

*Order Sheet*  
IN THE HIGH COURT OF SINDH, KARACHI  
**J.M. No.35 of 2021**  
[Mst. Gul Nasreen v. Mrs. Tasneem and another ]  
a/w Execution No.08/2021  
Suit No.1817 of 2018

Date	Order with signature of Judge
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1. For hearing of Main Application
2. For hearing of CMA No.18681/2021

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Mr. Zahid Hussain, Advocate for Applicant.  
Mr. Raheel Nafees Siddiqui, Advocate for Respondent/DH.  
Mr. Aqib Hussain, Advocate for the Objector in Execution Application  
No.08/2021.

Date of Hearing: 03.12.2024

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**ARSHAD HUSSAIN KHAN, J.** This order will dispose of the objections to Execution Application filed by objectors [**the objections**] namely; *Muhammad Iqbal and Muhammad Riaz* as well as Judicial Miscellaneous Application under section 12(2) CPC Read with Section 151 CPC [the “**J.M**”], filed by the Applicant namely; *Mst. Gul Nasreen* seeking setting aside the order dated 16.02.2021, and decree dated 26.02.2021, passed by this Court in Suit No. 1817 of 2018 on the grounds that the same has been obtained through fraud, misrepresentation and by concealment of material facts.

2. Briefly, the facts, as narrated in the objections as well as the J.M, are that the objectors and the applicant are occupants of the respective portions of the property situated on the ground floor of House No.JM 308, Custodian No.VII-D-279 No.A-11, Moti Lal Nehru Road, renamed as Jigar Muradabadi Road, Jamshed Quarters, Karachi, [the “**suit property**”]. It has been stated that the applicant is residing in the property since 1947. Whereas objectors claim that they are residing in the portion of Muhammad Akhtar Hussain since decades. It has also been stated that ground floor of the suit property is divided into three portions and at present three families viz. (i) Gul Nasreen widow of Riffat Ali Khan [Applicant herein], (ii) Muhammad Iqbal son of Aziz uddin [objector No.1] and (iii) Muhammad Riaz son of Azizuddin [objector No2] are residing. It has also been stated that Muhammad Akhtar Khan died on 13.04.1983, while her widow Gulzar Begum died on 20.02.2007,

she however during her life time executed a Will in favour of the objectors and Riffat Ali Khan creating interest in the property. It is also claimed that Riffat Ali Khan fought legal battle in respect of the suit property upto the Supreme Court of Pakistan. The said Riffat Ali Khan died on 28.12.2019. It has been further stated that decree holder/respondent No.1-Mrs. Tasneem filed Suit No.1817 of 2018 for possession, permanent injunction, mesne profits and damages against one Faiz Muhammad Arif. It has been stated that the said Faiz Muhammad Arif was fictitious person who never remained in possession of the property whereas the objectors and applicant who are in physical possession of the suit property were deliberately not impleaded in the case just to defraud the objectors and applicant and get the possession of the property under the garb of the orders of this Court. It has also been stated that the decree holder/respondent No.1 got the ex-parte orders from this Court and subsequently filed the execution application. It is also stated that the objectors and the applicant only came to know about the present proceedings in the month of August, 2021 when the officer of this Court for the purposes of inspection visited the suit property. It is stated that decree holders/respondent No.1 by committing fraud upon the court as well as with the applicant is trying to dispossess the objectors and applicant from the suit property, upon which they have valuable right and interest, under the garb of the impugned orders. Lastly, it has been stated that since the impugned orders are obtained through fraud, misrepresentation and concealment of fact, as such, the same is not sustainable in law and liable to be set aside.

3. Conversely, the stance of the decree holder/respondent No.1 is that the objections as well as J.M are not maintainable as the objectors and the applicant are neither owners nor the tenants of the suit property their status could at best be termed as illegal occupants, hence they have no locus standi to file the objections as well as J.M. It has been further stated that this Court vide judgment dated 15.02.2016, passed in C.P.No.S-49 & 50 of 1994 and CP No.S-76 of 1994, dismissed the claims of all the illegal occupants including the objectors/applicant in the suit property. The above order of this court was subsequently upheld by the Supreme Court of Pakistan, vide order dated 22.06.2017, passed in Civil Petition No.284-K to 286-K of 2016, filed by the above illegal

occupants, hence it has attained finality and the objectors/ applicant cannot claim any right and interest in the property.

