

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 877 of 2011

S. Shafiq ur Rehman ----- Plaintiff

Versus

**Pakistan Employees Cooperative Housing
Society Limited & another ----- Defendants**

Date of hearing: 31.03.2016

Date of judgment: 03.05.2016

Plaintiff: Through Mr. Mohamed Vawda Advocate.

Defendants Nemo for the defendants

J U D G M E N T

Muhammad Junaid Ghaffar, J. Through this Suit for Declaration, Perpetual and Mandatory Injunction the plaintiff has sought the following relief(s):-

- “a) Declare that the plaintiff is the exclusive and sole owner and in legal possession of Residential Plot No. 72-O, Block No. 2, PECHS Karachi;
- b) Direct the defendants to mutate / transfer the Residential Plot No. 72-O, Block No. 2, PECHS Karachi, in the name of the plaintiff and to complete all necessary formalities and take all necessary actions for this purpose of mutation / transfer;
- c) Permanently restrain the defendants or any of their employees or any person acting on their behalf from dispossessing or interfering with the possession of the plaintiff from or in the Residential Plot No. 72-O, Block No. 2, PECHS Karachi;”

2. Briefly, the facts of the case are that the plaintiff claims ownership and possession of Residential Plot No. 72-O, Block No. 2, Pakistan Employees Co-operative Housing Society (“**PECHS**”) Karachi, (“**Suit property**”) and has filed instant Suit, whereby, the mutation of the Suit property has been refused by defendant No.2. The Suit property was initially allotted to one Mr. Ahmadullah Akhtar vide allotment order dated

25.1.1953 by PECHS and thereafter, PECHS executed an Agreement of Lease dated 12.10.1965 in favour of said Mr. Ahmadullah Akhtar. Subsequently, Mr. Ahmadullah Akhtar executed a General Power of Attorney dated 6.3.1965 in favour of one Sajjad Mirza by according and delegating the power to sell the property; and on the basis of such powers to sell, the defendant No.2 through its letter dated 31.12.1965 also granted permission to sell. Subsequently, an Agreement of Sale dated 9.3.1966 was executed by the attorney Sajjad Mirza on behalf of Ahmadullah Akhtar with M/s Pakistan Plantation and Industries Limited ("**PPIL**") having office at 5-Magh Bazar, Outer Circular Road, Dacca, the then East Pakistan. The said agreement was signed by the plaintiff on behalf of (PPIL) and first part payment of Rs. 5000/- was paid by the plaintiff through a receipt dated 9.3.1966. Thereafter, a Conveyance Deed dated 26.3.1966 was also executed in favour of (PPIL) and such Conveyance Deed was executed through the plaintiff on behalf of the Company. The defendant No.2 through its letter dated 25.2.1966 and PECHS through letter dated 23.11.1966 confirmed the transfer / mutation of the Suit property in the name of (PPIL) and (**PPIL**) also executed a Sub-Power of Attorney dated 8.4.1966 in favour of the plaintiff. It is further stated that somewhere in June 1970 the authorized person / Director of (**PPIL**) executed a Deed of Disclaimer / Quit claim in favour of plaintiff in respect of the Suit property. It is the case of the plaintiff that (**PPIL**) was a family concern, and the three shareholders identified in the deed of disclaimer were related to the plaintiff, whereby, (**PPIL**) had completely given up all its rights in the Suit property, whereas, even otherwise since its purchase the possession of the property is with the plaintiff in addition to the original title documents. It is further stated that after the fall of Dacca, the plaintiff as well as the other Directors / owners of (**PPIL**) have no record / documents which were left at the time of leaving Dacca, however, the possession is with the plaintiff, whereas, the PT-I Form issued by the Excise & Taxation Department is also in the name of the plaintiff and the plaintiff is regularly paying property tax of the Suit property including the municipal bills. It is further stated that the plaintiff through letter dated 23.2.1992 approached defendant No.2 for obtaining Clearance certificate of no dues in respect of the Suit property which was replied vide letter dated 3.3.1992 by defendant No.2 and Director of the plaintiff through another

letter dated 30.8.1992 through PECHS supplied them all the relevant documents for mutation of the Suit property in the name of the plaintiff and after exchange of various correspondence by the plaintiff with PECHS and with defendant No.2 through PECHS, in February 2011, the plaintiff came to know that defendant No.2 had issued a letter dated 23.12.2008 to PECHS, whereby, they had advised the plaintiff to obtain a decree / order from the Court for confirmation of his title as in absence of any such decree / order they were unable to finalize the mutation in favour of the plaintiff; hence instant Suit.

