

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

Constitution Petition No. 7225 of 2022

Yousuf Master

Versus

The Additional District Judge of Court No.IV & others

Date of Hearing: 16.11.2023

Petitioner: Through M/s. Muhammad Naseem and
Burhanuddin Advocates.

Respondent No.2: Through Mr. Sh. Adnan Usman Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- A suit for partition amongst the legal heirs of Syed Muhammad Yousuf was filed, which was eventually decreed vide judgment dated 16.11.2012. The decree was drawn accordingly on 22.11.2012. The property was then put to auction and the record produced reflects that petitioner (as being auction purchaser) participated in the auction, which was conducted by Nazir who then submitted report on 08.03.2017. Record further shows that in relation to the auction, a sale proclamation via public notice was issued on 06.02.2017, which public notice is available at page 149 as Annexure P/9(vi) to this petition. The Nazir submitted auction report according to which only plaintiff (respondent No.1 herein) extended no objection and not others.

2. On realizing the auction, which was apparently conducted without notice to other legal heirs, the objectors/defendants No.1 and/or legal heirs and 5 intervened by moving separate applications under section 12(2) read with order XXI Rule 89 and 90 CPC, which were dismissed in limine vide order dated 24.12.2021 and the third application only under

order XXI Rule 89 and 90 CPC filed by the defendant No.3 separately, which was also dismissed on the same day i.e. 24.12.2021 by separate orders; whereas on the same day another application under section 151 CPC filed by the auction purchaser was allowed. Aggrieved of these, Revision Applications were filed, which were dealt with by a common judgment, whereby applications under section 12(2) CPC and Order XXI Rule 89 and 90 CPC, filed by defendants were allowed and order confirming the sale was set aside and the subject property was ordered to be re-auctioned.

3. We have heard the learned counsel and perused material available on record.

4. Admittedly, no notice was issued/served upon defendants/respondents before the terms of proclamation were settled by Nazir. For incorporating the terms of sale proclamation, a notice to all parties to the litigation is essential, which was not complied and whatever terms were incorporated in the sale proclamation are without the consultation of the legal heirs of the deceased whose property was being administered through the decree passed in the suit for administration.

5. The observation in the order of IV-Additional District Judge (Central) in Civil Revision No.1 of 2022 reveals that Nazir obtained the valuation of the suit property not in consultation with the legal heirs but has inquired from three estate agents i.e. (i) The Estate Point, (ii) Fazal Estate Agency and (iii) the Property Masters in the year 2013 whereas auction was conducted on 06.03.2017, after a lapse of about four years.

6. The record further reveals that the auction proceedings, as undertaken were surreptitiously confirmed, which is in violation of Rules 253 and 254 of Sindh Civil Court Rules, which for the sake of brevity are reproduced as under:-

“253. Report of sale:-- Upon completion of the sale the Nazir or other officer conducting the sale shall file in Court his report of the sale.

254. Time for confirming sale:-- A sale of immoveable property shall not be confirmed until after the expiration of 30 days from the date of such sale."

7. It is surprising that the auction is being confirmed in presence of only one party i.e. plaintiff/Decree holder whereas other legal heirs had no valid notice of the auction proceedings; in fact no notices were issued to other legal heirs. It not only violates aforesaid rules but also violates Order XXI Rule 66 CPC, which requires notice and attendance of legal heirs for setting out terms of the sale and setting the forced sale value as per current market.

8. The Revisional Court has also observed that the order of 20.10.2020 whereby he was directed to deposit 20% of the auction amount was also not complied, as is evident from the order sheet of 17.11.2020 in terms whereof it appears that the auction purchaser/appellant was short of the amount therefore he has deposited the documents of the vehicle along with cross cheque of some amount. No sale certificate had been issued till date and on realizing gross negligence, the applications under section 12(2) and that of Order XXI Rule 89 and 90 CPC were considered by the Revisional Court and allowed and the trial Court's order confirming the sale was set aside. The property was then allowed to put to auction/resale by an order, after issuing public notice/sale proclamation, as required under the law. Thus, the findings recorded by the Revisional Court do not suffer from any illegality and/or infirmity, both on count of facts as well as law.

9. In view of above we do not find any reason to interfere in the judgment passed by the Revisional Court in exercise of its discretion. Appeal as such is dismissed along with pending application.

Dated:

J U D G E

J U D G E