

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**Suit No.1450 of 2007**

Date	Order with Signature of Judge
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Present: **Mr. Justice Nazar Akbar**

Plaintiff	:	Haji Mohammad Shaikh through Mr. Khalid Dawood Pota Advocate
Defendant No.1	:	Sahibzada since deceased through LRs. (Nemo)
Defendant No.2	:	Rizwan Abdul Khaliq in person.
Defendant No.3	:	City District Government Karachi Through Mr. Sameer Ghazanfar, Advocate.
Defendant No.4	:	City Nazim-e-Ala, CDGK. (Nemo).
Date of hearing	:	20.11.2017
Decided on	:	20.11.2017

**JUDGMENT**

**NAZAR AKBAR, J.** Plaintiffs had filed this suit for Declaration, Injunction, Cancellation of Documents, Possession, Mesne profit and Damages for Rs.76,80,000/-.

2. Brief facts of the case are that plaintiff has alleged that the property bearing No.LY-1/77, Lyari, Karachi (the suit property) was purchased by his aunt Mrs. Haleema Shaikh from Umer and Nooru sons of Ebrahim Birood through registered sale deed bearing registration No.2043 at Pages 1-12 on **27.7.1948** before the Sub-Registrar, Karachi. He further averred that after death of Mst. Haleema Shaikh w/o Yousuf Fozen the property was inherited by her real sister Mst. Zulekha w/o Moosa Shaikh and continued with possession thereof as sole owner/legal heir. In her life time, mother of plaintiff, Mst. Zulekha has allowed a cousin of defendant No.1 to live therein with Katcha construction as her “licensee” out of

courtesy. The area was not developed and it was practice in the area that the people coming from upcountry being Pathan used to work on the port and lives in the suit property as a licensee with permission of plaintiff's mother and father who treated it "Sadqa/Fi Sabilillah" and ultimately defendant No.1 came into possession and he was allowed to live therein as a licensee. After the death of plaintiff's mother, plaintiff also allowed defendant No.1 to live just on same consideration as a licensee. Due to relation and strategy, he was allowed to continue but was surprised to see that defendant No.1 in association with defendant No.2 started construction who claimed to have entered into a contract. The plaintiff being responsible person and respectable in the area and close relations around being occupied around the plot avoided to create law and order situation and approached through various peoples to know how defendant No.1 and 2 are raising construction without permission from plaintiff but defendant No.1 avoided on different pretexts and ultimately promised that let the construction be allowed to be continued and on completion of ground floor he will make arrangement to live in one portion and will handover property being owner to the plaintiff and his license shall be deemed cancelled.

3. The plaintiff came to know that defendant No.1 has played fraud and he has misrepresented himself and prepared forged documents to get the lease of the plot in his name on the ground of unauthorized occupant. He has obtained lease on 9.5.2007 from defendant No.3. Defendant No.1 was neither holding possession of any unauthorized land nor entitled but as license on the land privately purchased for the consideration and any construction

raised thereon is illegal, unauthorized and without permission either from plaintiff or any other authority on the basis of documents obtained from defendant No.3. Plaintiff has certificates from Karachi Fishermen Jamaat, Khada and Nazim U.C No.4 that Zulekha Shaikh was the real sister of Haleema Shaikh and the plaintiff is nephew. The defendant's relative was allowed to live in the Katcha construction as a licensee and use to keep the people coming for job at the port and none claimed possession or any ground and finally allowed defendant No.1 to raise construction but he has turned dishonest.

4. The plaintiff had prayed for the following relief:-

- i) *To declare that the property bearing No.LY-1/77, Lyari, Karachi, is owned property of Zulekha Shaikh and plaintiff is lawful owner.*
- ii) *To declare that plot of land bearing No.LY-1/77, Lyari, Karachi the land is not unauthorized plot but a private land owned by owner having purchased and plaintiff being legal heir is owner.*
- iii) *To declare that all the documents prepared/obtained are forged on the basis of which the lease dated 9.5.2007 is obtained by defendant No.1 from defendant No.3 which is illegal and of no value and be deemed as cancelled with directions to defendant No.3 to issue cancellation certificate.*
- iv) *To declare that illegal construction is started without permission and is liable to be removed/demolished.*
- v) *Grant injunction restraining defendants from selling, transferring or creating third party interest in any manner in respect of said property or any part thereof bearing No.LY-1/77, Lyari, Karachi either by sale or by handing over possession to anyone else or on rent/goodwill.*
- vi) *Grant mesne profit for last 03 years @ Rs.5,000/- p.m, which is prevailing rate amounting to Rs.1,80,000/-.*
- vii) *Grant damages as compensation for breach of trust and preparing forged documents to the extent of Rs.25,00,000/-.*

- viii) *Grant judgment and decree in favour of plaintiff against the defendant as prayed above.*
- ix) *Cost of the suit may also be granted.*
- x) *Grant any other relief which this Honourable Court deems fit and proper under the circumstances of the case.*