3. Notices / summons were issued to the defendants whereafter the defendant No.2 was declared as Ex-parte vide order dated 8.10.2012 whereas, the Suit against the defendant No.1 (PECHS) was not pressed by the plaintiff as nothing adverse to the plaintiff's interest was averred in the written statement of defendant No.1, therefore, the Suit was dismissed against defendant No.1 PECHS as not pressed. In view of the fact that Suit stood dismissed against defendant No1, whereas, defendant No.2 was declared Ex-parte, the plaintiff filed its affidavit in evidence of ex-parte proof and for the purpose of Examination in chief and cross, the matter was referred to the Commissioner who completed the exercise of evidence of the plaintiff who has exhibited various documents as Exhibit 5/1 to 5/44.

4. Learned Counsel for the plaintiff has contended that the Suit property was in fact purchased by the plaintiff from his own sources and though it was in the name of **(PPIL)** at the relevant time, however, subsequently, by virtue of the Deed of Disclaimer issued by the authorized Director of the Company, the plaintiff has become the actual and legal owner of the property in question. He has further contended that ownership of plaintiff has remained unchallenged from its inception till today, whereas, the plaintiff is in possession of the Suit property as well as documents of the property, including the municipality bills and tax challans. Per learned Counsel since no one has contested the ownership of the property as against the plaintiff's claim, therefore, the defendant No.2 is not justified in refusing the mutation of the Suit property. He has further contended that defendant No.2 has been declared as Ex-parte, whereas, none has affected appearance on behalf of defendant No.2 to address any arguments in this Suit. In support he has referred to various documents which had been exhibited by the plaintiff

in his evidence and has prayed that the Suit may be decreed by directing the defendant No.2 to mutate the property in question in favour of plaintiff.

5. I have heard the learned Counsel for the plaintiff and perused the record including the evidence file, whereas, though the Deputy Attorney General was present on 15.3.2016 and had sought time to assist the Court on the next date however, on 31.3.2016, he chose to remain absent without any intimation and despite several chances no assistance has been provided on behalf of defendant No.2, therefore, having left with no other option, instant Suit is being decided with the assistance of the learned Counsel for the plaintiff and on the basis of documents on record. It appears that the property in question was purchased by **(PPIL)** from the attorney of the original allottee Ahmadullah Akhtar and the Conveyance Deed was executed by the attorney Sajjad Mirza in favour of **(PPIL)**. The Conveyance Deed dated 23.6.1966 has been exhibited as **5/14** by the plaintiff, perusal whereof reflects that the same has been signed by the plaintiff on behalf of (PPIL) as purchaser. Therefore, insofar as the first purchase of the property is concerned, though it has been signed by the plaintiff, however, in strict legal terms the property was purchased by (PPIL) which was a separate legal entity and therefore, the property vests in the company and not in the name of the person who had signed the Conveyance Deed as a purchaser on behalf of the company. It is the case of the plaintiff that the property was purchased by his funds for the company, whereas, the company through the deed of disclaimer has quit its claim. In fact the entire crux of the plaintiff's case is dependent on the Deed of Disclaimer dated 30.6.1970. It would be advantageous to refer to the said Deed of Disclaimer which reads as under:-

**“DEED OF DISCLAIMER
QUIT CLAIM**

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| Paragraph I. | I, Shaikh Khursheed Anwer Director of Pakistan Plantation & Industries Ltd., a Company having its Registered Office at 5-Magh Bazar, Outer Circular Road, Dacca, East Pakistan, do here on behalf of the Company above named this 30 th day of June, 1970, hereby unequivocally declare, disclaim and quite interest in the estate, styled as 72/0/2, P.E.C.H. Society, Karachi a Plot of Land measuring 400 Sq. Yards, with construction thereon, for the reasons as enumerated hereunder:- |
| Paragraph II. | The above Plot of Land with construction thereon was acquired out of the fund received from selling a house situated at Dil |

