

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1650 of 2008

[Mrs. Shamima Alam v. Syed Abu Obedah and others]

Dates of hearing : 23.02.2018.

Date of Decision : 01.03.2018.

Plaintiff : Mrs. Shamima Alam, through Mr. Muhammad Aziz Khan, Advocate.

Defendant No.3 : Sub-Registrar, through Syed Aal-e-Maqbool Rizvi, Additional Advocate General along with Ms. Naheed Akhter, State Counsel.

Defendant No.5 : Karachi Development Authority, through Mr. S. M. Ali Azam, Advocate.

Defendant Nos. 1, 2 and 4 : Nemo.

Case law relied upon by Plaintiff's Counsel

Case law relied upon by Defendants' counsel

Law under discussion:

1. Registration Act, 1908.
2. Specific Relief Act, 1877.
3. Evidence Law (Qanun-e-Shahadat Order, 1984.)
4. Civil Procedure Code, 1908 (“CPC”)

J U D G M E N T

Muhammad Faisal Kamal Alam, J.: Through the present proceeding, the Plaintiff is, *inter alia*, claiming her ownership rights in respect of plot bearing Plot No. A-19, Sector 7-D/3, measuring 238.88 Square Yards, situated at North Karachi (“**the Suit Plot**”). The plaint contains the following prayer clause(s)_

- “(a) *To declare that the plaintiff is bona fide purchaser and lawful owner of Plot No.A-19, Sector 7-D/3, measuring 238.88 Sq. Yds. situated at North Karachi. Further declare that the allotment order dated 27.03.1977 Annexure “A” of annexure “P/30” is contrary to annexure “P” and is an after thought therefore, the allotment order dated 27.03.1977 and all subsequent title documents of the suit property in the name of defendants are illegal, forged, bogus, null and void and order for their cancellation in accordance with law.*
- (b) *To grant permanent injunction by restraining the defendants, their workers, labourers, subordinate, men, servants, employees, attorneys, legal representatives any person or persons acting under the defendants or on behalf of the defendants, from creating any third party interest with the suit property with any manner whatsoever. Further restrain them from transferring, mutating, selling or creating any third party interest with the suit property of the plaintiff.*
- (c) *To grant decree in favour of plaintiff for restoration of possession of the suit plot in favour of plaintiff by directing the defendant No.1 and 2 or anyone else on their behalf to handover peaceful vacant possession of Plot No.A-19, Sector 7-D/2, measuring 238.88 Sq. Yds. situated at North Karachi, to the plaintiff and in case of their failure to do so same may be got vacated and restore peaceful physical possession of said plot to the plaintiff by operation of law.*
- (d) *To grant of money decree against defendants No.1 and 2 in sum of Rs.2,00,000/- in connection with demolition of the boundary wall of sit plaint erected in the year 1996. So also grant mesne profit @ of Rs.15,000/- per month w.e.f. 1st January 2008 till presentation of the above suit and till the suit is decreed and till satisfaction of the decree with 15% mark-up.*
- (e) *To grant the cost of this suit.*
- (f) *To grant any other relief or reliefs which this Hon’ble Court may please deem fit and proper under the circumstances of the case but lacking from the prayer.”*

2. After service of summons, Defendant No.1 (Syed Abu Obedah) filed his Written Statement and while contesting the claim of Plaintiff has raised an adverse claim concerning the Suit Plot. The other Defendant is Karachi Development Authority (“KDA”), which has also filed its pleadings / Written Statement. Defendant No.2 was declared *ex parte* vide order dated 20.05.2013, regarding whom Defendant No.1 has stated in his Written Statement that the said Defendant No.2 was merely an attorney, whose authority was subsequently revoked by Defendant No.1. Defendants No.3 to 6 are the Province of Sindh and its official-Sub-Registrars, who have been impleaded keeping in view the relief claimed.

3. The Plaintiff led the evidence, whereas Defendant No.1 despite being provided opportunities, abstained himself from leading the evidence. Defendant No.5-KDA also participated in the evidence proceeding.

4. From the pleadings of the parties, following Issues were settled by the Court vide order dated 03.02.2014_

- “1. *Whether the suit is barred under Sections 42 & 56 of the Specific Relief Act, 1877 as well as barred u/s 17 and 49 of the Registration Act?*
2. *Whether the Plaintiff has any cause of action against the defendant No.1?*
3. *Whether the defendant No.1 is bona fide purchaser / owner of the suit property and is in possession of the same right from 22.01.1978, and rights of the defendant No.1 are fully protected u/s 41 & 54 of the Transfer of Property Act and Sections 17 & 49 of the Registration Act?*
4. *Whether lease deed dated 13.09.1987, joint declaration of gift dated 13.05.1992 and deed of sale dated 105.07.2006 are the genuine documents in accordance with law.*
5. *Whether the plaintiff is lawful transferee/owner of the suit property?*

6. *Whether the plaintiff is entitled for the relief prayed in the suit?*

7. *What should the decree be?"*

5. Findings on the above issues are as follows:

FINDINGS

ISSUE NO.1.	_____	Negative.
ISSUE NO.2.	_____	Affirmative.
ISSUE NO.3.	_____	Negative.
ISSUE NO.4.	_____	Negative.
ISSUE NO.5.	_____	Affirmative.
ISSUE NO.6.	_____	As under.
ISSUE NO.7.	_____	Suit decreed.