4. Learned counsel for the objectors/applicant while reiterating the contents of the J.M as well as the objections has argued that the objectors and the applicant are the real occupants of their respective portion in the suit property. That respondent-No.1 filed suit No.1817 of 2018 for Possession, Permanent Injunction, Mesne Profit and Damages against the fictitious person Faiz Muhammad Arif before this Court without impleading the real occupants of the property and managed to obtain ex-parte judgment dated 16.02.2021 and decree dated 26.02.2021, despite having knowledge that the objectors and the applicant are the real occupants of the suit property. He has further argued that after getting the knowledge of fraud committed by the respondent upon this Court, the objectors and the applicant immediately filed objections to the Execution Application as well as the J.M respectively. It is also argued that the respondent deliberately and intentionally has filed suit No.1817 of 2018 and present Execution Application only against the fictitious person to defraud with the applicant with ulterior motives to dispossess the objectors and the applicant from the suit property under the garb of execution proceedings. Learned counsel has further argued that the judgment dated 15.02.2016 passed in C.P. No.S-49 & 50 of 1994 and C.P. No.S-76 of 1994 are not binding upon the objectors and the applicant as they are not illegal occupants of the suit property. Lastly, it is argued that the objectors as well as the applicant will suffer irreparable loss and injury if the order dated 16.2.2021 and the decree dated 26.2.2021 are not set aside. In support of the contention, learned counsel have relied upon the cases reported as *Mst. Shahana Ali v. Syed Muhammad Haris Jaffari and 3 others* [PLD 2010 Karachi 366 (371)], *Sain Muhammad and 4 others v. Muhammad Aslam and others* [2021 YLR 924] and *Altaf Ibrahim Qureshi and another v. Aam Log Ittehad and others* [ PLD 2019 SC 745].

5. On the hand learned counsel for the Decree Holder/ Respondent [Mrs. Tasneem] while reiterating the contents of the counter affidavit has argued that in terms of the orders of this Court as well the Supreme Court of Pakistan, the objectors and the applicant are illegal occupants having no title documents in their favour, and further their predecessors namely

Muhammad Akhtar Khan as well as Riffat Ali Khan have lost their cases up to the Supreme Court of Pakistan, as such, the objectors and the applicant cannot claim any right and interest in the suit property. It is argued that the objections as well as the J.M are frivolous having been filed with an attempt to delay the execution proceedings, as such, the same are liable to be dismissed with compensatory cost. In support of his contention he has relied upon the cases reported as *Anjuman Araian, Bhera v. Abdul Rashid and others* [PLD 1982 SC 308] and *Fazal ur Rehman v. Province of Punjab through District Officer Revenue Bhakkar* [2014 SCMR 1351].

6. I have heard learned counsel for the parties, perused the record as well as the law cited at the Bar.

From perusal of the record, it appears that the Respondent/ Plaintiff [Mrs. Tasneem] filed Suit No. 1817 of 2018 against Faiz Muhammad Arif for Possession, Permanent Injunction, Mesne Profits and Damages. However, despite sufficient period and opportunity, defendant failed to file written statement as such the matter was ordered to be proceeded ex-parte on 07.05.2019 and the plaintiff was directed to file affidavit in ex-parte proof. On 20.08.2019, at the request of learned counsel for the plaintiff, Commissioner to record evidence on the Affidavit-in-exparte proof was appointed. Thereafter, learned Commissioner filed his reports dated 18.09.2019 and 02.04.2020 and the matter was fixed for final arguments on 24.09.2019. Thereafter, on 16.02.2021, the impugned ex-parte order was passed, which for the sake convenience is reproduced as follows:

“Mr. Shahenshah Hussain, advocate files Power on behalf of the plaintiff. Learned counsel present has taken me through the record. The case as made out in the pleadings is that the portion of subject property having acquired by the plaintiff through gift from her husband, who had himself acquired the same as gift from his mother was allowed to the defendant around thirty years ago without any consideration however when the plaintiff eventually finally succeeded before the Hounarable Supreme Court in the contestation with the settlement department and also acquiring mutations called upon the defendant to vacate the same was denied the possession. It is contented that the licensee of plaintiff was revoked by legal notice dated 06.6.2019, however, despite replying to the same has refused to vacate the subject premises and as such this suit has been filed. The defendant in the matter was served eventually by way of publication and the ex-parte order was passed by order dated 7-5-2019. Learned counsel for the plaintiff contends that the plaintiff has brought up before this court in a way of ex parte proof documents annexed with the plaint as annexures P to P/12 which establish her entitlement. Learned counsel for plaintiff

finally contends that declaration in the matter need not be pressed on part of the plaintiff as only the acquisition of possession is required.

The plaintiff prima facie having established entitlement as owner as such having the right to acquire the possession and on account of her version gone un-challenged the Defendant being a licensee in view of record establishing the cancellation of license is found entitled to possession. The suit of the plaintiff stands decreed for the prayer of possession from the defendant or anyone claiming the same from him along with cost. The prayer of declaration given up and no material being brought as to mesne profits the same are declined. Let the office prepare the ex parte decree in the matter”.

