

ORDER SHEET543233433yy
IN THE HIGH COURT OF SINDH, KARACHI
HCA NO. 322 / 2015

Date	Order with signature of Judge
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For hearing of main case.

23.12.2015.

Mr. Muhammad Nazir Tanoli, Advocate for Appellant along with appellant Mr. Abdul Latif Shaikh.

Through instant appeal the appellant has impugned order dated 28.10.2015, whereby, the Execution Application filed by the appellant has been consigned to the record by holding that the same is not maintainable. Notices were ordered however, none has effected appearance on behalf of the respondents.

Counsel contends that a Suit bearing No. 707 of 2004 was filed by the appellant against the respondents and a restraining order was passed on 14.9.2004, to the effect that no third party interest shall be created in respect of the property in question i.e Plot No 20, JBCHS, Maripur Hawks Bay Road, Karachi admeasuring 200 square yards. He further submits that thereafter a compromise decree dated 26.3.2013 was passed, wherein, defendant / respondent No.1 had agreed to transfer the 50% ownership of the Suit property, already in possession of the appellant, to the wife of the appellant through a Sale Deed without any further demand and liability. He further submits that despite a restraining order, dated 14.9.2004, the defendant / respondent No.1 had gifted the said property to the sons, vide a Registered Gift Deed dated 23.9.2004, during subsistence of the restraining order passed by this Court, whereas, per Counsel the learned Single Judge instead of proceeding further in the Execution proceedings has consigned the same to the record by holding that the same is not maintainable as the fate of the gift deed is to be decided by the competent Court of law.

Since a very short point is involved we have heard the appellant and have perused the record which reflects that the gift deed was executed on 23.9.2004, when a restraining order passed by this Court on 14.9.2004 was in field, whereas, notwithstanding this, respondent No.1 entered into a compromise resulting in decree dated 26.3.2013, whereafter, even filed undertaking(s) executed by himself as well as his sons to the effect that they are willing to transfer the 50% ownership and satisfy the compromise decree. In the given circumstances, we are of the view that the Executing Court was well competent to investigate the issue further in terms of Section 47 and 51 CPC which confers powers on it to enforce Execution, by arrest and detention in prison, if it is satisfied that the judgement debtor with the object or effect of obstructing or delaying the Execution of decree, has, after institution of the Suit in which the decree was passed, dishonestly transferred, cancelled, or removed any part of the property, or committed any other act of bad faith in relation to his property.

In the circumstances, we are of the view that the learned Single Judge was not justified in consigning the Execution Application to record by holding it to be not maintainable, as the Executing Court is very much competent to exercise powers conferred upon it under Section 47 and 51 CPC to investigate the issue further. Accordingly, instant appeal is allowed and the impugned order is set aside by remanding the matter to the Executing Court to proceed further in accordance with law. Appeal stands allowed.

Chief Justice

Judge