

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C.P No. D-2758 of 2022

Petitioner : Arif Ahmed Siddiqui, through Hyder
Raza Arain, Advocate.

Date of hearing : 11.05.2022

ORDER

YOUSUF ALI SAYEED, J. The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the order made by the learned IInd Additional District Judge, Karachi (East) on 25.04.2022, dismissing Civil Revision Application No. 28 of 2022 preferred by him against the earlier dismissal of two applications filed before the 1st Senior Civil Judge, Karachi (East), in Execution No.1 of 2012, being applications under Section 12 (2) CPC and Order XXI Rule 59 CPC (collectively, the “**Underlying Applications**”), through which the Petitioner had sought to assert that he was a bona fide purchaser of Apartment No.419, 4th Floor, Category “A” Jabl-e-Rehmat Jauher, Karachi (the “**Subject Property**”) so as to forestall further proceedings for satisfaction of the judgment and decree in Suit No. 1414 of 2019 (the “**Suit**”), as had been contested between the private Respondents.

2. A perusal of the Application under section 12 (2) CPC filed by the Petitioner reflects that the same merely advanced a bare plea as to his being a bona fide purchaser of the Subject Property, without disclosing any further particulars, however, in the Application under Order XXI Rule 59 CPC it was stated that the Petitioner had purchased the Subject Property from one Syed Khursheed Ali Zaidi through a Conveyance Deed dated 19.10.2018 without knowledge of the litigation relating thereto between the private Respondents.

3. For proper appreciation of the matter, the course of that litigation and the aspect of its sale in favour of the Petitioner's predecessor stand charted in Paragraphs 4 and 5 of the order of the Revisional Court, which read as follows:-

“4. Briefly stated the facts are that respondent No.1 filed Suit for Declaration, Specific Performance, Possession and Permanent Injunction against respondent No.2&3 in the Court of 1st Sr. Civil Judge Karachi East which was decreed against respondents 2&3. The Respondents No.2&3 preferred appeal which was dismissed by learned 3rd ADJ East Karachi on 7-4-2012. The second appeal filed by the respondents 2&3 before Hon'ble High Court Sindh too was dismissed. The Respondents 2&3 filed leave to appeal Petition before Hon'able Supreme Court of Pakistan Which was dismissed.

5. Per decree dated 25-3-2011 the Respondent No.2 herein was directed to receive the balance consideration of Rs.400,000/- and execute Sub-Lease in respect of Flat NO.419, 4th floor under the name and style Jabal-e-Rahmat Towers. The Respondents 2&3 herein despite of dismissal of their appeals up to Hon'able Supreme Court failed to execute Sub-Lease in favor of DH (Respondent NO.1 herein), thus execution application NO.1/2011 was filed. The Respondents 2&3 executed Sub-Lease in favor of Syed Khursheed Ali Zaidi who thereafter by a Conveyance Deed transferred Flat NO.419 in favor of Petitioner.”

4. The order made by the Executing Court further dilates upon the manner and timing of the sale, with it being observed that:

“It is also matter of record that conveyance deed produced by applicant/intervener clearly showing that suit flat was sublease by defendant no. 1 under registration no. 4592 of Book no. 1, with the sub registrar II, Gulshan-e-Iqbal Town Karachi on dated 27-08-2018 and digital scanning unit Karachi BOR Sindh Dated 17-10-2018 RD 4592/SRO:18/DocType:23. Thereafter, conveyance deed was executed by vendor namely Syed Khursheed Ali Zaidi in favor of applicant/intervener exactly after two days i.e. 19-10-2018. It is crystal and clear and there is no further discussion on case of applicant/intervener that all the transfer of suit flat was made during pendency of litigations between plaintiff and defendant. I have already discussed that this matter was contested by defendant No. 1 upto Honorable Supreme Court of Pakistan and the transfer was made by defendant No. 1 in favor of said Syed Khursheed Ali Zaidi and thereafter Syed Khursheed Ali Zaidi made transfer of suit property in favor of applicant/intervener during pendency of litigation, hence it seems to be manage and pre-planned in order to linger on the execution proceedings.”

5. Under the given circumstances it is apparent that judgment in the Suit had been entered in favour of the Respondent No.1 several years prior to the sale of the Subject Property being undertaken, hence it cannot conceivably be claimed by the Petitioner that the same was the product of any fraud or misrepresentation. As such, no case for interference stands made out. Ergo, while granting the urgent application, we dismiss the Petition *in limine* along with other pending miscellaneous applications.

Judge

Chief Justice