

## IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1408 of 2016

Mirza Naseem Baig

Versus

The Administrator, K.E.S.C. Employees Cooperative Housing  
Society Housing Society Ltd. & others

Date of hearing : 01.04.2019

Date of Decision : 01.04.2019

Plaintiff  
[*Mirza Naseem Baig*] : Through Mr. Farooq Akhtar Shaikh,  
Advocate.

Defendant No.1  
[*K.E.S.C. Employees  
Co-operative Housing  
Society Ltd.,*] : Nemo for Defendant No.1.

Defendant No. 2  
[*Malir Cantonment*] : Through Mr. Sohail Rana, Advocate.

Defendants Nos.3 to 6  
[*Province of Sindh,  
District Officer, Cooperative  
Societies and Sub-Registrar-II,  
Gulshan-e-Iqbal.*] : Through Mr. Sharyar Qazi, Additional  
Advocate General and  
Mr. Shabir Shaikh, Law Officer,  
Board of Revenue.

Defendants No.7 to 10 : Nemo for these Defendants.

### J U D G M E N T

**Muhammad Faisal Kamal Alam, J:** The present action at law has been filed by the Plaintiff against the Defendants, seeking the following relief:-

*“In the circumstances, as narrated hereinabove and in the interest of justice, equity and good conscience this Hon’ble Court may be pleased to pass Judgment and decree in favour of the Plaintiff and against the Defendants jointly and / or severally in the following terms.*

- a. A declaration that the Plaintiff is the lawful, bonafide owner of the Suit property bearing Plot No.C-8, measuring 400 Sq. Yds., in K.E.S.C. Employees Cooperative Housing Society, Sector No.34-A, Shakra-e-Khizer, Deh Soophra, Karachi and that the Defendants have no right, title interest share in the same.*
- b. To declare that the lease documents issued by the Defendant No.1 in favour of the Defendants No.7 to 10 in respect of Plot No.C-8, measuring 400 Sq. Yds. in K.E.S.C. Employees Co-operative Housing Society, Sector No.34-A, Sharhah-e-Khizer, Deh. Soophra, Karachi, is forged, fabricated and further cancel / revoke the said documents issued by the Defendant No.1 in favour of the Defendants No.7 to 10.*
- c. A prehistory injunction restraining Defendants, their respective agents, successors, representative, assigns or any other person(s) acting under their control or ordiance from making false claim, selling, making deeds or any kind of transaction in respect of subject property till the disposal of Suit.*
- d. A prohibitory injunction against the Defendants, from harassing threatening the Plaintiff in any manner whatsoever.*
- e. To direct the Defendants No.1, 7, 8, 9, & 10 to pay damages of Rs.200,00,000/= (Two Crore) to the Plaintiff on account of Mental Torture, Agony and humiliation, suffered by the Plaintiff in the hand of the Defendants No.1, 7 to 10.*
- f. Any other or additions relief(s) as this Honourable Court may deem fit and proper in the circumstances of the case.*
- g. Cost of the Suit.”*

2. Upon issuance of summons and subsequent notices and publication in the newspapers, no one appeared except Defendants No.1 and 6 (K.E.S.C. Employees Co-operative Housing Society Ltd.) and (Area SHO), who have filed their formal Written Statements.

3. The controversy in the present case is in respect of a Plot No.C-8, measuring 400 Square Yards, in K.E.S.C. Employees Co-operative Housing Society, Sector No.34-A, Sharahah-e-Khizer, Deh Safura, Karachi (*'Suit Property'*).

4. Mr. Farooq Akhtar Shaikh, Advocate for the Plaintiff has argued that the Suit property was allotted to Plaintiff after completing all the codal formalities and he paid the entire sale price and in due course of time, he also from the concerned authorities, including Defendant No.2 sought the approval for raising construction of a house, but the same could not be materialised in view of the present dispute. He contends that private Defendants in collusion with the official Defendants have attempted to deprive the Plaintiff of his valuable rights as owner in respect of the Suit property, by preparing bogus and forged documents about which the Plaintiff came to know on 15.11.2015 when he through his Advocate addressed a letter to the Defendant No.1 for issuance of sale NOC. The documents, which he is seeking cancellation of are appended with the plaint as well as produced in the evidence as Exhibit-X-9 to Exhibit X- 13 (*Pages-173 to 181 of the main Court file*).

5. Written Statement of Defendant No.1 is on record filed by its Secretary (*K.E.S.C. Employees Cooperative Housing Society*). In the Written Statement in effect the stance of Plaintiff is accepted, while further disclosing that when the Society was taken over by an Administrator, irregularities were committed including in respect of the Suit property.