REASONS

ISSUES NO.1 AND 2:

6. The present proceeding is in respect of the claim of the Plaintiff for the Suit Plot. The lessor and one of the custodians of record, besides Defendant No.3 (Sub-Registrar), in this case is Defendant No.5-KDA, which in its pleadings / evidence has not disputed the basic claim of Plaintiff about the Suit Plot. From the pleadings and evidence of the parties, it is quite apparent that because of the interventions from time to time by other persons, the Suit Plot remained disputed in all these years. Plaintiff's side while deposing about the background of her acquiring the Suit Plot, has also challenged the claim of the private Defendants and particularly when she received the correspondence dated 08.03.2008 (**exhibit P/23** of the Evidence File) from Defendant No.5-KDA, informing the former that Defendant No.1 had approached the said Defendant-KDA for transfer of the Suit Plot. Though, the undisputed record of the case shows that the Plaintiff first tried to get some administrative relief, but, when failed, instituted the

present *lis*. Consequently, the present proceeding is the appropriate remedy through which the controversies / issues involved can be decided and therefore, Issue No.1 is answered in **Negative** and Issue No.2 in **Affirmative**; that the suit is not barred by law under Section 42 and 56 of the Specific Relief Act, 1877, and under Section 17 and 49 of the Registration Act, relating to registration of documents and adverse effect of non-registration, because the Plaintiff has subsisting cause of action against Defendant No.1.

ISSUES NO.3 AND 4:

7. The Written Statement of Defendant No.1 has been taken into the account only for the limited purpose to know about his stance, otherwise, since Defendant No.1 did not lead the evidence, therefore, the Written Statement has lost its evidentiary value; this being an established legal position. Defendant No.1 is deriving his title from Jamshed Ahmed Khan; latter claims his interest originally from one Waseem Shaikh, in whose favour (purportedly) an allotment letter dated 27.03.1977 (Annexure-A, page 145 of the Evidence File) was issued by Defendant No.5-KDA and subsequently latter (KDA) executed a 99 years ownership Lease Deed (allegedly); said Waseem Shaikh then executed a registered General Power of Attorney in favour of Haji Abdul Aziz, who further executed an irrevocable Sub General Power of Attorney in favour of one Rajib Din, who through a registered gift deed dated 18.05.1992 subsequently, transferred the Suit Plot to one Jamshed Ahmed (above named), from whom Defendant No.1 purchased the same by executing a registered Conveyance Deed bearing Registration No.2688, dated 01.06.2007. All these documents have been produced by the plaintiff's witness with his testimony and since original whereof is not in possession of Plaintiff, thus these documents have been marked as A, X/18 to X/2. In the present

proceeding a relief is also sought to cancel these documents, hence, collectively they may be called '*the impugned documents.*'

8. It is also pertinent to mention here, as the relevant record has been produced in the evidence, that earlier Civil Suit No.298 of 1990 was filed by one Suhail Khan against the present Plaintiff (Mrs. Shamima Alam) and Defendant No.5-KDA in the Court of learned Ist. Senior Civil Judge, Karachi Central, but later, the same was dismissed as withdrawn on 01.08.1996. Subsequently, the present Defendant No.1 instituted a Civil proceeding in the shape of Suit No.425 of 2008 in the Court of VIth Civil Judge, Central Karachi, seeking a relief of Permanent Injunction only in respect of his possession; which, came to an end by the order dated 17.06.2008 when the plaint was returned for presentation before the Court having territorial jurisdiction, thereafter, present Defendant No.1 did not initiate further proceeding. In the pleadings as well in her Affidavit-in-Evidence, the present Plaintiff made a disclosure about the earlier cases, but, as per the learned counsel, due to oversight the above order could not be exhibited, but filed as one of the annexures of the plaint. Today its original certified copy was presented, which is taken on record during the arguments as it has not been objected to by the learned counsel representing Defendant No.5-KDA and even otherwise, it is an undisputed public document under Article 85 of the Evidence Law and hence presumption of genuineness is attached to it in terms of Article 92 of the Evidence Law.

9. Mr. Muhammad Aziz Khan, learned counsel for the Plaintiff has also produced the original certified copy of the Statement of counsel for present Defendant No.1 in the above Suit No.425 of 2008 to advance his arguments that after filing of present *lis*, Defendant No.1 himself did not intend to proceed with his above earlier case (Suit No.425 of 2008).

