

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Saman Rafat Imtiaz

Civil Revision Application No.118 of 2023

Zeeshan Zaki & another
Versus
Mst. Farah Alamgir & another

Applicant: Through Mr. Muhammad Naqash Siddiqui Advocate.

Respondent No.1: Through Mr. Ahsan Mazhar Ali Advocate.

Respondent No.2: Through Mr. Imran Ahmed Abro, Assistant Advocate General.

Date of hearing: 20.05.2026

Date of Order: 20.05.2026

J U D G M E N T

Saman Rafat Imtiaz, J.- Instant Civil Revision Application has arisen from the order dated 30.05.2023 passed by IX-Additional District Judge Karachi West (MCAC) in Civil Appeal No.282 of 2022 in terms whereof order dated 26.04.2022 passed by XII-Senior Civil Judge Karachi West in Civil Execution No.10 of 2020 was maintained. The precise question involved is whether at the stage of executing the decree, the Executing Court was justified in concluding that the applicants are not the owner of the subject land on the basis of report of Mukhtiarkar though there was no issue as to the title in the suit in which judgment and decree was passed and thus decline to direct the applicant to execute sublease in favour of the respondent No.1.

Learned counsel for applicants has explained that the respondent No.1 filed suit for declaration, possession, specific performance of contract and permanent injunction against the applicants in respect of the suit property i.e. Apartment No.E-1A-A-104, in project known as Saima

Arabian Apartments Com-5, situated at Deh Jam Chakra, Tapo Manghopir, Gadap Town, Karachi, which was decreed in favour of respondent No.1 vide judgment and decree dated 01.10.2020. Thereafter, the respondent No.1 instituted execution proceedings in which possession of the suit flat has already been handed over to the respondent No.1. With respect to execution of sublease in favour of respondent No.1 it is submitted by the applicants No.1 who is the builder and applicant No.2 who is one of the co-owners of the land on which the subject project is situated that they are restrained from executing sublease due to interim orders passed in Suit No. 4950 of 2025.

Learned counsel for the applicants contends that although there was no issue of ownership rights of the applicants, the executing Court called for reports of Mukhtiarkar in response to which the Mukhtiarkar submitted report dated 05.11.2021 and 01.04.2022 contending that since there was a fire that occurred old previous record of rights is damaged and not legible and therefore Survey Nos.82 to 85 of Deh Chakra, on which the subject project is located could not be ascertained. Learned counsel for the applicants submits that these reports were misconstrued by the learned Executing Court vide the impugned order dated 26.04.2022, which has been upheld in appeal vide impugned order dated 30.05.2023 that the Mukhtiarkar report shows that the judgment debtors/ applicants are not the owners of the suit land and that the construction that was made on the land does not belong to the builder/applicants. He submitted that such findings are erroneous and contrary to the record and also beyond the scope of matter that is before the executing Court.

In order to assert the ownership rights learned counsel for the applicants relied upon report dated 27.01.2017 issued by the office of Assistant Commissioner Manghopir, Sub-Division District Karachi West, which was called for in other legal proceedings in which they have confirmed in view report of the Mukhtiarkar Manghopir that the subject

project i.e. Saima Arabian Apartments are the legitimate owners of the land in question. Such report of the Mukhtiarkar of even date confirms that by way of Entry No.5/8 dated 19.05.2009 Survey Nos.82 to 85 of Deh Jam Chakra comprising of 20-0 Acres is in the name of applicant No.2 and 2 others. He has also referred to the latest report of Mukhtiarkar dated 18.07.2023 which was submitted in another matter on the basis of reconstructed/ reconciled record that Survey Nos.82 to 85 are in the name of the applicant No.2 and two others. Learned counsel for the applicants submitted that the latter report could not be placed before the executing Court because it has been submitted after passing of the impugned order.

Learned counsel for respondent No.1 has supported the arguments submitted by the learned counsel for the applicants. The learned Assistant Advocate General also concedes that there is no report on the record stating that the Survey Nos.82 to 85 do not belong to the applicant No.2 and others or that the construction thereupon does not belong to the applicant No. 1.

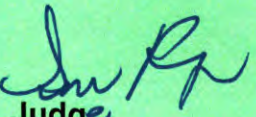
I have heard learned counsel for the parties and perused material available on record.

Perusal of the relevant record with the assistance of the counsel does not reveal any report of Mukhtiarkar whereby it has been stated that Plot Nos.82 to 85 is not in the ownership of applicant No.2. The reports dated 27.01.2017 which was submitted by the Mukhtiarkar prior to the occurrence of fire and report dated 18.07.2023 which was submitted after reconstruction/reconciliation of record in 2023 categorically confirm that the said survey numbers are in the ownership of applicant No.2 and two others who were not impleaded in the suit of respondent No.1 and consequently are not parties before this Court, whereas the report relied upon by the learned Executing Court/both the Courts below simply states that no conclusive report can be submitted as much of the record of the

Mukhtiarkar office was damaged/destroyed due to occurrence of fire and subsequent fire fighting efforts which resulted in seepage in the office.

In view of the foregoing instant Civil Revision Application is allowed; the impugned orders are set aside and the case is remanded to the learned Executing Court for further proceedings, particularly to consider whether the applicants are restrained from executing sublease in favour of respondent No.1 on account of any stay order passed in another proceedings.

Disposed of accordingly.


Judge