6. On the other hand, Mr. Sheryar Qazi, AAG along with Mr. Shabir Sheikh, Law Officer of Board of Revenue, have argued that government functionaries are not involved and the documents sought to be cancelled are not registered public documents, but appear to have been issued by Defendant No.1. Learned AAG has further argued by referring the document 'X-12', that it is only a payment receipt in respect of some lease, but no lease document showing adverse title to that of Plaintiff has been brought on record. Learned counsel for the official Defendants have not disputed the authenticity of the Lease Deed in favour of the Plaintiff, which he has produced in the evidence as Exhibit PW-1/7 together with Allotment Order dated 09.02.1978 (Exhibit PW-1/4) and the Possession Order (Exhibit PW-1/5).

7. Mr. Sohail Hayat Rana, Advocate, while representing the Defendant No.2 (*Cantonment Executive Officer, Malir Cantt. Karachi*) has stated that the said Defendant No.2 has performed its function in accordance with law and is not involved in any of the acts complained of. He has further contended that grievance of Plaintiff is mainly directed against private Defendants.

8. On 24.05.2018, the Issues Proposed by the Plaintiff were adopted as Court issues. On behalf of Plaintiff, he examined himself and closed the side, whereas, none of the Defendants have come forward to lead the evidence.

9. Vide an order dated 30.11.2018, it was observed that cross-examination on behalf of Defendants stands '*Nil*', and since no adverse interest of Government is involved, therefore, the Law Officer on behalf of official Defendants was not required to cross-examine the witness. The matter was then set down for final arguments.

10. For a ready reference, following are the Court Issues:

- “1. *Whether the letter of allotment was issued in the name of plaintiff dated 09.02.1978, if yes, what is the effect?*
2. *Whether the Indenture of sub-lease register in favour of plaintiff dated 02.03.1978 bearing Registered No.1749 of Book No.168 at page No.168 dated 02.03.1978, registered from Sub-Registrar T-Division-II, Karachi and the indenture was rectified on 09.05.1985 serial No.3186 at page 70 to 74 book No.414 from the sub-registrar T-Division-XII Karachi, if yes, what is the effect?*
3. *Whether the plot No.C-8 measuring 400 square yards situated at K.E.S.C. employee co-operative housing society ltd. Karachi, was in the possession of the plaintiff, if yes, what is the effect?*
4. *Whether the search certificate was issued in the favour of the plaintiff, if yes, what is the effect?*
5. *Whether the NOC was issued for construction in favour of plaintiff dated 20.05.2012, if yes, what is the effect?*
6. *Whether the plaintiff got the approved map for the construction from KBCA, if yes, what is the effect?*
7. *Whether the plaintiff has paid all dues, Taxes upto year ending 30.06.2016, if yes, what is the effect?*
8. *Whether the defendant No.1 has issued the NOC for sub-lease to the plaintiff, if yes, what is effect?*
9. *Whether the defendant No.1 has issued the NOC for sub-lease to the defendant No.7 to 10 illegally or unlawfully, if yes, or not, what is the effect?*
10. *Whether the defendant No.1 has issued the comments in favour of the plaintiff without any rebuttal, if yes, what is the effect?*
11. *Whether the defendants No.7 to 10 to declare as a null and void transaction as they not proved by the substantial documents to their legality, if not, what is the effect?*
12. *What should the Decree to be?”*

11. The Issue-wise finding is mentioned herein under:

<b>Issues No.1 to 5, 7 and 10 :</b>	<b>Affirmative.</b>
<b>Issues No.6 and 8 :</b>	<b>Redundant.</b>
<b>Issues No.9 and 11 :</b>	<b>Accordingly (as per discussion).</b>
<b>Issue No.12 :</b>	<b>Suit stands Decreed.</b>

*Discussion / Reasons of the Issues.*

**ISSUES NO.1, 2 AND 3:**

12. The Plaintiff as witness produced the original Allotment Order dated 09.02.1978 as Exhibit PW-1/4, Indenture of Lease as Exhibit PW-1/7, executed by Defendant No.1 in favour of Plaintiff, *inter alia*, for term of 99 years and Deed of Rectification dated 09.05.1985, as Exhibit PW-1/8. These documents have not been disputed by the Defendants and on behalf of official Defendants. The last two documents, the Lease Deed and the Rectification Deed are the registered documents and presumption of their genuineness as contained in the Articles 90 to 92 of the Qanoon-e-Shahadat Order, 1984, is also attracted in the present case. It is also a matter of record that before filing of present *lis*, the Plaintiff has filed a Constitutional Petition No.D-54 of 2016, record whereof has been produced in the evidence, in particular the Counter-Affidavit of the then Secretary of Defendant No.1, which has been produced by the Plaintiff as Exhibit PW-1/27. The Defendant No.1 in the said Counter-Affidavit has admitted the claim of ownership of Plaintiff in the following words:-