Mohammad Road near Brandreth Road, Lahore in the sum of Rs.90,000/- (rupees Ninety Thousand only) by one of the Director of the Company, namely S. Fazal Ellahi father of one Safia Rehman; who was the beneficial owner of the amount that is Rs.90,000/- being part of her dowry in consideration of her betrothal with one S. Shafiqur Rahman.

- Paragraph III. Both Safia Rahman and Shafiqur Rahman have since the inception of purchasing the Property 72/0/2, P.E.C.H. Society, with construction thereon are holding the same and are in physical possession of the same.
- Paragraph IV. Mr. Shafiqur Rehman S/o Allah Ditta and husband of Safia Rehman made the payment for the purchase of the subject property in two installments, being Rs.5,000/- as an advance and Rs.85,000/- against the Agreement of Sale Deed dated 9th March, 1966 and the Conveyance Deed dated 24th March, 1966 duly signed by the said Shafiqur Rahman for and on behalf of Pakistan Plantation and Industries and this act was rectified as to the payment of the consideration are receiving the possession of the subject Plot by way of a special Power of Attorney dated 8th April, 1966 signed and executed by me as being one of the Director of the Company.
- Paragraph V. The property 72/0/2, P.E.C.H. Society was transferred Excise and Taxation in the name of Shafiqur Rahman.
- Paragraph VI. That said Shafiqur Rahman son of Haji Allah Ditta had in fact executed the Agreement of Sale dated 9th of March 1966 and the Deed of Conveyance dated 24th of March, 1966, for and on behalf of the Vendee and in part the act was ratified by a Special Power of Attorney dated 8th April 1966, duly executed by me being the Director of the Company Pakistan Plantation and Industries Limited.
- Paragraph VII. This Deed has, therefore, been signed by virtue of an authority of the Resolution passed by the Directors of the Company consisted of the Directors, namely M/s. Fazal Ellahi; Shaikh Khursheed Anwer and Shaikh Nasim Anwer, whereas Shaikh Khursheed Anwer has been authorized to sign the same and whereof all the original documents pertaining to Property have now been handed over to Shafiqur Rehman.
- Paragraph VIII. Whereof in parting with the interest in the estate property styled as 72/0/2, measuring 400 Sq. yards, P.E.C.H. Society, Karachi with construction thereon has been signed by me before the Witnesses and has also been Counter-signed by another Director Mrs. Zakia Begum, who verifies the contents of the Deed are true.”

6. Perusal of the aforesaid Deed of Disclaimer reflects that the same has been executed by one Shaikh Khursheed Anwar as Director of M/s PPIL whereby, he on behalf of the Company, unequivocally declare, disclaim and quite (sic) interest in the Suit property by stating that the same was acquired out of the funds received from selling a house situated at Dil Mohammad Road near Brandreth Road, Lahore in the sum of Rs. 90,000/- by one of the Directors of the Company, namely S. Fazal Ellahi father of one Safia Rehman, who was the beneficial owner of the amount of Rs. 90,000/- being part of her dowry in consideration of

her betrothal with one Shafiqur Rahman (plaintiff). He has further stated that both Safia Rahman and Shafiqur Rahman since inception of purchasing the property in question are holding the same and are in physical possession of the same. In paragraph VII of this deed, it has been further stated that therefore, by virtue of an authority of the Resolution passed by the Directors of the Company consisted (sic) of the Directors, namely M/s. Fazal Ellahi, Shaikh Khursheed Anwer and Shaikh Nasim Anwer has been signed by me as an authorized person of the said company, and all the original documents of the said property have also been handed over to the plaintiff and in paragraph VIII, it has been further stated that as a witness this deed has been signed by another Director Mrs. Zakia Begum who verifies the contents of the deed as true. Although the defendants have failed to lead any evidence and have also failed to cross examine the plaintiff nor have led any arguments in the instant matter so as to defend their case, however, this Court in matters wherein Ex-parte proceedings are being carried on, has an additional burden and duty cast upon it, to ensure that the ends of justice are met and interest of the party who has not been able to defend its case for any reason, whatsoever, shall be protected and must be dealt with in accordance with law. It is the duty of the Court to see whether the plaintiff is entitled to the relief being claimed, and if yes, then to what extent. The Suit cannot be decreed as prayed in such matters, until and unless the Court is satisfied in this regard. Reliance in this regard may be placed on the case of *Nisar Ahmed & another Vs. Habib Bank Limited (1980 CLC 981)* and *Messers Al-Pak Ghee Mills through Managing Partner Vs. Zeeshan Taders Through Proprietor (2008 CLC 120)*.

