

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1119 of 2008

Muhammad Asghar -----Plaintiff

Versus

S. Zafar Hussain & others -----Defendants

Date of hearing: 23.11.2017

Date of Judgment 23.11.2017

Plaintiff: Through Mr. Ch. Abdul Rasheed and Mr. Muhammad Ramzan Tabassum, Advocates.

Defendants: Nemo.

J U D G M E N T

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration, Cancellation and Damages, wherein, the Plaintiff has sought the following relief(s):-

- a) Decree thereby declaring that the Plaintiff is owner of the Suit property and the Defendant have no lawful right, title, or entitlement over the Suit property and further declare that all such documents in possession of the Defendants pertaining to the Suit property are false, void, unlawful, illegal and having no legal effect.
- b) Decree of cancellation of documents which are in possession of the Defendants pertaining to Suit property, as such directed them to produce all such documents in original in this Court for cancellation.
- c) Decree thereby permanently restraining the Defendants and / or anybody else acting on their behalf and claiming to them from dispossessing the Plaintiff from the Suit property and also from creating third party interest.
- d) Decree of damages of Rs.40,00,000/- thereby directing the Defendant No. 3 to pay such damages to the Plaintiff.
- e) Decree thereby permanently restraining the Defendant from causing defamation of the Plaintiff in any manners.
- f) Cost of the Suit may be granted.

g) Grant other relief(s) in the circumstances of the case.

2. At the very outset, learned Counsel for the Plaintiff submits that he will only press Prayer Clauses (a), (c) & (f). Case of the Plaintiff is that the Plaintiff is owner of property bearing Plot Nos.MC-537 and MC-538, measuring 245 Sq. Yds, out of total area of Survey No.99, measuring 6 Acres 29 Ghuntas situated at Deh Digh Tappo Malir, Taluka and District Karachi East vide Sale Deed dated 07.06.2004 executed by Mumtaz Hussain S/o Ghulam Habib as attorney of the owners of the property duly executed on 25.07.1996 It is the case of the Plaintiff that Defendant No.3 made attempts to disposes the Plaintiff and also claimed ownership on the basis of some Sale Deed executed in his favour, hence instant Suit.

3. After issuances of summons, none has affected appearance on behalf of the defendants, whereas, Defendant No.1 has been declared ex-parte vide order dated 26.05.2014 and Defendants No.2 & 3 have been debarred vide Order dated 05.05.2009.

4. Learned Counsel for the Plaintiff submits that the Plaintiff is the lawful owner of the Suit Property on the basis of registered Sale Deed and has always been in possession of the Suit Property. He submits that earlier Defendant No.3 filed a Civil Suit bearing No. 757/2008 before the Court of IVth Civil Judge, Karachi East and claimed his ownership on the basis of some Sale Deed dated 26.6.2008 and in that Suit an inspection was carried out, wherein, the plaintiff, as a defendant in that Suit, was found in possession. He submits that ultimately the said Suit was dismissed and thereafter a Criminal Complaint bearing No.77/2008 for illegal

dispossession was filed by the Defendant No.3, which was also ultimately dismissed. He submits that though the Plaintiff has prayed for cancellation of the Sale deed as well, however, since the Plaintiff is in possession, whereas, the property number so stated in the Sale Deed of the said Defendant is different; hence the Plaintiff does not wish to proceed with his prayer of cancellation.

5. I have heard the learned Counsel for the Plaintiff and perused the record. As noted above, the Defendants have chosen not to contest this Suit and have either been declared ex-parte, or debarred, whereas, none has appeared to contest the case even otherwise at the time of evidence or at final disposal stage. I have perused the documents and record and apparently it appears that the Plaintiff's claim is correct. The Defendant No.3 who claims to be owner of some property on the basis of Sale Deed dated 26.6.2008 had admittedly filed his own Suit and when inspection of carried out the present plaintiff was found to be in possession. Moreover, the property mentioned in his sale deed also appears to be somewhat different and apparently has no nexus with the plaintiff's property. Thereafter, an application under the Illegal Dispossession Act, filed by Defendant No.3 also stands dismissed. This all resultantly reflects that Defendants have no case to contest and perhaps for this reason they have conveniently chosen not to contest this Suit. This entitles the plaintiff for a judgment and decree. In view of such position, the Plaintiff's Suit is decreed in to the extent of prayer clause Nos. (a), (c), & (f). Office to prepare decree accordingly.

Judge