10. On behalf of the Plaintiff, her husband being the attorney has testified; the General Power of Attorney produced in the evidence as Exhibit P/6. Plaintiff originally is deriving her title from her predecessor-in-interest, namely, Abdul Majeed in whose favour the allotment order issued by Defendant No.5-KDA has been exhibited as P/7, but, in respect of another residential Plot No.A-95, in Sector 1-A/4 having almost the same area. It has been argued from the Plaintiff's side, which stance is not disputed, that Abdul Majeed, the original allottee got the Suit Plot in exchange of his above plot. This is **evidenced by the document of 21.01.1985** produced in the evidence as Exhibit P/12, issued by Defendant No.5-KDA to said Abdul Majeed, wherein, *inter alia*, an approval was accorded to his request for exchange and further acknowledging that the said Abdul Majeed has paid the full occupancy value. The site plan of the Suit Plot issued by Defendant No.5-KDA has been exhibited as **P/13**. Plaintiff witness produced a subsequent Transfer Order dated 14.03.1985 (Exhibit P/8), regarding the suit plot, issued by Defendant No.5-KDA in favour of Syed Shafaat Hussain Zaidi, who was the subsequent transferee from Abdul Majeed Khan. Similarly, sale agreement between the subsequent transferee Syed Shafaat Hussain Zaidi and present Plaintiff, has been marked as X, because the original was not available with Plaintiff and was deposited with Defendant No.5-KDA, to fulfill codal formalities to transfer the Suit Plot in favour of present Plaintiff. This position has not been disputed by the learned counsel for Defendant No.5-KDA and it is further confirmed by the latter that the property in question has been transferred in the name of present Plaintiff through ***transfer order dated 19.12.1985***, original whereof has been produced in the evidence and the copy presently available has been **exhibited as P/9**. The possession order of the Suit plot in favour of the present Plaintiff has been produced and exhibited as P/10. Learned counsel for the Plaintiff has submitted that

before purchasing the Suit Plot, the Public Notice was also given and relevant extract of the newspaper is produced in the evidence as X-1.

11. On the other hand, the afore-mentioned documents regarding which the Plaintiff is seeking the relief of cancellation have been examined carefully. First document is afore-mentioned allotment order of 27.03.1977 in favour of Muhammad Waseem Shaikh, which is appended with the impugned lease deed dated 13.09.1987, which have been produced in the evidence by Plaintiff's witness as X/18; similarly, another registered lease deed (purportedly) for the 99 years' period issued by Defendant No.5-KDA in favour of aforementioned Muhammad Waseem Shaikh in respect of the same Suit Plot, is produced in the evidence as X-27 (page-201 of the Evidence File).

12. It is argued by the learned counsel for the Plaintiff, that the original of the impugned documents are not in custody of the Plaintiff and the same cannot be obtained from Defendant No.5-KDA as the said Defendant No.5-KDA itself has taken a position that these impugned documents do not exist and no lease has been executed. Since this has been testified by the witness of Defendant No.5 (KDA) that the above impugned documents were / are not in custody of KDA / KMC, hence, the arguments from the Plaintiff side has substance; more so, because the private Defendant disappeared after filing his Written Statement. In these peculiar circumstances, requirement of Article 77 of the Evidence Law of serving notice for production of the original of the said impugned documents is dispensed with.

13. Adverting to the authenticity of the impugned documents. Above annexure 'A' of the impugned lease deed is the allotment order in respect of the Suit Plot issued by Defendant No.5-KDA, whereas, Annexure 'B' (the

next document) is the acknowledgement of the possession issued by Defendant No.4-Karachi Metropolitan Corporation (“KMC”). Similarly, site plan appended with the impugned lease deed is issued by Defendant No.4-KMC. The other surprising and interesting part is the second 99 years’ lease (X-27) in respect of the same Suit Plot. This document (Indenture of Lease) has two registration numbers; first one is 3297 and the document is shown to be registered with Sub-Registrar, T. Division, Karachi, and the other registration number is 2688, and the stamp of Sub-Registrar, New Karachi Town, is affixed. **The above is a sufficient proof that this Indenture of Lease dated 13.09.1987 (X-27) is a bogus and void document, having no legal effect. The Plaintiff has led extensive evidence, *inter alia*, challenging the authenticity of all the above impugned documents and their entire version remained unchallenged.**

