

THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Yousuf Ali Sayeed

Mr. Justice Adnan Iqbal Chaudhry.

Const. Petition No. D - 3775 of 2023

[Latif Ahmed through legal heirs v. Moulana Qari Qasim & another]

Petitioner : Latif Ahmed through legal heirs,
through Mrs. Arjumand Khan,
Advocate.

Date of hearing : 05-09-2023

Date of decision : 05-09-2023

ORDER

Adnan Iqbal Chaudhry J. - Urgent hearing granted. The Petitioners are aggrieved of order dated 15.05.2023 passed by the Additional District Judge dismissing their Revision Application No. 204/2022 which was filed to challenge order dated 26.09.2022 allowing Execution No. 1/2022 filed by the Respondent No.1 as decree holder against the Petitioners as judgement debtors.

2. The underlying proceedings were as follows. Suit No. 592/2008 filed by the Respondent No.1 against the Petitioners, describing them as legal heirs of late Latif Ahmed, was decreed for possession of the suit shop along with mesne profits from the date of suit till delivery of possession; whereas Suit No. 1261/2008 filed by the Petitioners against the Respondent No.1 for rendition of accounts of partnership was dismissed. This was by way of a consolidated judgment dated 11.05.2011 passed by the Senior Civil Judge as both suits had been consolidated for trial.

3. Against the consolidated judgment, the Petitioners filed Civil Appeal No. 184/2011. By judgment dated 31.10.2012, the appellate court allowed the appeal in part by dismissing Suit No. 592/2008 filed by the Respondent No.1 but maintained the dismissal of Suit No. 1261/2008 filed by the Petitioners. The Petitioners did not assail that

judgment of the appellate court further. However, the Respondent No.1 preferred Revision Application No. 13/2013 before this Court insofar as the appellate court had dismissed his Suit No. 592/2008. That Revision was allowed by order dated 14.10.2021 by remanding the matter to the appellate court to decide Civil Appeal No. 184/2011 afresh after framing points of determination as required by Order XLI Rule 31 CPC.

4. After the revival of Civil Appeal No. 184/2011, the Petitioners who were the appellants therein, did not pursue the appeal. Eventually, on 20.01.2022, the appeal was dismissed for non-prosecution. The Petitioners did not seek restoration of the appeal, nor did they assail that dismissal before this Court. Consequently, the consolidated judgment passed by the trial court stood revived along with the decree of possession and mesne profits in favor of the Respondent No.1 and against the Petitioners. To enforce that decree, the Respondent No.1 filed Execution No. 1/2022. In July 2022, the Petitioners delivered possession of the suit shop to the Respondent No.1. The Execution was therefore allowed against the Petitioners for the remaining part of the decree *viz.* mesne profits, and the Petitioners' Revision Application against that was also dismissed as mentioned first above.

5. It is acknowledged by learned counsel that where the judgment/decree against the Petitioners has attained finality, the instant petition cannot be to question that judgment/decree. The point that she seeks to agitate is that in enforcing the decree of mesne profits against the Petitioners as legal heirs of the late Latif Ahmed, the executing court ignored the provisions of sections 50 and 52 CPC which provide that where a judgment debtor dies before the decree has been fully satisfied, the execution of that against his legal representative can only be to the extent of the property of the deceased that has come to his hand and has not been duly disposed of (section 50 CPC); and that where a decree is passed against a party as the legal representative of a deceased person, and the decree is for

payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property (section 52 CPC).

6. In our view, the submission of learned counsel is entirely misplaced. Suit No. 592/2008 in which the decree against the Petitioners was passed, was neither filed nor decreed against Latif Ahmed, but against the Petitioners as persons who retained unlawful possession of the suit shop after the demise of Latif Ahmed. The mesne profits sought and decreed too were only for that period. The fact that the Petitioners were merely described in the cause title as legal heirs of Latif Ahmed has no bearing when the decree against them is not for any liability of late Latif Ahmed. Thus, sections 50 and 52 CPC have no application to the decree.

7. For the foregoing reasons, we do not see any error in the orders impugned before us. The Petition is therefore dismissed *in limine*.

JUDGE

JUDGE

Karachi:
Dated 05-09-2023