

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

C. P. No. D – 3088 of 2018  
[Mukhatiar Ali v. Shahdad Ali and others]

**Before:**  
**Mr. Justice Aftab Ahmed Gorar and**  
**Mr. Justice Muhammad Faisal Kamal Alam**

Date of hearings : 22.01.2020 and 28.01.2020.

Petitioner : Mukhatiar Ali, through  
Mr. Muhammad Aslam Bhatti,  
Advocate.

Respondent No. 1 : Shahdad Ali through Mr. Imdad  
Ali R. Unar, Advocate.

State : Mr. Allah Bachayo Soomro,  
Additional A.G. Sindh.

Respondents No.2&3 : Nemo.

**JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** - The Petitioner has challenged two orders; dated 08.05.2017 passed in Execution Application No.56 of 2011 (arising out in the proceeding of F.C. Suit No.25 of 2005), on the application filed under Section 12(2) of C.P.C. by present Petitioner; and order of 27.07.2018 passed in Revision Application No.75 of 2017 (preferred by the same Petitioner).

2. Succinctly, case of the Petitioner as stated in the main petition is, that the latter has purchased plot No.47, admeasuring 240 Square Yards, situated in Revenue Cooperative Housing Society, Qasimabad, Hyderabad (“**Subject Plot**”) from one Altaf Hussain Dayo, vide a Sale Deed No.2434 dated 04.08.2008. The said Altaf Hussain Dayo was also a subsequent

purchaser (purportedly) derived his interest from one Noman Riaz, who purchased the Subject Plot from Respondent Nos.2 and 3, on the strength of a Sub-General Power of Attorney.

3. Mr. Muhammad Aslam Bhatti, Advocate representing the Petitioner, has argued that the Respondents (*herein*) have litigated amongst themselves without impleading the Petitioner as party and resultantly obtained a fraudulent decree in the above Suit. Per learned counsel, both learned Courts below have failed to appreciate the decisions given in another parallel litigation between the present Respondents, *inter se*, in the shape of another Suit No.21 of 2006. Gist of the arguments of Petitioner's counsel is that the both impugned decisions suffer from gross irregularity and are violative of settled principle of law and should be set aside.

4. Above arguments were controverted by Mr. Imdad Ali R. Unar, Advocate representing private Respondent No.1. His line of arguments is that no valid and subsisting title was ever transferred in the name of present Petitioner. He has read the relevant portions of the both impugned orders / decisions to fortify his arguments that despite having prior knowledge of litigation, Petitioner kept silent, while maintaining that the present petition lacks merits and should be dismissed.

5. Arguments and record are taken into consideration.

6. The order dated 08.05.2017 on the application of present Petitioner under Section 12(2) of C.P.C. in Execution Application No.56 of 2011, is at page-42; *whereas*, second and last impugned order of 27.07.2018 handed down by the learned Revisional Court is at page-81. Learned Executing Court has considered the record. It is specifically stated in the first impugned order of 08.05.2017, that the entry in favour of present Petitioner (who at the relevant time was the intervenor before the Executing Court)

was cancelled vide judicial order dated 17.07.2012, *inter alia*, because the Subject Plot was purchased by present Petitioner during pendency of Suit No.21 of 2006 and thus Section 52 of the Transfer of Property Act, 1882, was invoked against the purported transfer in favour of present Petitioner, but the application under Section 12(2) of C.P.C. was filed on 24.09.2016 for setting aside judgment and decree of 11.12.2010 and 21.12.2010, *but*, the above order of 17.07.2012, whereby the transaction in favour of present Petitioner was declared illegal, was never challenged. The impugned order of Revisional Court has clarified that the above original Suit No.21 of 2006 was renumbered as Suit No.25 of 2006, which was decreed in favour of present Respondent No.1, besides, discussing the fate of the litigation between Respondents, *inter se*, which went up to Appellate and Revisional Courts.

7. Very material aspect of the case, which is not denied by learned counsel for the Petitioner is that when the litigation started amongst Respondents *inter se* present Petitioner at the relevant time had no right or interest in the Subject Plot and that is why he was not made a party to the proceeding. Other undisputed aspect of the case is that Subject Plot was purchased during pendency of litigation and thus applicability of Section 52 (*ibid*), has been correctly determined by the Courts below.

The reported decisions in *Muhammad Naeem Butt v. Shaukat Ali and others* – 2008 S C M R page-1024 and *Aasia Jabeen and 3 others v. Liaqat Ali and others* – 2016 S C M R page-1773, handed down by the Honourable Apex Court, are relevant. *Secondly*, copy of the Sale Deed dated 04.08.2008 is enclosed with the Statement filed by learned Advocate for the Petitioner (dated 17.11.2018) and in paragraphh-3 of this Sale Deed, an indemnification clause is mentioned that Vendor (above named Altaf Hussain Dayo) would indemnify and compensate the present Petitioner in

case any defect in the title of the Subject Plot is found. Date of this Sale Deed further confirms the factual aspect that purported sale transaction in favour of present Petitioner was done during pendency of above litigation, as correctly observed in both the impugned decisions.

8. In view of the above, findings mentioned in the both impugned orders that no fraud upon the Court was played or misrepresentation done by the Respondents, could not be successfully contradicted or dislodged by the present Petitioner in this proceeding.

9. Consequently, both impugned orders do not suffer from any material irregularity or are violative of law, which requires any interference by this Court in this proceeding. Accordingly, present petition is dismissed.

10. Parties to bear their respective costs.

**JUDGE**

**JUDGE**

**Hyderabad,**  
**Dated: \_\_\_\_\_.**