***“3. That the contents of Para No.1 to 16 are not denied being the matter of record. The claim of the Petitioner as legal and genuine owner of Plot No.C-8 measuring 400 Sq. Yds. In the Respondent No.1 society is undoubtedly admitted.”***

13. In the present Written Statement, the said Defendant No.1 has reiterated its stance of ownership of present Plaintiff in respect of the Suit property. Even though it is a rule that pleadings do not themselves have evidentiary value, unless the Plaintiff and or Defendant, as the case may be, enter the witness box and lead the evidence in support or defence of their pleadings; but, an exception to this rule is, that pleadings or a Written Statement can be considered when there is an admission on the part of Defendant; because, depending upon the facts of each case, even on the basis of Written Statement a Judgment as envisaged under Rule 6 of Order 12 of CPC, can be pronounced. The Written Statement of Defendant No.1 filed in the present case cannot be ignored in which besides admitting the claim of Plaintiff, it has been further stated that certain illegalities were committed when an Administrator took over the affairs of the Defendant No.1 (Society), which the latter challenged in a separate petition, being C.P.No.D-2484/2009. Copy of the said Constitution Petition is also part of the present case record.

The learned counsel has referred to the record of another case-Suit No. 792 of 2011, filed in this Court, by some other allottee of said Defendant No.1 (Society), with almost similar grievance as contained in the present *lis*. Record shows that the above Case was also not contested by the parties and eventually was decreed in favour of the allottee. Copy of the Judgment and Decree is produced as X-7.

Therefore, all three issues are decided in affirmative that Allotment Letter was issued by the Defendant No.1 in favour of Plaintiff. The Indenture of Lease, which is a title document and shows the present Plaintiff as owner of the Suit property, which is situated at Defendant No.1 Cooperative Housing Society and Plaintiff is in possession of the same.

14. Even though, the present *lis* is hardly contested by the official Defendants, yet it is to be seen whether the same is maintainable in law.

15. Learned Counsel for the Plaintiff has responded that the Plaintiff came to know about the bogus and forged documents when he addressed a legal notice to the Defendant No.1 dated 05.11.2015, produced in the evidence as Exhibit PW-1/25 and then responded to by Defendant No.1 vide letter dated 15.11.2015 marked as Ex-X-8 (page-167). It is then argued that the present case was filed on 02.06.2016, primarily, for Declaration and Cancellation and the limitation presented for seeking such relief as mentioned under Articles 91 and 120 of the Limitation Act, 1908, is 3 and 6 years, respectively, and the present Suit is within time. Learned Counsel for the Plaintiff has produced the original Allotment Order, Possession Order and most important the Lease Deed dated 02.03.1978, which is the title document. Learned Counsel has also referred to the Counter-Affidavit, filed by the Defendant No.1 in the Constitutional Petition No.D-54/2016, which Counter-Affidavit has been produced in the evidence as Ex-PW-1/27, to show that the ownership of the Plaintiff has been categorically admitted by the Defendant No.1. Hence, the present suit is maintainable. Thus, **Issues No.1, 2 and 3 are Answered in affirmative.**

**ISSUES NO.4, 5, 6, 7 AND 8.**

16. The Search Certificate has been produced as Exhibit PW-1/14 in the evidence, which mentions the name of Plaintiff and the fact that a lease has been registered in his name by the Defendant No.1 [*K.E.S.C. Employees Co-operative Housing Society Ltd.*], together with the registered Rectification Deed (Exhibit PW-1/8) . This Search Certificate covers the period from 02.03.1978 to 31.12.1999. Similarly, Exhibit PW-1/17 is the approval given by Defendant No.2 (*The Cantonment*



*Executive Officer*) for construction of boundary wall at the suit property. Learned counsel for the Plaintiff has also referred to a correspondence from the above Defendant No.2 (*The Cantonment Executive Officer*), which is produced at Exhibit PW-1/24 with a caption '**No Demand Certificate**' (dated 31.07.2015), to further fortify his arguments that the Plaintiff was faithfully paying all the legal dues to different Official Defendants because the receipt issued by Defendant No.1 towards outer and inner developments are also produced in the evidence as Exhibits PW-1/9, PW-1/10 and PW-1/11. These are the official documents, which are not disputed by any of the Defendants, therefore, further endorse the ownership rights of Plaintiff in respect of the suit property. Thus, **Issue No.4 is answered in Affirmative so also Issues No.5 and 7.** In view of the above discussion and positive finding in favour of the Plaintiff on the above Issues, **Issues No.6 and 8 have become redundant** because it has been acknowledged by the learned counsel for Plaintiff during arguments that the construction could not be raised because the dispute arose, which resulted in the present litigation.