Secondly, as observed in the preceding paragraphs, the private Defendants did not come forward to lead the evidence. Thirdly, the official witness of Defendant No.5-KDA supported the version of Plaintiff, while recording his no objection to the prayer of cancellation of these documents. Fourthly, in the plaint as well as in the Affidavit-in-Evidence of the Plaintiff, the letter dated 10.08.1999 issued by Defendant No.5-KDA to the predecessor-in-interest of present Defendant No.1, namely, Jamshed Ahmed Khan, is available. This has been produced in the Affidavit-in-Evidence of Plaintiff as X/3. In this correspondence, the KDA Officer has disputed the genuineness of the documents of said Jamshed Ahmed Khan while mentioning the fact that as per official record, the present Plaintiff is the owner of the Suit Plot. In the said correspondence, the said Jamshed Ahmed Khan was called upon to attend the office of Defendant No.5-KDA for further investigation about the impugned documents, but that never happened. Another valid piece of evidence, which has gone unrebutted, is the letter addressed to erstwhile Naib Nazima of Karachi, which has been

produced as X-13, wherein, the present Plaintiff has disclosed the fact that the present Defendant No.1 was the younger brother of the then Nazim of Nazimabad (Usama Qadri). This is also appalling that near relatives of elected representatives of the people get involved in such illegalities with impunity and even after becoming aware of their unlawful activities, such elected representatives shy away from their responsibilities and obligations, which they owe towards public at large.

14. From the above, discussion and after appraisal of the evidence of the parties, it is not difficult to hold that all the impugned documents in favour of Defendant No.1 and his predecessors-in-interest starting from the allotment order dated 27.03.1977, Possession Letter dated 22.01.1978 (*ibid*), subsequent 99 years' lease dated 13.09.1987 (X-18), General Power of Attorney having purported registration number 2689 (X-21), irrevocable Sub General Power of Attorney (X-22) bearing registration No.2325; Joint Declaration of Oral Gift (afore-mentioned) dated 13.05.1992 (X-23) bearing registration number 2319 and finally the impugned conveyance deed of 05.07.2006 in favour of present Defendant No.1 having registration No.2688, **are all bogus documents having no sanctity in the eyes of law** and, therefore, are void *ab-initio* with no legal effect. It follows that the transaction, if any, has taken place based on these documents, that transaction is also void *ab-initio*. Both Issues are answered in **Negative** and against the Defendant No.1; latter is not a *bona fide* purchaser / owner of the Suit Plot nor is in its possession from 22.01.1978.

ISSUE NO.5:

15. Not only the documents produced by the Plaintiff's witness and the evidence led, has gone unchallenged but even the lessors of the Suit Plot, viz. Defendant NO.5-KDA, has supported the case of the Plaintiff and that is why the KDA has cross-examined the Plaintiff only to the extent of

allegations leveled against Defendant No.5-KDA, whereas, official witness of Defendant No.5 in his pleadings and deposition has confirmed the ownership of the present Plaintiff, based on the genuine documents, which are already referred in the foregoing paragraphs. Consequently, Issue No.5 is answered in **Affirmative** and in favour of Plaintiff that latter is lawful transferee / owner of the Suit Plot.

ISSUES NO.6 AND 7:

16. The undisputed scenario, which has emerged in the present proceeding is that for more than a decade the present Plaintiff was made to run from pillar to post to keep alive her ownership rights in respect of the Suit Plot, whereas, the Officials have not taken appropriate measures against the land grabbers / encroachers, including the private Defendants. The Anti-Encroachment Department of the Official Defendants should have taken action against Defendant No.1 and any other person claiming through or under him and ensured that vacant and peaceful physical possession is handed back to the Plaintiff, when the occupancy value in respect of the Suit Plot was already paid long time back and other dues were subsequently cleared; this is again a proven fact. The Plaintiff has specifically pleaded and then testified that the boundary wall built to protect the Suit Plot was demolished by the private Defendants. However, the stand of Plaintiff with regard to mesne profit is not supported by convincing evidence, therefore, prayer of mesne profit cannot be granted, nor any inquiry was held by way of preliminary decree; but the loss she suffered on account of demolition of boundary wall to the extent of Rs.200,000/- (rupees two hundred thousand only), is hereby awarded.

The private Defendants are also guilty of violating the fundamental rights of Plaintiff, *inter alia*, Article 23 and 24 of the Constitution of Islamic Republic of Pakistan, 1973, concerning proprietary rights. In this

view of the matter, the present suit is decreed as prayed, but, the damages as claimed in prayer clause-(d) is partly awarded to the extent that only the private Defendants No.1 and 2 are liable to pay a sum of Rs.200,000/- (Rupees Two Hundred Thousand only), as mentioned above, to the Plaintiff.

17. Looking at the peculiar facts of the case and in view of the above discussion, the Plaintiff is also granted the costs of the present proceeding, but only against the private Defendants No.1 and 2.

18. Suit is decreed in the above terms.

19. A copy of this judgment be sent to the District Registrar for his necessary action and to MIT-II of this Court for filing a compliance report after he receives a Report from the District Registrar about the above mentioned impugned Documents.

Judge

Karachi dated: 01.03.2018.

Riaz / P.S.*