7. In this matter the entire case of the plaintiff is dependent on the Deed of Disclaimer (**Exh-5/14**) which according to the plaintiff confers the title and transfers the interest in his favour. However, on perusal of the same, it appears that it has only been executed by one Khursheed Anwar who claims to be the Director of the Company. Though it has been stated that he has done so on the basis of a board resolution, however, no such resolution has been placed on record, through evidence or otherwise, whereas, in paragraph VII he has stated that the resolution was passed by three Directors of the company, however, in paragraph VIII he has further stated that it has been counter signed by another Director Mst. Zakia Begum meaning thereby that the resolution was not passed by all

the Directors. It is also important to note that the said Deed of Disclaimer is not a registered document and is merely an attested copy, perusal whereof further reflects that it has been witnessed by two other persons but their names and or details are not on record, nor any of them has come to give evidence in support of the plaintiff's claim. It further appears that though it has been stated in the plaint that since inception of Deed of Disclaimer Mr. Shaikh Khursheed Anwar is willing to give evidence as well as the two witnesses, however, perusal of the evidence file reflects that they have not come forward with any evidence in support of the plaintiff.

8. It is needless to mention that a company is a separate juristic person being distinct and different from its shareholder(s). This principle also applies to a private limited company including that of a family concern. The company in question has never been liquidated nor I have been assisted in any manner as to how other assets of the company were dealt with in law which were left at Dacca where the company was being run before the fall of East Pakistan. The deed of disclaimer is also not a registered document, whereas, it is dated prior to the fall of Dacca, therefore, any question of hardship also does not arise, as it is was incumbent upon the plaintiff to have such deed registered with the concerned Registrar by registering the property in his name instead of the company's name. It is also noted with concern that while filing instant Suit the plaintiff has chosen not to array any of the Directors of the company who according to the plaintiff were and are supporting his claim, nor the company itself, though it may have come defunct, whereas, seeking a declaration of ownership from this Court without arraying them as defendants does not show the bonafides of the plaintiff. For all legal purposes the ownership of the Suit property vests in the Company. Since the plaintiff claims ownership of the property in question on the basis of Deed of Disclaimer which has been signed only by one of the Directors of the company which owned the property, it was incumbent upon the plaintiff to array all the Directors as well as their legal heirs if any, in this matter so as to seek a decree in his favour from this Court. In the alternative, at least the plaintiff could have called them as witnesses to support his claim. Insofar as the documents on record is concerned, no doubt though they have been exhibited, but in absence of the executant of the Deed of Disclaimer and his failure to lead any

evidence in support of the plaintiff, the Court cannot come to any other conclusion but to hold that since the Deed of Disclaimer is not proved as required under the Qanoon-e-Shahadat Order, 1984 the property still vests in the name of the defunct company PPIL. It is but surprising that the plaintiff while filing instant Suit has claimed that the executants as well as the witnesses are willing to lead evidence in his support but has neither brought them as witnesses in the instant matter nor has made any effort to array the executants and other Directors as defendants in the Suit.

9. In view of hereinabove observations, I do not see any reason to grant an indulgence in favour of the plaintiff who has not been able to prove ownership of the property in question in his name through any substantial or cogent evidence and therefore, no relief can be granted. Accordingly, instant Suit is dismissed however with no order as to cost.

Dated: 03.05.2016

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