#### **ISSUE NO.10.**

17. In view of the above discussion, it is a matter of record that the Counter-Affidavit filed by Defendant No.1, which has been produced in the evidence of present *lis* as Exhibit PW-1/27, filed in an earlier Constitutional Petition No.D-54 of 2016, the Defendant No.1, which is concerned Cooperative Housing Society has admitted the ownership of the present Plaintiff. Similarly, the Written Statement filed in the present *lis* by the said Defendant No.1 has in fact supported the main claim of Plaintiff with regard to his ownership and if read with the Counter-Affidavit of the said Defendant No.1, filed in the aforementioned Constitutional Petition, in my considered view, it is an

acknowledgment on the part of Defendant No.1, which is the Lessor of the suit plot, about the claim of Plaintiff. **Issue No.10 is also answered in Affirmative** and in favour of present Plaintiff and against the private Defendants.

**ISSUES NO.9 AND 11.**

18. The Plaintiff has produced documents of which he has sought cancellation, in the evidence, as “X-9, X-10, X-11, X-12 and X-13, viz. a transfer of occupancy right dated 4-12-2010, in favour of one Rehmatullah from Ejaz Hussain Shah, who are impleaded as Defendants No.7 and 8, respectively, purportedly issued by Defendant No.1; the next document (*‘X-10’*) is a receipt of physical possession in favour of the said Defendant No.7 (Rehmatullah) and interestingly, mentioning membership number as “transferred”; the other document is “X-11”, a receipt of payment of Rs.10,000/- (Rupees Ten Thousand Only) towards possession, said to have been issued by Defendant No.1 and is of 24.03.2011; the other document is only a Payment Fee challan for lease but no registered lease is produced; document ‘X-13’ of which the Plaintiff is seeking cancellation, is a transfer letter in favour of one Shahnawaz Khan-Defendant No.9 (herein) and this document is dated 16.03.2011. It is mentioned in this document that the suit plot is ‘transferred’ to the said Defendant from Mrs. Riffat Sultana Defendant No.10 (herein). This document bears the stamp of Administrator of Defendant No.1.

19. The Plaintiff is basing his claim on the registered public documents, which are also accepted by the official Defendants. The submission of learned AAG has substance that none of the documents sought to be cancelled are public documents and the impugned

documents relate to the Defendant No.1. The stance of Defendant No.1 is that these impugned documents were issued in that period when the Defendant No.1 was taken over by the Administrator, who has committed gross illegalities. It means that even Defendant No.1 has disowned the afore-mentioned impugned documents. *Secondly*, these documents cannot be given more weight than the registered documents, particularly, the original Allotment Letter, Possession Letter and the registered 99 years ownership lease in favour of Plaintiff. Even the Defendant No.2 (*the Cantonment Executive Officer*) has acknowledged the documents pertaining to the said Defendant (*the Cantonment Executive Officer*), which are produced in the evidence. Thus considering this irrefutable evidence and the discussion in preceding paragraphs, it is not difficult to hold that the above impugned documents are bogus, having no legal sanctity and are void *ab-initio*. **Issues No.9 and 11 are answered accordingly and** against the private Defendants. All these documents, which have set up an adverse ownership claim against the Plaintiff are liable to be adjudged as cancelled.

20. Now adverting to the claim of damages of the Plaintiff. Broadly, damages are of two kinds; general and special. Special damages are awarded only when a party successfully proves actual losses suffered by him / her. In the present case, the Plaintiffs' side has failed to adduce evidence with regard to their claim of rupees twenty million towards damages, which in fact are special damages. Notwithstanding this aspect of the case, the Superior Courts have held in number of decisions, *Abdul Majeed Khan v. Tawseen Abdul Haleem* [2012 C L D page-6], being one of the leading cases, that if circumstances so warrant, general damages can be awarded by invoking the rule of thumb; particularly where violation of legal rights exists. It is a matter of record that Plaintiff

is pursuing his remedy for enforcement of ownership rights for the past few years and has incurred expenses, including towards litigation.

Similarly, in the case of *Sufi Muhammad Ishaque vs. The Metropolitan Corporation Lahore through Mayor*-PLD 1996 Supreme Court page-737, the damages with regard to mental agony has been discussed and the conclusion is that they can be no yardstick or definite principle for assessing damages in such cases, which are meant to compensate a party who suffers an injury. The determination criteria should be such that it satisfies the conscience of the Court, depending on the facts and circumstances of the case. In these circumstances, I am of the considered view that the Plaintiffs are also entitled for general damages to the tune of Rs.10,000,00/- (Rupees One Million Only), payable by the private Defendants No.7 to 10 only.

21. The Suit in view of above discussion is decreed in terms of Prayer Clause-‘a’, ‘b’ and ‘c’; with regard to Prayer Clause-‘e’, the Plaintiff is entitled for damages and compensation of Rs.1 million, against the private Defendants No.7 to 10 only, who are liable to pay the same jointly and severally.

22. The Suit stands decreed in the above terms with costs.

Karachi  
Dated : 01.04.2009.

JUDGE

