

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
R.A. No. 189 of 2009

Date	Order with signature of Judge
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1. For orders on CMA No. 1052 of 2017
2. For hearing of CMA No. 2309 of 2011.
3. For hearing of main case.

24th February 2020.

Ms. Sarwar Jehan, advocate for applicant.

Mr. Qamar-ul-Islam, advocate for respondent No.1.

Heard learned counsel for the applicant.

2. At the outset, learned counsel for the applicant contends that present administration of New Model High School was not party in the lis and earlier proprietor Muneera Shakir was party in the earlier litigation and she lost her case, subsequently, she vacated the premises after three years. Thereafter, through the present administration, she occupied the same and is running the school with the permission of relevant Department. Respondent filed execution application being aggrieved whereas applicant preferred application under section 47 CPC. Further learned counsel for the applicant contends that the scope of section 47 CPC is wide and that application shall be treated and proceeded like suit.

It is needful to add that *prima facie*, the instant Revision is against concurrent findings of two Courts below. It is settled principles of law that scope of revisional jurisdiction of this Court is quite narrow and normally the concurrent findings of facts cannot be disturbed in revisional jurisdiction unless this Court comes to the conclusion that the findings of learned Courts below are result of misreading or non-reading of evidence available on record or contrary to the settled law. Reliance may be made to the decision titled as "Noor Muhammad and others v. Mst. Azmat-e-Bibi" (2012 SCMR 1373), wherein the Hon'ble Supreme Court of Pakistan has observed as under:

"6. There is no cavil to the proposition that the jurisdiction of High Court under section 115, C.P.C. is narrower and that the concurrent findings of facts cannot be disturbed in revisional jurisdiction unless courts below while recording findings of facts had either misread the evidence or have ignored

any material piece of evidence or those are perverse and reflect some jurisdictional error."

3. At this juncture, it would be conducive to refer order dated 16.01.2009 passed by learned V- Civil Judge, South Karachi which is that:-

" By this order I would like to disposed of the present execution application and so also subsequent objections filed therein for issuance of writ of attachment against the judgment debtor in respect of her moveable property lying at New Modern School C-99 sector 321 Korangi crossing Dar-us-Salam Society, Karachi.

After perusal of the case it appears that the suit No.739/1997 filed by plaintiff Fauzia Islam D/o. Qamar-ul-Islam against Mrs. Munira Shakir wife of Yousuf Ahmed owner of New Model High School C/99, sector 31 Dar-us-Salam Co-operative Housing Society which was decreed on 03-04-2001 and after the expiry of appellate (stipulated) period the present execution application was filed in the same year which is surprisingly yet pending due to the certain objections filed by the interloper/objector. The record is evident that at the time of decree the judgment debtors were enjoying their full title in the property and till the disposal of the case no objector or interloper appear though the present objector/interloper is under the same name and title which is /was the address of the judgment debtor. As such there arise no question that the interloper was not aware at that time nor any intimation was made that prior to the institution of the suit the title of the judgment debtor was changed and the interloper had taken all the control of the judgment debtor's property what so ever that may be which is the subject of this execution. The learned counsel for the objector/interloper further argued that the judgment debtor's was his tenant and the subject premises was given to the judgment debtor's for running a school who vacated the subject premises three years back and the new management had taken the control of the subject school. On this point it is surprise to me that nothing has been changed at the school premises of judgment debtor every thing including furniture, computers, students particularly the name of school is same except the alleged management. The interloper has miserably failed to satisfy the court for his taking control of the school by his new management from the judgment debtor and what was the mode that they judgment debtor handed over the premises to them and more so over if every thing has been done under the table and during the pendency of court proceedings how could this be believed that the arguments of interloper carries some weight as the applicant/interloper has also stated that at the time of fractiously handing over the possession the judgment debtor was under the default of arrears of rent and utility bills to which neither the proof of any rent proceedings nor any suit for recovery was instituted if it is believed that was tenant of interloper. Prima facie it appears to me that neither judgment

debtor had filed any appeal nor the interloper in execution has come with clean hands. Further more if any step was taken up to the higher court the same was decided against them which further established the claim of the plaintiff. The learned judgment debtor also filed some legal citations much after and under the instructions of this court in order to provide the full and final opportunity for adducing their all grievances to the address after a through perusal of the citation filed by the intervener A.I.R. 1932 Kalkatta 569 or A.I.R. 1932 Lahore and 2004 CLC 851. My findings upon those citations are that the cases discussed therein are quite distinguishable and does not support the interveners case more so ever no any order was passed or objection was dismissed in default. The plaintiff has a right to enjoy the fruits of decree whereas the intervener seems to deprive the decree holder for the same.

I, therefore,, keeping in view all the circumstances of this case and the continuous absence of judgment debtor the execution application as per the process server report and the surprising entry of the interloper of my humble view that plaintiff has legally entitled to recover the decretal amount from the judgment debtor or any person claiming through him and allow this execution application filed by the decretal [decree] holder. Let the writ of attachment be issued in respect of description provided by the decretal [decree] holder in his execution application. I further disallow with the objections of the intervener.

In view of above all the pending applications stands disposed of."

That order has been maintained by the appellate Court as well. Perusal of order passed by the trial Court reflects that every objection was heard and decided and applicant is unable to demonstrate that applicant has any legal character over the property. Earlier administration was sued and suit was decreed whereas administration is claiming their rights in an interdependent capacity and intend to frustrate the execution proceedings, which aspect is rightly decided by both courts below and both orders are warranted under the law and there is no illegality or infirmity committed by both the courts below, hence, instant revision application is dismissed.

JUDGE