

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SECOND APPEAL NO.143/2017

Date Order with signature of Judge

1. For hearing of CMA No.540/2021
2. For hearing of CMA No.541/2021

11.10.2023

Mr. Muhammad Aziz Khan advocate for appellant.

Mr. Muhammad Khalid advocate for respondent.

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Heard, perused record.

2. Admittedly property left by deceased Niazi Begum was transferred in the name of legal heirs and entered in the record of rights, subsequently all legal heirs including appellant transferred the property by way of sale to the respondent, however possession was not handed over by the appellant regarding one portion of the subject matter property, hence respondent filed suit for possession that was decreed, appellant filed first appeal that was allowed however in second round of litigation first appeal filed was dismissed, thereafter appellant filed present second appeal. Meanwhile appellant filed suit No.447/2015 claiming therein that sale deed on his behalf in favour of respondent is fraudulent and is to be set aside. That suit was pending for adjudication. After arguing this appeal to some extent, learned counsel for the parties were agreed for disposal of present appeal hence it was disposed of with consent with observation that "Under circumstances, by consent the instant second appeal stands disposed of alongwith pending applications, however without prejudice to the contentions/pleas raised by the parties in Civil Suit No.447/2015 which suit as agreed, to be decided on its merits and strictly in accordance with law." Accordingly judgment debtor/

appellant filed application before executing court that in view of this order execution may be stayed, however executing court proceeded further and possession was handed over to the respondent hence appellant filed present Application under section 12(2) CPC contending therein that referred order was passed on misrepresentation and no court will sit over the order of this court whereby two judgments were maintained in Civil Suit No.448/2015; no purpose will be served as by that order two judgments are in field.

Admittedly, appellant has been dispossessed. Under these circumstances in the interest of justice while examining the legal aspects as raised by both counsel, it would be in the interest of justice to decide this appeal on merits instead of technicalities hence application is allowed; order dated 22.10.2019 is set aside. Appeal is restored to its original position.

Since respondent has received the possession he would be under protection subject to final outcome of this appeal with condition that respondent will not alienate this property to anyone under the doctrine of *lis pendens*; further execution proceedings are hereby stayed. To come up on 27.10.2023 for hearing.

J U D G E

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