

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No. 1457 of 1999**

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|------|-------------------------------|
| Date | Order with signature of Judge |
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For Final Arguments

**12.12.2017**

Mr. Nadeem Pirzada, advocate for the plaintiff.  
Mr. Naveed-ul-Haq, advocate for the defendant.

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**JUDGEMENT**

**Nazar Akbar.J,-** Very briefly, the plaintiff claims to be owner of property bearing House No.157/1 at Plot No.766, Bihar Colony, Lyari, Karachi admeasuring 238 sq.yds (the suit property) by virtue of registered lease in his favour. Plaintiff averred in para-8 of the plaint that he has obtained loan from defendant No.4 (U.B.L) in 1983 against mortgage of various properties including the suit property through a collateral mortgage deed dated **20.6.1983** and since then original title documents of the suit property are with defendant No.4. The plaintiff sometime in 1998 came to Karachi and found that his step mother, defendant No.1 on the basis of an unregistered forged power of attorney dated **16.8.1990** has gifted the property by registered gift deed dated **9.7.1992** to defendant No.2. Then the said defendant No.2 has sold the suit property to defendant No.3 through registered sale deed dated **9.6.1998**. In the meanwhile defendant No.4 (UBL) had already filed suit No.02/1984 in the Banking Court-I at Peshawar against the plaintiff for recovery of loan against collateral mortgage of the suit property. Therefore, the plaintiff filed present suit challenging the transaction between defendants No.1, 2 & 3 and prayed for the following relief(s):-

- a) Declaration to the effect that the Plaintiff is exclusive lawful owner of the property bearing House No.157/1, constructed on Plot No.766, Bihar Colony Lyari Karachi, admeasuring 238 sq.yards.

b) Declare that the unregistered Power of Attorney dated 18.8.1990, purported to be executed by the plaintiff in favour of the Defendant No.1 is fraudulent, void and of no legal effect whatsoever.

c) Declare that the declaration of oral gift bearing Registration No.1834 dated 9.7.1992 Book no.1, Registered with the Sub-Registrar T-Div VI Karachi the defendant No.5 in respect of the Suit Property bearing no.157/1, constructed on Plot No.766, measuring 238 sq.yds., Bihar Colony, Lyari, Karachi has been fraudulently executed by the Defendant No.1 in favour of the Defendant No.2 is, void and of no legal effect whatsoever.

d) Declare that the Sale Deed bearing Registration No.1190 dated 9.6.98 Registered with defendant No.5 in respect of the Suit Property bearing No.157/1, constructed on Plot No.766, measuring 238 sq.yds., Bihar Colony, Lyari, Karachi has been executed by misrepresentation by the Defendant No.2 in favour of the Defendant No.3 is fraudulent, void and of no legal effect whatsoever.

e) Call upon the Defendants No.1 to 3 to deliver up the Unregistered Power of Attorney & Declaration of Oral Gift dated 9.7.92 and Sale Deed dated 9.6.98 in respect of the Suit Property 157/1, constructed on Plot No.766, measuring 238 sq.yds., Bihar Colony, Lyari, Karachi being registered with Defendant No.5 be delivered up in Court and be canceled and annulled.

f) Direct the defendant No.1 to 3 to handover the peaceful and vacant possession of the Suit property to Plaintiff.

g) Decree in the sum of Rs.3,60,00/= being mesne profit/compensation for the use and occupation of suit property with effect from October 1996 till October 1999 for three years against the defendant No.1 with 14 percent Markup, and further a sum of Rs.15,000/- per month against the Defendant No.1 to 3 jointly and severally, with effect from November 1999, till possession of suit property is restored to the plaintiff.

h) Permanent injunction restraining the Defendant No.1 to 3 and or any person claiming through or under them, from claiming or representing to be owner of the said property. From transferring alienating, encumbering, and or from creating third party interest in the said property and further be restrained from delivering possession of the same to any person other than the Plaintiff.

i) Permanent Injunction restraining the Defendant No.5 from further executing any document in respect of said Property in favour of any other person on the basis of fraudulent Sale Deed dated 9.6.98.

j) Cost of the suit.

k) For such further and other decree / relief(s) against all or any of the defendants as nature and circumstances of the case may require and which this Hon'ble Court may consider the Plaintiff is entitled to and/or deem fit and proper under facts and circumstances of the case.

2. Defendants No.1 & 2 filed their joint written statement and defendants No.3 filed separate written statement. Defendant No.4 also filed the written statement and confirmed that loan of Rs.5.1 million has been extended to the plaintiff as finance facility to M/s. F.A Leather Industries (Pvt) Ltd., against mortgage of various properties including the suit property and that the original title documents were always with defendant No.4. Defendant No.4 fully supported the plaintiff since original title deeds were lying with the bank and transfer of the suit property was without lawful authority and based on malafide.

