

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 215 of 2023

[Rana Munir Ahmed Khan & anotherv..... Jawaid Sarwar]

&

HCA No. 235 of 2023

[Jawaid Sarwarv..... Rana Munir Ahmed Khan & another]

Present: **Mr. Justice Yousuf Ali Sayeed**
Mr. Justice Arbab Ali Hakro

Appellants through : Mr. Nabeel Ahmed Kolachi, Advocate for Appellant in HCA No. 215 of 2023 and for Respondents in HCA No.235 of 2023.

Respondents through : M/s. Naveed Ahmed Khan and Salman Hamid, Advocates for Appellants in HCA No. 235 of 2023 and for Respondents in HCA No. 215 of 2023. Mr. Imran Rind, Advocate.

Dates of Hearing : 13.08.2024 & 09.09.2024

Date of Decision : 29.10.2024

JUDGMENT

ARBAB ALI HAKRO, J:- These two appeals have been instituted challenging the Order dated 07.04.2023 (hereinafter referred to as the "**impugned Order**"), rendered by a learned Single Judge of this Court in Execution Appl. No. 68 of 2016 (hereinafter referred to as the "**Execution**"). Given that the crux of the dispute in both these appeals hinges upon the impugned Order, it is hereby determined that the said appeals shall be adjudicated through this consolidated judgment.

2. The trivia of the Appeals filed vice versa assailing the impugned Order are as follows:

(i). **HCA No.235/2023.** The crux of this HCA is that the appellant instituted a suit against the respondents for Specific Performance, Recovery, Permanent Injunction, Compensation, as well as Damages on the plea that respondent No.1 beseeched the appellant for financial support, asserting that respondent No.1 had to discharge a financial obligation amounting to Rs.1,25,00,000/- to his creditors. Having a friendly relationship with respondent No.1, the appellant handed over files of his four plots, the details of which are enumerated in Para 2 of the memorandum of HCA. The appellant sought security, to which respondent No.1 undertook either to return the amount or to hand over possession of a house constructed on plot No.26, Field Street No.19, measuring 791-9, Model Colony Malir,

Karachi (hereinafter referred to as the "**subject property**"), which is in the name of respondent No.2 (respondent No.1 and respondent No.2 are spouses). It was pleaded by the appellant that respondent No.1 surreptitiously mutated and transferred the said four plots in the name of his creditors. Furthermore, in March 2015, respondent No.1 beseeched for an additional sum of Rs.25,00,000/-, which was also handed over by the appellant to respondent No.1. As time progressed, respondent No.1 was under an obligation to pay a sum of Rs.1,41,00,000/- to the appellant. However, respondent No.1 kept the appellant on hollow hopes and never fulfilled his obligations. Consequently, the appellant, having grown weary of the omissions on the part of respondent No.1, preferred a civil suit, which was later patched up between the parties under the provisions of Order XXIII Rule 3 C.P.C (CMA No.10848/2015 in Suit No.1244/2015) through an edict dated 27.07.2015. At a subsequent stage, the appellant filed execution proceedings, which were allowed through an impugned order. Nonetheless, the appellant impugned the Order of the learned Single Judge passed in the Execution in this HCA to the extent that the claim of the appellant seeking possession for his daughters and sons for sub-divided plots Nos. 26/5 (120.12 sq. yards), 26/3 (119/15 sq. yards), 26/7 (117 sq. yards), and 26/8 (84.16 sq. yards) were declined by the learned Single Judge. Hence, this appeal.

(ii). HCA No.215/2023. The respondents in this appeal instituted a Suit for the Specific Performance, Recovery, Permanent Injunction, and Compensation, as well as Damages, which was later compromised upon a joint plea moved under the provisions of Order XXIII Rule 3 C.P.C (CMA No.10848/2015 in Suit No.1244/2015) through an edict dated 27.07.2015. Subsequently, the respondents filed Execution proceedings, which were partly accepted through an impugned Order. Hence, this appeal.

3. It is considered prudent to illustrate here that the appellant Jawaid Sarwar in HCA No.235/2023 is the respondent in HCA No.215/2023, whereas the appellants, namely Rana Munir Ahmed Khan and Mst. Abida Munir in HCA No.215/2023, are the respondents in HCA No.235/2023. Since the subject matter of these HCAs, as well as the parties, are the same, to avoid any confusion, Jawaid Sarwar (appellant/deed holder) will be referred to as the "**Decree Holder**" in this edict, whereas Rana Munir Ahmed Khan and Mst. Abida Munir (respondents/judgment debtors) will be referred to as the "**Judgment Debtors**".

4. Chronologically, the Decree Holder filed a suit that was compromised. Later on, the Judgment Debtors assailed the compromise decree under the provisions of Section 12(2) C.P.C by filing J.M. No. 56/2017 vide an edict dated 21.01.2020.

