

IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No.D-227 of 2024

Present:

Mr. Justice Zafar Ahmed Rajput
Mr. Justice Arshad Hussain Khan

Petitioner : Muhammad Faisal, through
Mr. Ramiz Naseem, Advocate.

Respondents : Zaheer Ahmed & 07 others.
(Nemo- though served through Trial Court)

Date of hearing : 20.01.2025
Date of order : 20.01.2025

ORDER

ZAFAR AHMED RAJPUT, J: This Constitutional Petition is directed against the order, dated 29.11.2023, whereby the learned Additional District Judge-VII, Karachi-East, while dismissing Civil Revision No. 117 of 2023, maintained the order, dated 31.05.2023, whereby the learned Senior Civil Judge-VIII, Karachi-East (*Trial Court*), dismissed an application under Order XXI, Rule 89 & 90, C.P.C. (*the "Application"*), filed by the Petitioner/Plaintiff No. 3 in Civil Suit No. 414 of 2019.

2. Learned counsel for the Petitioner contends that the Nazir of the Trial Court auctioned the suit property in petitioner's absence; that the Nazir of the Trial Court was duty-bound to auction the suit property in the presence of the parties, however, he failed to do so, hence, the auction of the suit property is liable to be recalled on the sole ground that the same was made without observing the legal formalities; that the impugned orders passed by the Courts below suffer from jurisdictional error, the same are not sustainable in law.

3. Heard. Record perused.

4. It appears from the perusal of the record that the parties in the Petition as well as the Civil Suit are the legal heirs of deceased Muhammad Zahoורuddin, who was the owner of suit property i.e. a House bearing No. A-510 (Plot No.

2923), admeasuring 82 sq. yds. situated at Burmi and Sharif Colony Area 36-G, Landhi, Karachi. The Petitioner and the Respondent Nos. 2 to 7/Plaintiffs, filed the Civil Suit for administration, partition, distribution of shares and permanent injunction against the Respondent No. 8/ Defendant. In this regard, Respondents No. 2 to 7 (*Plaintiffs No. 2 & 4 to 8*) appointed Respondent No.1 (*Zaheer Ahmed-Plaintiff No. 1*), while the Petitioner (*Plaintiff No. 3*) appointed Respondent No. 2 (*Muhammad Irfan-Plaintiff No.2*) as their attorneys. On 18.11.2019, the Trial Court passed the preliminary decree in the Civil Suit, giving the first option to the parties to purchase the entire suit property by paying off shares to other legal heirs, and in case of their failure to do so, to put the suit property in private auction. Since none of the parties was in a position to pay off the shares of other legal heirs, the Nazir of the Trial Court after completing all the requisite formalities put the suit property in private auction on 03.03.2022 and declared the Respondent/Plaintiff No.1 as successful bidder, who deposited full bid amount on 10.05.2022 with the Nazir. At the time of private auction, the parties in Civil Suit were personally present, except the Petitioner, who was represented in auction proceedings by his attorney Muhammad Irfan. It is also a matter of record that the auction proceedings were conducted on 03.03.2022, while the Petitioner filed belated Application on 15.05.2023, which in terms of Article 166 of the Limitation Act, 1908, which provides thirty days period, from the sale, to file an application to set aside a sale in execution of a decree, was time barred.

5. For the foregoing facts and reasons, we do not find any illegality or irregularity in the impugned orders passed by the Courts below; hence, the instant Constitutional Petition is dismissed accordingly, along with pending application, with no order as to costs.

JUDGE

JUDGE

Tahseen/PA