3. This Court on **29.10.2001** from the pleadings of the parties framed following issues:-

1. Whether the suit is barred under provisions of Article 91 and Article 120 of the Limitation Act?
2. Whether the plaintiff was the exclusive owner of House No157/1, Plot No.766, Bihar Colony, Lyari Quarters, Karachi, having acquired the same from KMC in the year 1975?
3. Whether the Power of Attorney dated 16.8.1990 executed by the Plaintiff in favour of defendant No.1, is fraudulent, void and of no legal effect?
4. Whether the registered Declaration of Oral Gift dated 9.7.1992 in respect of property in suit executed by the defendant No.1 in favour of defendant No.2 is void and of no legal effect?
5. Whether the Sale Deed dated 9.6.1998 in respect of suit property executed by the defendant No.2 in favour of defendant No.3 is fraudulent, void and of no legal effect?
6. Whether the suit property was mortgaged? If so to what effect?

7. Whether the plaintiff is entitled to peaceful and vacant possession of suit property?

8. Whether the plaintiff is entitled to claim from the defendants the sum of Rs.3,60,000/- as mesne profits/compensation for use and occupation of suit property w.e.f. October 1996 till October 1999 and further Rs.15,000/- per month against defendants Nos. 1, 2 & 3?

9. Whether the plaintiff is entitled to Permanent Injunction as prayer for?

10. Whether the plaintiff has an cause of action against the defendants?

11. What should the decree be?

4. Plaintiff on **14.10.1999** alongwith plaint has also filed an application under Order 39 Rule 1 & 2 CPC bearing CMA No.8963/1999 wherein he has prayed that;

*“this Hon’ble Court may be pleased to restrain the defendant No.1 to 3 and or any person claiming through or under them from alienating, and or creating any charge or third party interest in respect of suit property bearing House No.157/1, constructed on **Plot NO.766, Bihar Colony Lyari Karachi, ad-measuring 238 sq. yards** till the disposal of the suit”.*

This Court by order dated 21.5.2001, disposed of CMA No.8936/1999 in the following terms.

“Learned counsel for the defendants states that the defendants will not part with possession, encumber or create any third party interest in the suit property and will not act in any manner prejudicial to the title of the respective parties. In view of this statement made before the Court today learned counsel for plaintiff is satisfied. CMA No.8936/1999 under Order 39 Rule 1 & 2 is disposed of in terms of the above statement”.

5. At the evidence stage only plaintiff appeared in the witness box in support of his claim and he was cross-examined only by the counsel for defendant No.4. He has placed on record several documents, viz; Photocopy of Registered Power of Attorney as **Ex.5/1**, special power of attorney as **Ex.5/2**, death certificate of Fida Muhammad as **Ex.5/3**. Registered lease issued by KMC as **Ex.5/4**. Irrevocable of general power of attorney as **Ex.5/5**. Memorandum confirming deposit of title deeds as

**Ex.5/6.** Certificate dated 14.6.1999 issued by UBL as **Ex.5/7.** Photocopy of collateral mortgage deed as Ex.5/8. Letter dated 31.5.1997 issued by UBL as **Ex.5/9.** Letters as **Ex.5/10** and **Ex.5/11.** Letters dated 22.4.1992, 20.5.1992, 29.9.1992 as Exs.5/12, 5/13 and 5/14 written to Assistant Director, Land Lease Lyari, Karachi. Public notices as **Exs.5/15, 5/16, 5/17.** Conveyance deed dated 9.6.1998 as **Ex.5/118.** Letter written to Deputy Director, FIA CBC, Karachi, as **Ex.5/19.** Legal notice dated 10.7.1999 as **Ex.5/20.** Letter dated 26.7.1999 as **Ex.5/21.** Letter dated **9.8.1999** written by Mr. Khalilur Rehman advocate as **Ex.5/22.**

6. I have perused record and heard counsel for the plaintiff and defendant No.4. My findings on the above issues are as under:-

7. Learned counsel for the bank (defendant No.4) confirms that the original title documents remained with the bank pending the suit No.02/1984 filed by the bank. The bank on **9.4.2009** redeemed the mortgaged property in favour of the auction purchaser in terms of the decree in banking Suit No.02/1984 meaning thereby that all the original documents of the suit property had been handed over by the defendant No.4 to the auction purchaser.

8. The defendants No1, 2 and 3 have never turned up to prove that they have lawfully acquired the suit property on the basis of unregistered power of attorney. The original property documents at the relevant time when the defendants entered into Gift and sale transactions in respect of the suit property was in possession of the bank (defendant No.4) since 1983 (Ex.5/6, Ex.5/7 and Ex.5/8). Therefore, admittedly on **9.7.1992** when the declaration of gift was registered the property documents were not handed over by defendant No.1 to defendant No.2 and in the same fashion when sale deed dated **9.6.1998** in respect of the suit property was executed by defendant No.2 in favour of defendant No.3, it was also

without original title documents with the seller to pass on the title to the buyer.