5. Defendant No.1 and 2 filed their written statement wherein they took preliminary legal objections that the suit is not maintainable and denied the claim of the plaintiff while claiming that the suit property prior to purchase by Mrs. Shaika Yousuf Fozen was in the joint names of two persons viz Umar Broo and Nooru in the record of rights. After purchasing it by Mrs. Shaika Yousuf Fozan, the names of said two persons were cutoff by making a line on their names, while the names of Mrs. Shaika Yousuf Fozan was entered as owner in place of their names. The plaintiff and his companions belong to a gang of land grabbers. The father and ancestors of the plaintiff were Hindus and the plaintiff converted himself as muslim. He came in the area in 1954/55 with his mother and brother, as his father had already died. The plaintiff converted himself as Muslim in the year 1957/58 and is known in the area as “megwaar”. The name of the father of the plaintiff is not Moosa because during his life time he was Hindu by religion. The plaintiff falsely got entered the name of his father as Moosa at the time of preparation of his NIC.

6. Prior to filing of this suit, on 20.7.2007 another suit No.615/2007 was also filed by son and attorney of the plaintiff herein against the defendants on the basis of same documents viz copy of extract, application dated 01.8.1994 etc. on which the present case is filed. The court of learned XIth Civil Judge, Karachi South rejected the plaint of the said suit under Order 7 Rule 11

CPC on 05.10.2007. After about one month of rejection of plaint of suit No.615/2007, the present suit was filed on 13.11.2007 on the basis of same copy of extract and application dated 01.8.1994 etc.

7. Defendant No.3 & 4 have also filed written statement wherein different legal pleas were taken including suit is not maintainable, the relief claimed are barred under Section 42 & 56 of the Specific Relief Act and no cause of action has accrued to the plaintiff against the defendant/CDGK.

8. This court from pleadings of the parties on 26.4.2010, had framed the following issues:-

- i. Whether suit is maintainable under the law in view of legal grounds taken in application under Order VII Rule 11 CPC.*
- ii. Whether plaintiff holds suit property under the valid and legal documents?*
- iii. What is effect of the earlier suit No.615/2007 on the merits of the present suit?*
- iv. Whether defendants hold possession of suit property under valid lease executed in their favour by legal authority?*
- v. Whether defendant has obtained the lease by misrepresentation, fraud or by illegal means?*
- vi. Whether the plaintiff is entitled to the possession of the suit property?*
- vii. Whether the plaintiff is entitled to the mesne profits? If yes, at what rate and upto what extent?*
- viii. Whether the plaintiff is entitled to the damages claimed in the suit? If so, upto what extent?*
- ix. What should the decree be?*

9. On the same date i.e. 26.04.2010, Mr. Adnan Ahmed, Advocate was appointed as Commissioner for recording evidence of the parties. The plaintiff's attorney has filed his affidavit in

evidence as Ex.P, copy of General Power of Attorney as Ex-P/1, certified copy of conveyance deed as Ex-P/2, certified copy of extract from dated 03.3.1987 as Ex-P/3, original death certificate of Mst. Shaikha Haleema as Ex-P/4, Photostat copy of certificate issued by M. Ismnail Jamot, Khada Fishermen Karachi Jamat as Ex;P/5, Tasdeeqnama datd 06.2.2007 issued by Abdul Karim Nizamani, Nazim UC-4 as Ex-P/6, Heirship certificate dated 16.8.2007 as Ex:P/7, Photocopy of declaration/statement dated 10.11.2007 by Mst. Zulekha Wd/O Umar Barood Jamot as ex-P/8, two photographs as Ex-P/9 and P/10 and certified copy of extract form dated 10.3.2007 as Ex:P/11. The plaintiff also produced one Mr. Noor Muhammad, both the witnesses of the plaintiffs were cross examined by defence counsel and learned counsel for the plaintiffs closed their side for evidence.

10. Defendant No.2 appeared as his own witness and also as attorney of defendant No.1. He filed his affidavit in evidence as Ex.D. He produced the photocopy of registered general power of attorney dated 10.7.2007 as Ex-D/2, death certificate of Qayyum issued by KMC Liyari Zone as Ex-D/3, computerized consumer statement dated 26.3.2008 as Ex-D/4, paid bill of KESC for the month of April, 2008 as Ex-D/5, certificate of Sui Gas company as Ex-D/6, paid sui gas bill for the month of September, 2007 as Ex-D/7, the bill as Ex-D/8, photocopy of PT-I for the year 2007-2008 as Ex-D/9, paid bill of Karachi Water and Supply and Sewerage Board for the month of April, 2007 as Ex-D/10, certified copy of plaint of suit No.615/2007 as Ex-D/11, certified copy of Extract from the Ex-D/12. The plaintiffs' counsel cross examined the

defendant No.2 and their counsel closed the side of defendants for evidence.

