

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Execution Application No. 16 of 2017

Date	Order with Signature(s) of Judge(s)
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1. For hearing of Ex. Application.
2. For further order on C.M.A. No. 411/19.

16.03.2021

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Mr. Abdul Wajid Wyne, Advocate for decree holder.  
Mr. Rasheed Siddiqui, Advocate for judgment debtor.  
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Through instant Execution Application, the plaintiff / decree holder seeks execution of decree passed in Suit No. 1192 of 2008 (Re. Muhammad Amin Chapal v. Sohail Akhtar).

Plaintiff /decree holder filed aforesaid suit for declaration, injunction and possession inter alia with the following prayers:-

- a) *To declare that the said Bungalow No.A-55, Block II, measuring 200 Sq. yards Chapal Sun City, Plot No. 29/1, Sector 29, KDA Scheme 33, Karachi was booked and acknowledged its possession under agreement dated 24.3.2004 Annexure H to the plaint and the defendant is bound to the terms and conditions of the said Agreement.*
- b) *To call up /adjudge and cancel the said Agreement dated 74.3.2004 entered into by the defendant with the plaintiff in respect of Bungalow No.A-55, Block II, measuring 200 Sq. yards Chapal Sun City, Plot No. 29/1, Sector 29, KDA Scheme 33, Karachi.*
- c) *For possession of the said Bungalow No.A-55, Block II, measuring 200 Sq. yards Chapal Sun City, Plot No. 29/1, Sector 29, KDA Scheme 33, Karachi be delivered to the plaintiff.*

It appears that after receiving summons and notices, on 11<sup>th</sup> November, 2008 Vakalatnama was filed on behalf of the defendant by Mr. Dur Muhammad Shah Advocate; however, no written statement was filed by the defendant, who later on was debarred from filing written statement vide order dated 8<sup>th</sup> September, 2011 passed by the Additional Registrar (O.S). Subsequently, on 22<sup>nd</sup> December, 2015 an application bearing C.M.A. No. 18728 of 2015 was filed on

behalf of the defendant for recalling of aforesaid order, which was dismissed vide order dated 10<sup>th</sup> November, 2016. Against the said order, the defendant did not prefer any appeal. Subsequently, plaintiff's suit was decreed to the extent of prayer clauses "a, b & c"; however, subject to refund/return of the amount so far paid by the defendant alongwith 10% early profit (but not on compoundable basis) vide judgment dated 7<sup>th</sup> December, 2016 and decree was drawn on 22<sup>nd</sup> December, 2016. Against said judgment and decree, the defendant preferred High Court Appeal No. 130 of 2017, which was dismissed by the Hon'ble Division Bench of this Court, vide judgment dated 20<sup>th</sup> December, 2018. It was thereafter, the plaintiff / decree holder maintained instant Execution Application seeking issuance of writ of possession in respect of the subject property i.e. Bungalow No. A-55, Block-II, measuring 200 square yards, Chappal Sun City, Plot No. 29/1, Sector 29, K.D.A. Scheme No. 33, Karachi in his favour and against defendant / judgment debtor.

It will be relevant to mention here that after filing of instant Execution Application, the plaintiff / decree holder deposited the amount paid to him by the defendant / judgment debtor alongwith 10% yearly profit with the Nazir of this Court, in compliance of aforesaid judgment and decree.

On being served, on 23<sup>rd</sup> December, 2019 the judgment debtor filed objections to this Execution Application in terms of Section 47 of the C.P.C., while decree holder filed C.M.A. No. 411 of 2019 seeking an order for the ejectment of the judgment debtor from the subject property.

Learned counsel for judgment debtor while referring the objections, filed under Section 47 of C.P.C., contends that the suit itself was not maintainable in law as there was no privity of contract between the decree holder and the judgment debtor, as the later never entered into any sale transaction with the former in

respect of the subject property. He further contends that the judgment debtor booked the subject property through application form on 21.06.2000 against total sale consideration of Rs. 30,30,000/- and thereafter, on 24<sup>th</sup> March, 2004 he finally entered into a sale agreement with a juristic person, namely, M/s. Chappal Real Estate Division through its authorized signatory, namely, Abdul Latif s/o. Muhammad Siddique and paid amount of installment to him; hence, the suit was liable to be dismissed by this Court and since this fact was not taken into consideration by the Court during trial, the same can be adjudicated by this Court being executing Court under Section 47 of the C.P.C.; hence, this Execution Application is liable to be dismissed, so also the suit filed by the decree holder by setting aside the judgment and decree. In support of his contentions, learned counsel has relied upon the case of *Broken Hill Proprietary Company Limited v. Ghee Corporation of Pakistan (Private) Limited and others (2001 CLC 707)*.

On the other hand, learned counsel appearing for the decree holder maintains that the objections filed under Section 47 of the C.P.C. by the judgment debtor are misconceived and incompetent. He further maintains that the decree holder is the proprietor of M/s. Chappal Real Estate Division and Abdul Latif, the signatory of alleged sale agreement, was the manager of decree holder, who acted in signing the alleged sale agreement of subject property with the judgment debtor as an agent/employee of decree holder; otherwise, he had no other legal capacity to enter into any sale transaction with the judgment debtor. He further maintains that since the decree holder is the owner of the project and proprietor of the firm M/s. Chappal Real Estate Division, the suit filed by him by his name was maintainable and competent in accordance with law. He also maintains that the objections so raised by the judgment debtor now, were not raised by him in his appeal, which otherwise appear to be without any substance; therefore, the same are liable to be rejected.

I have heard learned counsel for the parties and perused the material available on record.

Section 47 of the C.P.C. provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. The only question raised by the judgment debtor is regarding the locus standi of the decree holder to maintain the suit and such question is not related to the execution, discharge or satisfaction of the decree but with regard to maintainability of the suit. The judgment debtor does not claim that said Abdul Latif being owner of the subject property entered into sale transaction with him.

Section 182 of the Contract Act, 1872 (**“the Act”**) provides definition of ‘Agent’ and Principal” as *“an “agent” is a person employed to do any act for another or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the “principal”* The aforesaid definition of “agent” and “principal” is very wide. A person employed to carry on business on behalf of his employer is an agent. On same analogy, a manager of a builder and developer/company is an agent of the latter to the extent that he can enter into a contract on behalf of the latter being partially entrusted with his/its business. Section 226 of the Act provides that *“contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person”*.

I am; therefore, of the view that said Abdul Latif while signing alleged sale agreement, dated 24<sup>th</sup> March, 2004, acted as an agent of the decree holder/principal to represent later in dealings with judgment debtor and; therefore, the

contract entered into through him (*Abdul Latif*), and obligations arising from acts done by him are enforceable in the same manner, and have the same legal consequences, as if the contracts had been entered into and the acts done by the decree holder in person.

For the forgoing facts and reasons, the instant Execution Application is allowed by rejecting the objections raised by the judgment debtor with direction to the judgment debtor to vacate the subject property and hand over its peaceful possession to the decree holder within a period of ninety (90) days hereof.

Athar Zai

JUDGE