

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-946 of 2025

Date	Order with signature of Judge
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Hearing of cases priority

1. For hearing of CMA No.5289/2024
2. For hearing of main case

Date of hearing and order: 19.11.2025

Ms. Nausheen Khan, advocate for the petitioner

Mr. Naveed Ali advocate for the respondent

Nisar Ahmed Bhanbhro, J. Through the instant petition the petitioner has challenged the order dated 23.02.2024 passed in Civil Revision No. 81/2022 (Re - Mst. Bhanwari through Legal Hiers Vs. Ali Jah Yousif and others) by the learned VIth Addl. District & Sessions Judge Karachi East and order dated 21.03.2022 passed by Learned Senior Civil Judge Ist Karachi East (Trial Court) in civil suit No 880 of 2016 and execution application No 08 of 2021 whereby the application filed under section 12(2) CPC Read with Section 151 CPC, under order 1 Rule 10 CPC and under order XXXIX Rule 1&2 CPC in execution application No 08 of 2021 were dismissed.

2. It is the case of the petitioner that Flat No.212, 2nd floor, Rado Livina, Gulistan-e-Jauhar Karachi was purchased by Mst Bhanwari and such indenture sale deed was executed in her favour, since then Mst Bhanwari was in possession of the suit property. The suit property on demise of Mst. Bhanwari devolved upon her legal heirs as a right of inheritance.

3. On the contrary it is the case of the respondent No.1 Ali Jah Yousuf that he purchased the property from same builder and paid entire amount, since the builder refused to transfer the title of property he preferred Suit No. 880/2016 before the learned trial court for declaration of ownership.

4. It transpired from the record that the suit was decreed in favour of the respondent No.1 through ex parte judgment dated 28.11.2016, thereafter an application 12(2) CPC under order 1 Rule 10 CPC was filed by one Ghulam Rasool son Mst. Bhanwari which was allowed vide order dated 07.03.2019 but he failed to proceed the matter and remained absent, even he did not file the written statement therefore the suit was again decreed in favour of respondent No.1 Ali Jah Yousuf vide ex parte judgment and decree dated 08.04.2021

5. It further transpired from the record that Petitioner Mst Afshan being one of the legal heirs of Mst. Bhanwari filed an application under section 12(2) CPC before the learned trial court seeking reversal of the impugned judgment and decree, which was declined on the ground that the similar application was filed by her brother but he failed to proceed with the matter, therefore the instant application was nothing but an attempt to defeat the execution proceedings. The Revision Application filed by the Petitioner also met the same fate.

6. Heard arguments, perused material available on record. It is matter of record that indenture of lease deed was executed in favour of deceased Mst. Bhanwari and she was in possession of the suit property since date of purchase. Mst Bhanwari was not party to the original proceedings and the suit was preferred against the builder, suit was decreed in favor of Respondent No 1 through ex parte proceedings.

7. During earlier round Ghulam Rasool stepped in and informed the Court that in fact his mother Mst Bhanwari was the owner of the property. The application filed by Ghulam Rasool was granted and ex parte judgment and decree dated 28.11.2016 was set aside. Ghulam Rasool being son of late Mst Bhanwari was allowed to contest the matter. It is pertinent to notice that once it was brought to the knowledge of the Court and parties that late Mst Bhanwari was the owner of the suit property by way of registered document and she had passed away it was incumbent upon the party contesting for a right to declaration of ownership to sue her properly and in case of the failure of the party the Court should have taken pains to bring on record all legal

heirs of Mst Bhanwari to ensure that before passing any adverse order against the party having right or interest in the property which is subject matter of lis. The safe administration of justice required that Court could have acted suo moto to ensure that requirements of fair trial were fully satisfied. It is legal position that on death of a party whose interest is involved in the subject matter of lis, the right to sue remains alive against the legal heirs. It appears from the record that no application impleading the legal heirs of deceased Bhanwari as party to the proceedings was made.

8. Moreover, when a party is added as defendant by invoking the provisions of Rule 10 of the Order I CPC, law mandated that the plaint be amended. For the ease of reference Sub Rule 4 of Rule 10 is reproduced below:

10. Suit in name of wrong plaintiff.—

1)

2) Court may strike out or add parties. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

3)

4) Where defendant added, plaint to be amended. Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

9. It is crystal clear from the record that no amendment in the pleadings was made and the suit was again decreed ex-parte vide judgment and decree dated 21.03.2022. In absence of any findings against the ownership rights acquired by Late Mst Bhanwari it cannot be safely held that Respondent No 1 was actually the owner of the suit property. It appears that no any prayer was made seeking cancellation of title documents of Mst

Bhanwari, as such execution of the decree against Mst Bhanwari was not within the premise of law. It is settled principle of law that a person cannot be deprived of his property except in accordance with law. To possess, acquire and own property was guaranteed as fundamental rights under Article 23 and 24 of the Constitution, which being the supreme law, has to be followed.

10. It can be safely held that the legal heirs of Mst Bhanwari were denied the right of fair trial as recognized under article 10 – A of the Constitution. Since the judgment and decree dated 08.04.2021 was not passed on merits and the plaintiff/Respondent No 1 even after coming in knowledge in the year 2019 about the rights and interests of Mst Bhanwari (late) in the suit property did not seek amendment of the pleadings, therefore a case for indulgence in favor of Petitioner is made out.

11. Consequently; this petition is allowed with cost of Rs 20,000 to be paid by the Petitioner to Respondent No 1 through Learned Trial Court within a period of 30 days from date of this order. The order dated 23.02.2024 in Civil Revision No. 81/2022 passed by the learned Appellate and order dated 21.03.2022 passed by Learned Trial Court on application under section 12(2) R/s Section 151 CPC under order 1 Rule 10 CPC in suit No 880 of 2016 is hereby set aside. The application under section 12(2) CPC filed by the Petitioner is allowed, consequence whereof the judgment and decree dated 08.04.2021 is also set aside. The Suit No 880 of 2016 shall be deemed to be pending before learned trial Court. The Petitioner shall appear before learned Trial Court within a period of 10 days from the date of this order and shall file the list of legal heirs of Mst Bhanwari who shall be impleaded as Defendants in the suit. The Plaintiff / Respondent No 1 shall be at liberty to file an amended plaint in terms of Rule 10 (4) of Order I CPC, seeking any of the relief permissible under the law including but not limited to the cancellation of registered deed in favor Mst Bhanwari and legal heirs of deceased Bhanwari shall file written statement, thereafter, the suit shall be decided on merits within the shortest possible time.

JUDGE

Shafi *

Approved for reporting