The compromise decree was executed through execution proceedings, which were later allowed through the impugned Order. It may be pertinent to record the operative observations of the learned Single Judge in this regard, which are delineated hereunder:-

"13. In view of the foregoing, the compromise decree is executable to the extent of taking possession of Plot No. 26/6, measuring 86.64 square yards and Plot No. 26/4, measuring 86.66 square yards, which have already been transferred by the judgment debtor No.2 to the decree-holder by registered sale deeds dated 18-04-2016 bearing registered numbers 794 and 793, Book-I, Sub-Registrar, Malir Town. The execution application is allowed accordingly. The Nazir shall associate the Survey Superintendent and the Mukhtiarkar, Model Colony and inspect the suit property viz. Plot No. 26, Field Street No.19, measuring 791-9 square yards, Model Colony, Malir, Karachi, to report whether Plot No. 26/6 and Plot No. 26/4 as laid out in the aforementioned sale deeds are capable of separate physical possession from the house constructed on the suit property. If not, the Nazir shall give the occupants of the house 2 months" time to vacate the same, failing which he shall get the same vacated with police aid if need be, and thereafter proceed to attach the same for further orders of this Court for demolition of the house or otherwise."

5. M/s. Salman Hamid and Naveed Ahmed Khan advocated the case of the Decree Holder. They contended that the subject property was subdivided into eight plots, and the same is an admitted position from the record. However, six subdivided plots have been mutated in the name of the Decree Holder's children. Mr. Hamid further contended that as per trite law, the Executing Court ought to execute the decree and ought not to go behind it. However, the learned Executing Court declined to execute the terms and conditions of the compromise decree and only allowed the execution proceedings to the extent of handing over possession of plot No.26/6 (86.64 sq. yards) and plot No.26/4 (86.66 sq. yards) to the Decree Holder, which, according to him, is not in accordance with the trite law. Therefore, the appeal should be allowed, and the impugned Order should be set aside to the extent that possession of sub-divided plots Nos. 26/5 (120.12 sq. yards), 26/3 (119/15 sq. yards), 26/7 (117 sq. yards), and 26/8 (84.16 sq. yards) be handed to his daughters and sons as per the terms and conditions of the compromise. Learned counsel relied on the precedents reported as **2007 SCMR 983, 2015 CLD 1590, 2023 SCMR 2133, 1992 SCMR 1208, PLD 1963 Dacca 849, PLD 2009 Lah 176, PLD 2001 S.C. 131, PLD 2003 Lah 102, and PLD 2022 Sindh 388.**

6. Mr. Nabeel Kolachi, Advocate, appeared for the Judgment Debtors and expressed his concern that the suit filed by the Decree Holder was for specific performance of a mutual agreement, and no relief of possession was sought in the said suit. However, the learned Single Judge transgressed his jurisdiction and

rendered the impugned Order, which is not tenable in the eyes of the law. Mr. Kolachi further submits that the Judgment Debtors have filed Suit No. 780/2017, in which the subject property in these proceedings is the nucleus of the later suit, which is pending adjudication. While concluding his submissions, learned counsel submitted that the learned Single Judge erred in not considering that the compromise decree, on its own, is beyond the pleadings of the parties. Therefore, the same can only be passed through a fresh suit. Consequently, the impugned Order is liable to be set aside.

7. We have meticulously scrutinized the submissions advanced by the respective learned counsel and have thoroughly examined the documentary evidence arrayed before us. It is deemed prudent to commence this deliberation by elucidating the terms and conditions of the compromise application submitted by the parties in the suit, which are reproduced hereunder:-

“1. That both the defendants agree the contents of memo of plaint and agree that plaintiff helped defendants at the time when their creditors were fully in position to insult and humiliate defendant and plaintiff get the dispute settled with them.

2. That Defendants confirm that they shall, without any excuse of whatsoever nature, make payment in full and final of an amount of Rs.14,100,000/- (Rupees Fourteen Million and One Hundred Thousand) on or before 01.03.2016 to plaintiff.

3. That in case Defendants feels that he shall not be in position to make compliance of above said term No.02 the Defendant No.2 on or before 01-03-2016 shall bifurcate her Plot No. 26, Field Street No.19, ad-measuring 791-9 sq. yds., Model Colony Malir, Karachi, and against four plots which were taken by Defendants from Plaintiff's daughters to adjust against his debts to be paid to Rana Ahsan, give four plots each ad-measuring 125 sq. yds. to four daughter of plaintiff and also get the title said four plots transferred and registered in favor of daughters of plaintiff respectively.

4. That above said four plots shall be adjusted against an amount of Rs.11,600,000/- (Rupees Eleven Million and Six Hundred Thousand) and for remaining amount of Rs.2,500,000/- (Rupees Two Million and Five Hundred Thousand) Defendant No.2 out of her remaining portion of above said plot shall get the title registered for a plot of land measuring 15 x 72 feet equal to 120 sq. yds. in favour of plaintiff.

