017, filed by the Respondent No.1 seeking recovery of possession under Section 8 of the Specific Relief Act, Cancellation of documents and permanent injunction against him and Respondent No.2. In the said suit pending trial before II Senior Civil Judge, Karachi Central, the Respondent No.1 has, inter alia, sought cancellation of sale deed dated 15.11.2012 executed in favour of the Petitioner by the Respondent No.2. Needless to say, the competing rights remained to be adjudicated in that proceedings.

In view of above, the orders assailed herein do not require any interference and Petition is dismissed.

Chief Justice

Judge