

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

First Appeal No. 23 of 2019

Zahoor Ahmed & others

Versus

M/s Al Zamin Leasing Modraba & others

Date of Hearing: 16.04.2024
Appellants: Through Mr. Ch. Atif Rafique Advocate
Respondent No.1: Through Mr. Faiz H. Durrani Advocate.
Respondent No.2 to 8: No one appeared.

J U D G M E N T

1. This appeal is arising out of order dated 06.04.2019 passed by Banking Court No.1 at Karachi in Suit No.16 of 2005 (Execution Application No.61 of 2010) whereby applications filed by the appellants under section 12(2) read with Order 21 Rules 58 and 60 and section 151 CPC and application under order 21 Rule 26 read with section 151 PC for stay of execution proceedings were dismissed.

2. Very brief facts of the case are that appellants on the strength of their respective registered subleases, which were in respect of a plot having been bifurcated into many, filed application under section 12(2) CPC against a judgment and decree along with stay of execution proceedings. The appellants claim ownership of their respective plots by virtue of the said sublease. The notices of the applications were issued to respondents who contested it. As ill luck would have it, the Banking Court dismissed the applications summarily hence this appeal.

3. We have heard learned counsel appearing for appellant as well as respondent No.1 whereas no one has appeared on behalf of remaining respondents.

4. The only ground which impressed the learned Banking Court was that apparently the registered instruments (subleases) were fictitious and forged. These are only words against words; it is only in response to 12(2) application that the banking Court found that the instruments are not genuine and fake. In all fairness this requires trial, more particularly when the registered instruments were obtained and/or executed much before equitable and registered mortgage of 2003; whereas the subleases of the appellants were apparently registered in the year 1998.

5. Thus, we are of the view that the application under section 12(2) CPC could not have been dismissed summarily via impugned order hence we set it aside with directions to the Banking Court to allow the parties who may record their respective evidence, if they so desire, however, the process may not take more than three months from today and the application under section 12(2) CPC be disposed of soon thereafter.

6. Appeal in above terms is allowed.

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