

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Jaffer Raza

Misc. Appeal No.157 of 2024

The Pakistan Employees Cooperative Housing Society Ltd..... Appellant

Versus

Habib-ur-Razzaq and others Respondents

Date of Hearing : 12.05.2025

Date of Judgment : 12.05.2025

Barrister Rehman Aziz Malik, Advocate for the Appellant.
Dr. Shah Nawaz Memon, Advocate for the Respondent No.1 along
with M/s. Masjood Ali Memon and Fawad Chand, Advocates.
Muhammad Ahmad, DAG.

JUDGEMENT

Muhammad Jaffer Raza, J: - Instant Misc. appeal has been filed under Section 53(2) of the Sindh Cooperative Societies Rules, 2020, impugning the order dated 15.08.2024, which was passed in Society Execution Application No.60 of 2022 [Society Suit No.1230 of 2022 (old Civil Suit No.480/2004)] by the Vth Senior Civil Judge, Karachi-West & Special Court for Cooperative Societies, Karachi-Division).

2. The learned counsel for the Appellant has argued that the Impugned order cannot be complied with as no such plot exists. He has further that amenity plot cannot be converted under the law and the procedure which ought to be complied with in compliance of the above order, is “cumbersome” and involves the approval from the relevant federal ministry.

3. Learned counsel for the Respondent No.1 has argued that he had filed Civil Suit No.1230 of 2022, which was decreed in his favour vide judgment and decree dated 10.08.2022. Subsequent to the same, Execution Application No.60/2022 was

filed by the learned counsel for Respondent No.1. The above-mentioned judgement and decree was Impugned by the Appellant in the present appeal in Misc. Appeal No.84 of 2022. The same was dismissed vide order dated 15.01.2024. Thereafter, learned counsel for the said Respondent stated that leave to appeal has been filed before the Hon'ble Supreme Court, however, no stay order has been granted therein. Learned counsel for the Respondent has lastly prayed that the instant appeal may be dismissed as there is no impediment in grant of the execution application preferred by the said Respondent.

4. Learned DAG appearing on behalf of the Federation has stated that the judgment and decree passed in Suit No.1230/2022 is a nullity in the eyes of the law as the same has been passed without appreciating the facts. Learned DAG has further argued that the judgment and decree passed in the above-mentioned Suit cannot be implemented and the decree has been obtained through fraud and misrepresentation. In this respect, he further states that he is in process of filing an application under Section 12(2) CPC before the learned trial court.

5. I have heard all the learned counsels for the parties as well as learned DAG and perused the record. More particularly, I have perused the Impugned order dated 15.08.2024. It is evident from the bare perusal of the Impugned order that the same was passed in the Execution Application mentioned above in compliance of the judgment and decree of the trial Court passed in Suit No.1230/2022. It is a well settled principle of law that the Executing Court cannot travel beyond the judgment and decree of the trial Court. I have also examined the Impugned order and the same is within the scope of the judgment and decree passed by the learned trial Court. It is also noted that an appeal against the judgment and decree bearing Misc. Appeal No.84/2022 was dismissed by this Court and the leave to appeal is pending before the Hon'ble Supreme Court without any interim order passed in favour of the present Appellant. It is not open for me to examine the merits of the judgment and decree as the instant appeal has only been preferred against the Impugned order passed by the learned trial court in the above-noted execution. Therefore, no cogent grounds have been raised by the learned counsel for the

Appellant as well as the learned DAG to interfere in the Impugned order. The instant appeal is dismissed with no order as to cost.

Judge

Nadeem