7. Precisely, the claim of the applicant is that her mother-in-law Majeedan Begum was residing in the suit property since 1947 and in the year 1977 her son [Late ] Riffat Ali Khan got married with the applicant and since then she is residing in the property as such she has valuable right and interest in the property. Insofar as the claim of the objectors is concerned, they claim their rights and interests in the property through Muhammad Akhtar Khan as his widow Gulzar Begum during her life time executed her Will in favour of the objectors and Riffiat Ali Khan the husband of present applicant (Mst. Gul Nasreen). Both the objectors as well as the applicant in J.M filed documents viz. nikahnama, FRC, birth certificate, utility bills, and copy of CNICs along with the objections as well J.M, however, no title documents in respect of their right and interest in the suit property have been filed. It may be observed that proprietary rights over a property cannot be claimed merely on the basis of utility bills, CNIC and long-term possession. In the case of *Liaqat Ali through L.Rs, v. Khalid Mehmood and others* [2013 MLD 1818 Lahore], it was held that utility bills and receipts for tax payment do not confer ownership rights. Similarly, this Court in the case of *Muhammad Shafi v. Syed Chan Pir Shah and others* [2018 CLC 866] has held that utility connections do not confer any title on the person on whose premises the same are installed. There is nothing available on the record, which could show that the applicant and the objectors ever filed any civil suit for deceleration of their ownership rights in the suit property. On the contrary, their predecessors in interest, namely Muhammad Akhtar Khan and Riffat Ali Khan, from whom the objectors and the applicant derive their rights and interest, lost their cases in respect of the suit property upto the Supreme Court of Pakistan. In the circumstances, the status of the objectors as well as the applicant in

absence of any title document is nothing but illegal occupants and their claim in respect of the suit property on the basis of long possession of the same is a misconception.

8. In the case of *Fazal ur Rehman and others v. Province of Punjab through District Officer [Revenue] Bhakkar and another* [2014 SCMR 1351], the Supreme Court of Pakistan while refusing to recognize proprietary right on the basis of long possession, inter alia, has held as follows :

3. It is argued by the learned counsel that the petitioner had a 40 years possession over the land in question; therefore, he had been dispossessed in violation of section 32 of the Colonization of Government Lands (Punjab) Act, 1912. We are not inclined because admittedly no document exists in favour of the petitioner to establish his claim to remain in occupation of the property in dispute. Learned counsel stated that an application has been moved before the Board of Revenue for the proprietary rights. We are not inclined because in our considered opinion this argument had not been advanced earlier at any stage and it was not the case of the petitioner in any manner. Contrary to it, it strengthens the plea of the respondent that the petitioner was an unauthorized occupant. We may add that the law lean towards persons who believe in the rule of law and not those who takes the law in their hands as happened in the instant case where the petitioner with no legal authority had occupied the premises in dispute. As far as the question that he was in possession for so many years is concerned, it can never be a ground for the purpose of proprietary rights. The petitioner has failed to establish his case in his favour.

[emphasis supplied]

9. In another case reported as *Anjuman Araian, Bhera v. Abdul Rashid* [PLD 1982 SC 308], the Supreme Court of Pakistan has held as under :

“We find force in the contention of Mr. Brohi; we observe that the only contention of the appellant to show its interest in the land in dispute is that it was in its possession. But this possession was illegal, unauthorized and had no legal sanction. Faced with this situation, the only argument, which the appellant's counsel could press, was that in transferring the area to Abdul Rashid (Respondent No. 1), the law had not been followed. But this grievance was shared by the appellant alongwith numerous others and, therefore, his capacity, while agitating against the orders of transfer, was of person raising a question *pro bono publico*. However, this Court has now held in several decisions that a party acting *pro bono publico* had no *locus standi* to all in question the transfer of property in favour of a third party unless he has a personal interest in the matter. We may add that a person can be deemed to be "aggrieved" if he has some interest in the corpus of the party, to which the law attaches some sanctity. It is only if the appellant can demonstrate some interest in the property, to which some legal sanctity was attached, can he be considered as an aggrieved party. However, the interest of a trespasser is not such an interest which has the blessings of any law. Hence he cannot maintain a writ petition. This view has consistently been expressed by this Court. In *Abdul Ghafar v. Settlement Commissioner, Rawalpindi etc. (1)* it was observed that "a

trespasser was neither entitled to the transfer of a house under the Displaced Persons (Compensation and Rehabilitation) Act, 1958 nor competent to move the High Court in exercise of its constitutional jurisdiction". Again in *Managing Committee, Muhajrin v. Mst. Zainab Bib! and others (2)* it was observed that "the doctrine of "Istehsan" has never been applied in favour of persons in unauthorised possession of property". In *Mirza Sardar Muhammad and others v. Pakistan and others (3)*, wherein the petitioners therein had constructed a shop over the property and the notice of ejectment served by the Municipal Committee was challenged through a writ petition, it was observed that the petitioners had no right or title to remain on the property and, therefore, could not be allowed to perpetuate their unlawful possession. Thus, a trespasser has never been held to be a person, who is entitled to successfully invoke the writ jurisdiction of the High Court, as he lacks the *locus standi* to do so.

[emphasis supplied]

10. In view of the above discussion, I am of the opinion that learned counsel for the objectors/applicant has failed to point out any fraud or misrepresentation in the impugned order, which is the main ingredient for invoking the jurisdiction of this Court under Section 12(2) CPC. Accordingly, the objections to the Execution Application are rejected and present J.M is dismissed.

JUDGE

Karachi,  
Dated 23.01.2025

*Jamil\**