

**IN THE HIGH COURT OF SINDH
AT KARACHI**

SUIT NO. 1673 OF 2021

Raisa Begum.....**Plaintiff**

Versus

Mohib Ullah Khan (Deceased)
through legal heirs, and another.....**Defendants**

Rakhshi Khan, Advocate for the Plaintiff. Jaffer Raza, Advocate for the Alleged Contemnor No.2. Sawan Meghwar, Advocate for the Alleged Contemnors Nos. 5 and 6 and for the Applicant/Intervener in CMA. No. 8877/22, along with M. Faheem Zia, Advocate. Ghulam Shabbir Buledi, Advocate for the Applicant/Intervener in CMA. No. 5315/23. Irshad Ahmed Shaikh, Assistant Advocate General, Sindh.

Date of hearing : 12.03.2024

ORDER

YOUSUF ALI SAYEED, J. – The Plaintiff had earlier filed Suit Number 983 of 2018 before this Court, asserting a claim of ownership over House No.150, Mominabad, Phase-I, Model Colony, Malir, Karachi (the “**Property**”) otherwise standing solely in the name of her husband, the Defendant No.1, namely Muhammad Mohib Ullah Khan, with it being alleged she had contributed significantly from her own personal funds towards its purchase.

2. Vide an Order made 19.08.2019, that Suit was decreed under Order 23, Rule 3 CPC in terms of a Deed of Compromise/Settlement executed between those parties, whereby, *inter alia*, the Property was to be sold in the open market and the proceeds of sale were to be divided between them equally after settlement of all liabilities outstanding in respect thereof.

3. Albeit the rights of the plaintiff having crystalized in terms of that decree and being circumscribed accordingly, and this Suit ostensibly having been brought for its enforcement, an interlocutory application was made by the Plaintiff under Order 39 Rule 1 & 2 CPC, bearing CMA No. 867/20, seeking that the Defendant No.1 be restrained from dispossessing her from the Property as well as from alienating the same. On 27.01.2020, an ad-interim Order was made on that Application whereby the Defendant No.1, who has since passed away, was directed not to create any third-party interest. That Application remains pending, along with various other applications that fall to be decided, being:
- (a) CMA No.5964/20 filed by the Plaintiff under S.40 CPC, seeking that the Nazir may be directed to take over the possession of the Property and its documents;
 - (b) CMA No.10870/21, filed by Plaintiff under Sections 3 and 4 of the Contempt of Court Ordinance 2002, alleging a violation of the Order dated 27.01.2020 and seeking the initiation of proceedings against the persons arrayed therein as contemnors;
 - (c) CMA No.5346/22, filed under Section 151 CPC by one of the alleged Contemnors mentioned in the CMA No.10870/2021, namely Saeed Ahmed Khan, seeking that his name be struck off therefrom;
 - (d) CMA No.7893/22, filed under Section 151 CPC by the Plaintiff, seeking that protection may be provided to against the alleged harassment of the alleged Contemnors for the purposes of forcing her to vacate the Property;
 - (e) CMA No.8877/22, filed under Order 1 Rule 10 CPC by one Muhammad Raheel, arrayed in CMA No.10870/202 as the alleged contemnor No.6, seeking to be added as a defendant on the ground that he has purchased the Property from the Defendant No.1; and

- (f) CMA No.5315/23, also under Order 1 Rule 10 CPC, filed by certain persons, namely Ayesha Khan, Sanobar Khan and Mohammad Omar Khan, claiming to be the legal heirs of the Defendant No.1, seeking to be added as defendants in addition to the other legal heirs joined as parties to the Suit in view of the demise of said Defendant.
5. Proceeding with her submissions, learned counsel for the Plaintiff drew attention to the Decree in Suit Number 983 of 2018 and the Order dated 27.01.2020 so as to argue that the Defendant No.1 and alleged contemnors had violated the same by selling and demolishing the Property. She invited attention to the Nazir's report so as to argue that the structure on the Property had been demolished by the alleged contemnors, but acknowledged that possession thereof was presently with the Plaintiff.
6. She prayed that the interim Order dated 27.01.2020 be confirmed whilst providing protection to the Plaintiff and penal consequences be brought to bear against the alleged Contemnors whilst dismissing CMA No.5346/22 as well as CMA Nos.8877/22 and 5315/23 filed by the intervenors.
7. Conversely, learned counsel for the alleged contemnor No.2 submitted that he had no interest in either this Suit or earlier Suit No.983/2018 and was not arrayed as a party in either proceeding nor was aware of of the Order dated 27.01.2020 made in the Suit, nor had any part to play in the creation of any third-party interest in the Property. He submitted that the CMA No.10870/21 was misconceived to the extent of the alleged contemnor No.2 and prayed for deletion of his name, as sought through CMA No.5346/22.

8. Learned counsel for the alleged Contemnor Nos. 5 and 6 invited attention to the Counter Affidavit filed by him in respect of CMA No.10870/21 and submitted that the alleged Contemnor was a *bona fide* purchaser of the Property without any notice of the decree or pending litigation in relation thereto. He argued that whilst those persons were not liable for any violation of the Order dated 27.01.2020 by the deceased Defendant No.1, the alleged contemnor No.6 ought to be added as a party to the Suit in view of the interest acquired by him in the Property.
9. For his part, learned counsel for the interveners through CMA No.5315/23 submitted that they were the legal heirs of the deceased Defendant No.1 and ought to be added in addition to the persons already arrayed in that regard through the amended title that had come to be filed following his demise during the course of the proceedings.
10. Having considered the arguments advanced, it merits consideration that the Order dated 27.01.2020 served to bind only the Defendant No.1, that too to the extent of restraining him from creating any third-party interest in the Property, who obviously cannot be proceeded against for contempt in terms of CMA No.10870/21 following his demise. Furthermore, the allegations against the other alleged contemnors of participating in the alleged forcible dispossession of the Plaintiff are even otherwise already the subject of a complaint under the Illegal Dispossession Act as well criminal proceedings ensuing from an FIR, all of which would be decided on their own terms. It has also been acknowledged by all present that possession of the Property is presently with the Plaintiff, which state of

affairs may conveniently be preserved pending determination of the Suit. As for the interveners, in view of the interest espoused by them in the Property, whether as a *bona fide* purchaser thereof or as heirs of the deceased Defendant No.1, in either case their relevance to the Suit stands established.

11. As such, under the given circumstances, CMA Nos. 867/20 and 5964/20 stand disposed of while directing the parties to maintain status quo in respect of the Property, whereas CMA Nos.8877/22 and 5315/23 stand allowed with the interveners being added as Defendants, while CMA Nos. 10870/21 and 7893/22 stand dismissed, and CMA No.5346/22 also stands dismissed as having become infructuous.

JUDGE

MUBASHIR