

IN THE HIGH COURT OF SINDH AT KARACHI

R.A. NO.110 AND 111 OF 2022

Date

Order with signature of Judge

R.A. NO.110/2022:

1. For hearing of CMA No.5024/2022
2. For hearing of CMA No.4956/2022
3. For hearing of main case.

R.A. NO.111/2022:

1. For hearing of CMA No.5026/2022
2. For order on office objection.
3. For hearing of CMA No.4949/2022
4. For hearing of main case.

14.09.2022

Mr. Umair Bachani advocate for applicants.

Mr. Muhammad Ramzan Awan advocate for respondent Shahid Ahmed.

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ORDER

SALAHUDDIN PANHWAR, J: Heard respective counsel, perused the record.

2. Applicant has challenged order dated 06.04.2022 passed by 7th Additional Sessions Judge Karachi South in CMA No.66/2021; according to applicant he preferred suit No.268/1979, same was transferred due to enhancement in pecuniary jurisdiction, to the Senior Civil Judge Karachi South, matter was accordingly proceeded and decreed as Suit No.1308/1996, thereafter execution application was allowed and he received possession of the property in Survey No.264 Deh Gujro, Tappo Songal, whereas respondent filed application under section 12(2) CPC while challenging the judgment and decree dated 11.11.2010 claiming therein that 1000 square

yards in survey No.261 purchased by him from Muzammil and others, accordingly evidence was recorded and application under section 12(2) CPC was dismissed on the plea that dispute between the parties is over the location and identification of proper location. Thereafter Mukhtiarkar Liaquatabad submitted such report, he produced map prepared by Nazir of this court in R.A. No.13/2000, however rest of the decree with regard to 1 *acre* and 22 *ghuntas* same was not executed on the plea that respondents received possession of that portion in Execution No.18/1991 and location is same. Accordingly, application was preferred by applicant before Executing Court, same was dismissed on the plea that since respondents received possession in execution therefore that order cannot be recalled hence applicant approached District and Sessions Judge under section 47 CPC. Learned Additional Sessions Judge maintained the order of the trial court on the plea that property is situated in district central hence learned Executing Court was right in saying that same cannot be executed as judgment and decree was passed by Senior Civil Judge, District South.

3. Case of the respondent is that they received possession in execution proceedings being Execution Application No.18/1991 of Suit No.161/1988 by the 3rd Senior Civil Judge, District Central, Karachi, therefore they are in possession and applicant cannot disturb that possession.

4. Mainly question before this court is that two parties are claiming one portion of land through executing court. Needless to mention that if property is situated within the territorial jurisdiction of a court, that matter is to be referred to the concerned court having

jurisdiction for execution purpose. Besides, Civil Procedure Code provides mechanism if possession is wrongly handed over, that Court can rectify such illegality.

5. It is pertinent to mention that both parties are not disputing legal character of each other and question only remains as to possession of one acre and some *ghuntas*. According to applicant his land is falling in front of road that is in possession of the respondent and respondent is claiming that he is in lawful possession as executing court has handed over the same to him. When admittedly legal character is not disputed and if executing court wrongly handed over the possession of any portion of land which is owned by other party, the same under any order cannot be protected.

6. Without prejudice to above, both orders are suspended. Nazir of this court has submitted report that he conducted site inspection where he found Shops, Petrol Pump and Goat *Mandi*; in this respect a sketch already prepared in Civil Revision Application by the Nazir of this court, that is not in dispute.

7. Accordingly Nazir shall take over the property as per demarcation map of Survey No.261 and ensure land in question is non-occupied by any occupant, however in case of any commercial activities there which cannot be dismantled shall be under Nazir's possession where rent shall be deposited with the Nazir. As per Nazir report illegal sheep/cattle farm, are being operated; Nazir shall ensure that same are removed/shifted by the cattle owners. Nazir

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shall deploy guards at the expenses of applicant, to preserve property. Nazir would be entitled to receive fees of Rs.100,000/-.

To come up on 12.10.2022.

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