

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.24 of 2023

Samiuddin Qureshi
Versus
Mrs. Rahat Saleem and others

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| DATE | ORDER WITH SIGNATURE OF JUDGE(S). |
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial.

Hearing (priority) case

1. For order on CMA No.328/2024 (U/S-151 CPC).
2. For order on office objection.
3. For hearing of CMA No.4930/2023 (151 CPC).
4. For hearing of CMA No.4931/2023 (151 CPC).
5. For hearing of main case.
6. For hearing of CMA No.425/2023 (stay).

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Dated 20.03.2024

Mr. Muhammad Ramzan Tabassum, Advocate for the Appellant.
Mr. Raja Muhammad Safeer, Advocate for Respondents No.8 to 13.
Mr. Muhammad Zahid Khan, Advocate for Auction Purchaser.

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Muhammad Shafi Siddiqui, J.- Before us is an order dated 18.01.2023 impugned in this appeal whereby the learned single Judge was pleased to order that the articles lying at the adjacent piece of land be removed for its onward control and use of adjacent plot owner.

2. Some of the legal heirs have filed this appeal contending that the only piece of land that was sold by virtue of an agreement of sale is a piece of land measuring 216 square yards, however, it is seen that it was on 'as is where is' basis.

3. Mr. Muhammad Zahid Khan, learned counsel for the purchaser submits that this was an understanding between the legal heirs and the purchaser and that they would acquire the entire property including the adjacent land which measures around 185 square yards. The sale certificates somehow were issued by the Nazir of this Court which also disclosed the area as 216 square yards.

4. Subject property is 216 square yards which was originally a leased land by PECHS. It could have been a case of the borrower that only they could have been allotted this piece of land but it is also to be seen independently whether it was originally a park or otherwise, as we have called the officials of PECHS on the previous dates of hearing, who raised no objection thereon.

5. We are, however, of the view that by an ad-interim order such piece of land should not have been ordered to be handed over unless such controversy of additional land is taken to its logical end that it is saleable and that it was acquired for consideration by the purchaser from the legal heirs. Some of the legal heirs have already filed a suit bearing No.1752/2023 before V-Senior Civil Judge, South, Karachi, which has disputed the adjacent piece of land. Similarly, it is for the purchaser to demonstrate that the adjacent piece of land in fact was acquired by the purchaser from some of the legal heirs and is saleable.

6. As a particular stance was taken by PECHS in a reply which they have filed, hence the interim order, whereby the adjacent piece of land was ordered to be handed over, is set aside. The parties, however, shall maintain status-quo subject to the outcome of the controversy as raised in the aforesaid suit or any other litigation pending with regard to adjacent land of 185 square yards etc. It would be via decree which could bestow and maintain status of the land in question.

7. The appeal is allowed in the above terms.

JUDGE

JUDGE