9. The evidence of plaintiff was concluded on **13.12.2006** and since defendants No.1, 2 & 3 never turned up for recording of their evidence, on **15.5.2008**, side of defendants No.1, 2 & 3 for evidence was closed by the Court. The evidence of plaintiff has gone not only unrebutted but it has also been supported by the evidence of defendant No.4. The plaintiffs have successfully proved their case and plaintiffs from the sale proceeds of the auction of all the properties mortgaged including the suit property have realized the value of the suit property. Counsel of the plaintiff on **14.10.2009** has placed on record an order dated **9.4.2009** passed by Banking Court-I Peshawar, which is reproduced below:-

1. Rep: of the DH bank present. Counsel for the applicants present.
2. This order would dispose of an application filed by **Niaz Badshah**, which is concerned with the property of GM For Leather and another application filed by **Iltaf Hussain** concerning the property of FA Leather. According to them, all the outstanding amount has been paid to the DH bank and, now, nothing is outstanding against these companies. It is further stated, that, some of the property was mortgaged by the bank as security. These properties included mortgaged land of the factory premises, building, machinery alongwith houses situated at Mauza Khazana, Hadbast No.100, Peshawar. **The other property is bearing No.766 situated at Behar Colony Lyari Quarters Karachi.** In this case, the statement of counsel for DH bank has been recorded. The bank has no objection on acceptance of applications filed by **Niaz Badshah** and **Iltaf Hussain** for release of the mortgaged property in their favour. Similarly, the statement of Asif Zaffar OG-iii UBL City Branch Peshawar, has also been recorded, in which, he has stated that nothing is outstanding against the JDs. He has also filed NOC in this connection. **Special power of attorney on behalf of LRs of the deceased Directors / owners of the company, has also been filed. The attorney is Mr. Amjad whose statement was recorded on 21.3.2009. He has stated that the LRs of the deceased directors have no objection at the release and redeeming of the entire remaining mortgaged property in favour of the applicants, namely,**

**Niaz Badshah and Iltaf Hussain who had paid the decretal amount to the bank and remaining amount to the LRs of the late directors.** Ex.PB which is form-29 also filed which shows the change of directors. The directors as per this form are Saadullah Khan, Muhammad Shakeel and Saleem Ahmed. Their statement was recorded on 16.2.2009. They have also stated that they are now directors of the JD company and have no objection if the Court released/redeemed the entire remaining mortgaged property of the company in favour of the applicants.

3. In view of the above situation, the mortgaged properties mentioned in the applications be released/**redeemed in favour of Niaz Badshah and Iltaf Hussain** applicants, respectively. File be consigned to record room after necessary completion.

10. The above order clearly indicates that the suit property on plot bearing **No.766 situated in Bihar Colony, Lyari Quarters Karachi, admeasuring 238** sq. yards was at all times from 1983 till at least 2009 was not free for transfer, alienation through gift and sale even by the plaintiff himself. The Banking Court No.1 Peshawar, after recording No Objection by the attorney of the plaintiffs herein has handed over original title documents to the auction purchasers or their nominee named in the above order. Counsel for the bank confirms that these documents have been released pursuant to that above order. Therefore, it is evident from the record of Banking Court No.1 Peshawar that now the suit property is owned by **Niaz Badshah and Iltaf Hussain**. Admittedly, the seller and buyers i.e defendants No.1, 2 & 3 derive their so-called title from the plaintiff on the basis of an unregistered power of attorney in favour of defendant No.1. Therefore, in view of above discussion, I have no option except to declare that the registered Gift Deed dated **9.7.1992** and Sale Deed **9.6.1998** by and between the defendant No.1, 2 and 3 in respect of the suit property were unlawfully and fraudulently registered and both stand cancelled and such cancellation should be recorded by defendant No.5 in their official record. These transactions, in view of above facts

and evidence were fraudulent, therefore, issue No.2, 3, 4 & 5 are decided in affirmative against the defendants No.1, 2 & 3.

11. In view of the order of Banking Court reproduced in para-3 above, Defendant No.5 is directed that no further transaction in respect of the suit property bearing House No.157/1 at Plot No.766, Bihar Colony, Lyari, Karachi admeasuring 238 sq.yds should be entered / registered in their record unless there is official redemption deed of the suit property from the Banking Court-I Peshawar is produced by the parties concerned and the original title documents with the lawfully executed Power of Attorney by said Niaz Badshah and Iltaf Hussain to whom the Banking Court has handed over original is produced and kept on the record of defendant No.5. All entries in respect of sale and transfer of the suit property from 1984 till today shall be deemed to have been cancelled and the defendants are directed to deliver the registered gift and sale deed in their favour to the Registrar Properties concerned for their proper cancellation. Such cancellation in any case should be noted by the Sub-Registrar in their record.

The suit stand disposed in the above terms.

JUDGE

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