5. That in case or circumstances any of the defendants above named failed to make compliance of above said terms, the plaintiff is fully and duly entitled and/or authorized to get learned Nazir of this Hon'ble Court appointed from this Hon'ble Court so that compliance of above said term No. 3 and 4 may be made immediately.

6. That Defendants confirm and undertake that now and onward till full and final satisfaction of all terms of this compromise, they neither shall sell nor transfer nor mortgage nor gift nor alienate nor create any kind of third party interest of whatsoever nature at least in 620, sq. yards of above said property, i.e. Plot No. 26, Field Street No. 19, ad-measuring 791-9 sq. yards. Model Colony Malir Karachi of defendant No.2.

7. That now and onwards, none of the above named parties shall initiate any proceedings against each other in respect of the subject matter of the above suit, and in case of violation of this term of compromise, the defaulting party bounds himself to be liable to pay a compensation amount of Rs.2,500,000/- (rupees two million and five hundred thousand) to this adversary.”

8. It is gleaned from the appraisal of the foregoing that the Judgment Debtors acknowledged the Decree Holder’s assistance in settling disputes with their creditors and agreed to pay Rs.14,100,000/- to the Decree Holder by 01.03.2016. If unable to pay, Judgment Debtor No.2 would subdivide her plot and transfer four plots to the Decree Holder’s daughters, adjusting Rs.11,600,000/- of the debt, and transfer an additional plot for the remaining Rs.2,500,000/-. Failure to comply would entitle the Decree Holder to seek court intervention for enforcement. The Judgment Debtors also agreed not to sell or transfer the property until the terms are fulfilled and to avoid initiating any further proceedings, with a penalty of Rs.2,500,000/- for non-compliance.

9. Section 38 and Order XXI C.P.C pertain to the execution of decrees. Section 38 stipulates that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. This provision confers upon the decree-holder the prerogative to seek execution from either the original Court that rendered the decree or an alternative Court to which the decree has been transferred for execution purposes. Order XXI delineates the mode, manner, processes, and proceedings pertinent to executing a decree. Pursuant to Section 2(3) C.P.C., the term "decree-holder" is defined as any person in whose favour a decree has been passed or an order capable of execution has been made. Conversely, Section 2(10) of the Code defines "judgment-debtor" as any person against whom a decree has been passed or an order capable of Execution has been made.

10. The Learned Single Judge has meticulously observed that Judgment Debtor No.2 executed sale deeds in favour of the two daughters and two sons of the Decree Holder, thereby establishing the privity of contract directly with them. Should the children of the Decree Holder be aggrieved by the non-delivery of possession despite the sale deeds, it is incumbent upon them to initiate legal proceedings to claim possession. The Decree Holder lacks the locus standi to seek possession on their behalf through an execution application.

11. A compromise decree is executable only if it explicitly encompasses the relief sought by the parties involved. This necessitates that the decree clearly address and provide for the specific relief agreed upon in the compromise. In the absence of such explicit coverage, the compromise decree cannot be executed as it stands. In such scenarios, the parties must institute a fresh suit to enforce the compromise agreement. This fresh suit is imperative to obtain a new decree that accurately reflects the terms of the compromise and the relief sought.

12. Admittedly, in the present case, both the daughters and sons of the Decree Holder were not parties to the suit, the compromise application, or the execution proceedings. Consequently, as majors, they must sue for possession if they are aggrieved under Section 8 of the Specific Relief Act. Therefore, the children of the decree-holder, not being parties to the original proceedings, are not directly entitled to the benefits of the compromise decree. They must independently establish their claims through appropriate legal channels.

13. Insofar as the contention of the learned counsel for the Judgment Debtors that the suit filed by the Decree Holder was for the specific performance of a mutual agreement and no relief of possession was sought in the said suit is concerned, it is a settled law that a suit for specific performance is always a suit for possession. This principle is grounded in the understanding that the specific performance of a contract inherently involves the transfer of possession of the property in question. When a court decrees specific performance, it essentially orders the fulfilment of the contractual obligations, which includes the delivery of possession to the party entitled under the agreement. Therefore, even if the suit or terms and conditions of compromise do not explicitly seek possession, the compromise decree for specific performance implicitly includes the right to possession. This legal interpretation ensures that the decree-holder receives the full benefit of the contract as intended, including the possession of the property. Therefore, such contention of Judgment Debtors is misconceived.

14. For the foregoing reasons, we discern no infirmity in the impugned Order necessitating intervention in the exercise of the appellate jurisdiction of this Court. Consequently, we hereby **dismiss** the appeals along with all pending applications, with no order as to costs.

JUDGE

JUDGE