11. I have heard learned counsel for the parties at length and perused the record. My findings on the above issues with reasons thereon are as under:-

### **REASONS**

#### **Issues No.1, 2, 6, 7 & 8**

12. The burden of proof of these issues is on the plaintiff to establish that he is ownership of the suit property. In this contest the plaintiff claims to be owner by inheritance on the ground that he is nephew of last recorded owner and in support he has produced certificates from the Administration Union Council No.4 and Karachi Fishermen Jamaat, Khada Karachi P/5, P/6 & P/7. The perusal of these documents shows that these exhibits have no legal status. These are neither the death certificate nor birth certificate of the Mst. Shaikha Yusuf Fozan, whose name is mentioned as buyer of suit property in the documents produced by the plaintiff as Exh. P/2 page 47 of the evidence file. All these documents are irrelevant to connect the plaintiff with the owners shown in Ex.P/2. The death certificate Ex.P/4 was obtained by the plaintiff on **03.08.2007** when even in the said documents the date of death has been shown as **20.7.1977** and the name of deceased is Sheikha Haleema not Sheikha Yusuf Fozan. It is indeed not explained by the plaintiff that what has prevented him or their father from reporting the death of their so closed relative for 30 years. The Union Council's representative has not come forward in the witness box to authenticate that the said certificate was issued by the said Union Council. The further perusal of conveyance deed

shows that name of Shaikha Haleema is not mentioned in it. It is in favour of Mrs. Shaikha Yousuf Fozan, and it is not identified that she is wife of Yousuf Fozan. Similarly Ex.P/5, P/6 & P/7 shows that the same were obtained in August, 2007, or even later. The Ex.P/5 has no date. These documents cannot be believed. How has it come in the record of UC-4 that the Shaikha Zulikha w/o Moosa Shaikh and Shaikha Haleema w/o Shaikh Yousuf Fozan were two real sisters. Their father's name has not been mentioned by the UC in the so called certificates to corroborate the claim of the plaintiff that they were sisters. Similarly the certificate Ex.P/7 regarding Shaikha Haleema claimed to have been issued by UC-4 does not disclosed even name of her husband and father. The plaintiff has also filed Ex.P/8, which is declaration dated **06.11.2007** said to have been executed by Zulekha wd/o Umar Barood Jamot. She is said to be widow of Umar Barood Jamot one of the executant of Ex.P/2 i.e. conveyance deed in favour of Shaikh Yousuf Fozan, which was executed in 1948. It is indeed surprising that in 2007 wife of Umar Barood Jamot was alive to execute a declaration in English language. In the declaration she herself claimed that she is 90 plus and in her CNIC her date of birth shown is **1938** which was issued in **2001**. Her CNIC is also attached to Ex.P/8. The plaintiff has not produced any record of the UC to show that under what circumstances the relationship of the two ladies Shaikha Zulikha who died in 1952 and Shaikha Haleema who died in 1977 was entered in their record and from where they got the information to issue such certificates. This further supplements the contention of the defendant that all these documents are forged and fabricated documents and plaintiff has nothing to do with any of the executants of the Exh.P/2. I have



also categorically asked the plaintiff's counsel that even if we believe that the plaintiffs are legal heirs of same Shaikha Haleema who died in 1977 according to their own claim through death certificate (Exh.P/4) then why they have not ever approached the Court for issuance of letter of administration / succession certificate in their favour in accordance with Succession Act, 1925 to acquire the suit property by inheritance. The transfer of immovable property by inheritance is possible only by approaching the Court under **Section 276** of the Succession Act, 1925. Till date the plaintiff has not approached any Court of law to establish their right of inheritance to the suit property. Civil Court merely on the basis of meaningless unauthenticated certificate issued in 2007 by a Union Council in respect of two women who had died in 1977 and 1952 respectively, cannot declare ownership of immovable property. In view of the evidence, plaintiff do not hold any valid or lawful documents or any other documents to show that they are the owners of the suit property by inheritance or otherwise. Therefore, Issue No.1 and 2 is decided in **negative**. In view of my finding on issues No.1 & 2, issues No.6, 7 & 8 are also answered in the **negative**.

**Issues No.3, 4 & 5.**

13. The documents produced by the defendant No.2 are registered documents executed by the Government functionaries' i.e Defendant No.3 & 4 have not been rebutted. The plaintiff has not given details of alleged fraud and misrepresentation committed by the defendant in obtaining the title documents in accordance with the policy of the official defendants. Therefore, in view of un-

rebutted evidence issues No.4 & 5 are decided in **affirmative** and issue No.3 is of no significance.

**Issue No.6**

14. In view of above facts and evidence, the suit was dismissed by short order dated **20.11.2017** and these are the reasons for the same.

Karachi,  
Dated: \_\_\_\_\_

SM

**J U D G E**