

IN THE HIGH COURT OF SINDH, KARACHI
First Appeal No.24 of 2025
[Jamal-ud-Din v. Faysal Bank Limited and others]

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

- 1.For order on CMA No.369/24
- 2.For order on office objection/reply A
- 3.For hg of main case
- 4.For hg of CMA No.268/25

26.05.2025.

Mr. Zia-ul-Haq Makhdoom, advocate for appellant.
Mr. Badar Alam, advocate for respondent No. 6.
Mr. Muhammad Shaifque Malik, advocate for respondents.
Mr. Muhammad Hisham Mahar, Assistant Advocate General.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: This appeal impugns an order dated 11.02.2025, passed by learned Banking Court No. IV, Karachi dismissing an application, filed by appellant under Order XXI Rule 58 read with section 151 CPC in Execution Application No. 14 of 2017 for inquiry/investigation to identify the mortgaged property in respect of which the judgment and decree in the relevant suit (Suit No.589 of 2017) was passed holding that the same may be attached and sold in satisfaction of the decree.

2. The case of the appellant raised in application was that he was owner of Plot No. 48 admeasuring 02 Acres from NA-Class No. 46, Shehryar Town, Road No. 11, Bhens Colony, Malir Karachi. Under the garb of decree in the suit relating to Plot Nos. 67 and 68, Wool Washing Area, Landhi, District Malir, Bhens Colony, Karachi, an attempt was

being made to dispossess him from his plot of 02 Acres, that his property was different than the mortgaged property mentioned in the decree.

3. Learned counsel for appellant in order to maintain this appeal has argued that his application was dismissed without even a notice to other party which has resulted in miscarriage of justice as under the order of the Court alleged auction purchaser/respondent is trying to dispossess him from his own property by declaring it to be the property in respect of which the decree has been passed.

4. On first date of hearing viz. 13.02.2025, this Bench passed the following order:-

“Learned Counsel submits a Banking matter was pending before Banking Court No. IV at Karachi in which the Respondents were involved, pertaining to mortgage of a property bearing Registration No.67 and 68 situated in Wool Washing Area, Landi Cattle Colony, Deh Ghanghrio, Tapo Landhi, District Malir, Bin Qasim, Karachi ("Mortgaged Property"), which was mortgaged by Respondent No.2 with Respondent No.1. The Appellant states he has no nexus with the mentioned Mortgaged Property, and was not in any manner part of the proceedings before the Banking Court.

The Appellant further submits that he is owner and in possession of a separate property bearing Plot No.48, measuring 02-00 acres (Approx.) Near Shaharyar Town Road No.11 Bhains Colony, Malir, Karachi ("the Property"), for which he has placed certain documents on record (available at annexures H/1 and H/2 to I/1 and 1/3 of his File). The Appellant claims that on 06.02.2025, the bailiff of Banking Court No. IV along with Respondent No.6 (i.e. Auction Purchaser) and authorities came on to the Appellants' Property in an attempt to take it over. Learned Counsel submits that due to some kind of fraud being committed, the bailiff and authorities were misguided and have erroneously approached the Appellants' Property to take it over, instead of approaching the Mortgaged Property which is in a separate location altogether. The Appellant states that he took immediate steps and filed an application under Order 21 Rule 58 and 60 CPC before the Banking Court No. IV in Execution Proceedings No.14 of

2017 (where the matter inter se the Respondents is pending). However, as per Counsel, when the matter was taken up and heard by the learned Banking Court Judge on 11.02.2025, the said application was dismissed without any notice being issued, or without any proper hearing or inquiry being conducted, and the learned Judge passed the Impugned Order dated 11.02.2025, from which the instant Appeal arises.

The Appellant states this is a case of blatant land grabbing, for which the Appellant shall suffer irreparably unless interim orders for protection and safeguarding his Property are granted. The Appellant states that he is currently in possession of his Property, but has severe apprehension that the Respondents along with authorities might unlawfully dispossess him, as he states they have repeatedly approached the Property showing their intent to do so. Let notice be issued to the Respondents for 03.03.2025. In the meanwhile status quo is to be maintained and the Respondents are restrained from dispossessing the Appellant from his Property.”

5. Subsequently, on 03.03.2025 keeping in view the controversy between the parties and noting the facts of the case in brief plus the case of the respondents, we directed the Deputy Commissioner Malir to verify location of the said plots decreed and plot of appellant as claimed by him. Subsequently, Deputy Commissioner Malir has filed a report based on a report of Mukhtiarkar and a visit of the area by relevant Tapedar. The operative part of the report reads as under:-

“It is submitted that the undersigned gone through the contents of the above referred letter and its enclosures, the Supervising Tapedar Deh Gangiaro was directed to furnish the detailed report in the subject matter, who after verifying the relevant record and visited the site has reported that, the land measuring 20-00 acres out of N.C. 46 of Deh Gangiaro being 30 years lease entered in the record of rights in favour of Muhammad Hussain s/o Gul Muhammad vide entry No.541 dated 15.10.2009 of VF-VII-B and the Cattle Farms are available at the site which are under possession of the appellant.

It is pertinent to mention here that the plot bearing Nos. 67 & 68 situated at Wool Washing Area are comes under the KMC

and there is no mutation entered in revenue record in respect of said plots.”

6. The Tapedar on visit of the area and scrutiny of the record has reported that land, measuring 20 Acres out of N-Class No.46 of Deh Gangiario, being in 30 years lease is entered in the record of rights in favour of Muhammad Hussain (alleged predecessor-in-interest of the appellant) vide entry No.541 dated 15.10.2009 of VF-VII-B and the Cattle Farms are running at the site which are under possession of the appellant. Plots No.67 and 68 are situated in Wool Washing Area and there is no mention of any entry in revenue record in respect of the said two plots. According to this report, the record of said plots is being maintained by KMC.

7. Against such report, auction purchaser/respondent has filed objections stating that 30 years lease in favour of Muhammad Hussain has already expired and therefore appellant has no *locus standi* to squat in the said property or to file appeal; he was not party in the proceeding before the Banking Court and this appeal is not maintainable, therefore.

8. Be that as it may, after hearing both the parties including the advocate for auction purchaser and going through the report of Deputy Commissioner Malir and objections thereon, we are of the view that in the given facts and circumstances, the Banking Court was required to investigate the claim of appellant in regard to identification of mortgaged property in respect of which the decree has been passed with the order of attaching and selling the same. The report of Deputy Commissioner in specific words has clarified that purportedly predecessor-in-interest of the appellant (Muhammad Hussain) was given 30 years lease relating to N-Class No.46 of Deh Gangiario, which *prima facie* appears to be a separate property from plots bearing No. 67 and

68, ordered to be attached and sold to satisfy the decree, which are situated in Wool Washing Area and are being maintained by KMC for the reason there is no entry in respect of those plots maintained by Revenue Department, Government of Sindh.

9. In these circumstances, we set aside the impugned order, remand the matter to the Banking Court where the application filed by appellant would be deemed to be pending. The Executing Court shall decide the same after affording an opportunity of hearing to the other side including KMC, which is maintaining the said plots, and conducting an inquiry/investigation as required under Order 21 Rule 58 CPC. The Banking Court shall decide the same expeditiously as soon as possible.

The appeal is accordingly disposed of in above terms along with pending applications.

JUDGE

JUDGE

HANIF