

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
JM No.75 of 2015

Date

Order with signature of Judge

1. For hearing of CMA No. 17069/2015.
2. For hearing of CMA No. 17070/2015.
3. For hearing of CMA No. 2399/2016.
4. For hearing of CMA No. 2136/2016.
5. For order on Nazir report dated 09.12.2020.
6. For order on CMA No. 21034/2021

08.12.2021

Mr. Umer Memon alongwith Khurram Asghar, advocates for the applicants.

Mr. Abdul Latif Leghari, advocate for the Respondent No.2.

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SALAHUDDIN PANHWAR, J: Through listed applications, applicants have challenged the validity and legality of the judgment and decree passed in Suit No.1911/2015, on the ground that the same have been obtained by practicing fraud and misrepresenting the facts.

2. The learned counsel for the applicant has referred the Para No.2 of the plaint and the prayer clauses. In the prayer clause 'a' the plaintiff sought declaration that he is the lawful owner of the suit property having purchased the same through irrevocable General Power of Attorney from its previous owner who has also delivered the peaceful vacant possession of the same to the plaintiff, while in the prayer clause 'b' the plaintiff is seeking relief of possession directing the defendant to handover the physical, vacant

possession of the same to the plaintiff, failing which the same be delivered to the plaintiff through process of law.

3. The plaintiff obtained the decree through compromise by filing an application U/O 23 Rule 3 CPC R/w Section 151 CPC, seeking disposal of the suit on a consent decree in terms of compromise application. The application was signed by the constituted attorney of the plaintiff namely Ghulam Ahmed and the Defendant Sajid Nawaz Khokhar. The compromise application was also supported with the affidavits of Attorney of the plaintiff by the Defendant viz. Sajid Nawaz Khokhar, they admitted the contents of the compromise application and their signatures. Their counsel also signed the compromise application. Ultimately, the application U/O 23 rule 3 CPC R/w Section 151 CPC was allowed and decree was prepared.

4. At the very outset, the learned counsel for the applicants while referring death certificate issued by NADRA regarding the death of Ghulam Rasool as he passed away in 2008. He also contends that suit was filed in July 2015 and same was decreed on 06.11.2015 whereas no counter affidavit and written statement were filed; he has emphasized over the affidavit of the attorney of the plaintiff which conflicts that this as mentioned on the plaint. He further contends that plaintiffs claim his licensee, matter pertains to subject property, accordingly matter is required to be proceeded under rent jurisdiction, hence impugned judgment and decree are result of misrepresentation, fraud and without jurisdiction.

5. Whereas; the learned counsel for decree holders contends that plaintiffs have concealed his brother as he is not party in the suit. He has

referred a compliance report while highlighting that possession of the subject matter premises was handed over under the supervision of the SHO and at that time both the brothers were present and original documents are available with him, hence applicants have not come before the Court with clean hands.

6. Heard the arguments and perused the record.

7. While examining the plaint, it reflects that the claim of the plaintiff was that he purchased the property from one Zebinda through sale agreement, hence the plaintiff ought to file a suit for specific performance but he has not filed such suit and the vendor Zebinda was not made party in the suit. Counsel for decree holder is unable to challenge the validity of death certificate of Ghulam Rasool whereas Ghulam Rasool died in 2002 and Attorney of Ghulam Rasool files suit in the year 2015 for which he was not competent. Hence fraud and misrepresentation of facts are apparent of the record. Courts have been held to be possessed of inherent powers to set aside their own judgment, decree or final order, fraudulently or collusively obtained. Reliance is placed on **1995 CLC 331**. Where fraud is played upon the Court, the decree can be set aside by the Court itself. Reliance is placed on **2002 YLR 1984 and 2003 CL 607**.

8. Whatever the situation may be, the attorney always represents the principal being his agent. After death of the principal the power of attorney has lost its sanctity and the agent has no right to use the same on behalf of the principal.

9. Besides, the prayer clauses show that matter was required to be adjudicated by joining all the relevant parties being legal owners. Plaintiff

was not competent to be heard and allowed to lead evidence. Accordingly present J.M. is allowed; as a result thereof, judgment and decree are set aside.

10. With regard to possession received by the Nazir, parties shall address on **17.12.2021**.

Shahbaz

J U D G E

