

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-1274 of 2008

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Abdul Maalik Gaddi.

Pakistan Steel Corporation (Pvt.) Ltd.,.....Petitioner

V E R S U S

Allah Morayo & others.....Respondents

For regular hearing.

Date of hearing 07.02.2017

Mr. Fazal-ur-Rehman advocate for the petitioner.

Mr. Asadullah Memon advocate for the Respondent No.1.

None present for the respondent No.2.

Muhammad Ali Mazhar, J: This constitution petition has been preferred against the order passed by learned IInd Additional District Judge, Malir, in Civil Revision No. 02 of 2008, whereby, the learned appellate court allowed the revision application with the directions to the learned executing court to make the applicant (respondent No.1) as party in the execution application and opportunity be provided to him to file objection on the execution application.

2. The brief facts of the case are that the petitioner filed civil suit No. 79 of 1995 against the Respondent No.2 in whose favour lease was executed for plot No. A-619, situated in subsector 8/C/I, Gulshan-e-Hadeed, Phase-I, measuring 120

Sq, yards for a period of 99 years lease. This lease was executed in favour of the respondent No.2 for constructing a house but on violation of terms and conditions of lease, the petitioner filed a civil suit which was decreed on 27.11.1999 and the declaration was granted in favour of the petitioner that the said plot can only be used for residential purpose and its conversion was illegal and against the terms and conditions of the lease. According to the learned counsel for the petitioner, no appeal was filed against the respondent No.2 impugning the said judgment. The execution application No. 02 of 2000 was filed which was allowed vide order dated 20.12.2000 and writ was ordered to be issued for the satisfaction of the decree. The respondent No.1 after allowing execution application, filed an application under Order I Rule 10 C.P.C in the capacity of objector/intervener, however, the said application was dismissed vide order dated 11.01.2008. Against the impugned order passed by the learned executing court, the respondent No.1 filed a revision which was allowed and the executing court was directed to implead him as party and also dispose of the application after hearing his objection, if any. The respondent No.1 applied as intervener in the executing court for the reasons that the respondent No.2 sold out plot to him which fact has been admitted by the learned counsel for the petitioner.

3. Learned counsel for the petitioner argued that execution application has already been disposed of and the writ was ordered to be issued. He further argued if the respondent No.1

had purchased the plot from the respondent No.2 by virtue of conveyance deed even then he was equally liable to follow the terms and conditions of the lease and he has no right and authority to covert residential plot into commercial where at present shops have been constructed.

4. On the contrary, learned counsel for the respondent No.1 argued that before doing any commercial activity or conversion or even prior selling the plot, the respondent No.2 paid conversion charges to the petitioner, thereafter, the property was sold out to the respondent No.1. He further argued that besides the application under Order I Rule 10 C.P.C one more application under Order XXI Rule 58 and 59 C.P.C is also pending in the executing court. Since the respondent No.1 was not originally made party or impleaded in the suit and the matter was between the Lessor and Lessee, therefore, it was necessary by the respondent No.1 to file application in the executing court immediately upon knowing the pending execution application.

5. In our understanding of law, under Order XXI C.P.C various provisions are already provided to handle such type of situation where against the attachment any person can file application for the investigation of claim and objection to the attachment and he may place all such documents to show that he is claiming right independently and not through judgment debtor. Similar types of provisions are also provided under Order XXI Rule 98 to 101 C.P.C. Learned counsel for the

respondent No.1 asserts that his client is in possession which fact has been confirmed by the petitioner's counsel. At present, the revisional court set aside the order of the executing court and directed that the respondent No.1 to be impleaded as party which application was moved under Order I Rule 10 C.P.C. The court has to see pith and substance of the application and not merely a nomenclature of the application and at present the effect of such type of application may be treated under Order XXI Rule 58 and if the objector is out of possession he may move application under Order XXI Rules 98 and 100 C.P.C. Both learned counsel after arguing at some length have agreed that all pending applications in the executing court may be decided by the learned executing court after providing ample opportunity of hearing to both the parties.

6. As a result of above discussion, this petition is disposed of with the directions to the learned executing court to decide the pending applications, if any, and the application filed under Order I Rule 10 C.P.C may be considered to have been filed under Order XXI Rule 58. The executing court shall decide the pending application within 45 days with independent application of mind without being influenced by the order of revisional court. The respondent No.1 shall produce all relevant title documents in his favour before the executing court.

JUDGE

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