

THE HIGH COURT OF SINDH, KARACHI

Suit No. 02 of 2012

[Mst. Aneela Zehra versus Faheem Haider and 09 others]

Plaintiff : Mst. Aneela Zehra through M/s Farhan Zia Abrar and Muhammad Rehan Quraishy, Advocates.

Defendants 1-9 : Naeem Haider, Defendant No. 9 in person and as an Attorney of Defendants 1 to 8.

Defendant 10 : Nemo.

Date of hearing : 17-02-2020

Date of order : 19-05-2020

ORDER

Adnan Iqbal Chaudhry J. - The question is whether the Plaintiff has over-valued the suit to bring it within the pecuniary jurisdiction of this Court.

2. The Plaintiff and the Defendants are siblings. The subject matter of the suit are two buildings of ground + 2 storey each, constructed on Plot No. 193 measuring 96 sq. yds. and Plot No. 194 measuring 90 sq. yds., Survey No. 553, Ammar Yaseer Cooperative Housing Society, Malir, Karachi. It is the Plaintiff's case that both buildings are the properties of their late father who had purchased the plots in 1981 when the parties were minors; that while allotment of Plot No. 194 was transferred by the Society to the deceased's name, the allotment of Plot No. 193 was transferred to the name of the deceased's son, the Defendant No.1 as his *benamidar* so as to get around a Bye-law of the Society which restricted one person to one plot. Per the plaint, the Defendant No.1 claims Building No. 193 in his own right and has retained its rental income, and the Defendants have refused to partition or sell the buildings to give the Plaintiff her

inherited share therein. The Plaintiff therefore prays that Building No. 193 be declared the property of their late father, and the Defendant No.1, his benamidar; that the mutation of Building No. 193 to the sole name of the Defendant No.1 be declared void and be cancelled; for a declaration that the Plaintiff is entitled to receive her inherited share in both Building No. 193 and Building No.194; for the appointment of a Receiver; for an injunction against the Defendant No.1; and for accounts of the rent collected by him.

3. The suit has been valued as follows:

"The Suit is valued for the jurisdiction and Court fee for Declaration, Cancellation, Administration, Partition and Accounts at Rs.1,60,00,000/- being present market value of both the properties. The Plaintiff has affixed the Court fee of Rs.15,000/- as maximum Court fee."

4. The question to the valuation of the suit was first raised by the Defendant No. 9 vide CMA No. 3985/2012. By order dated 18-09-2014 this Court appointed the Nazir as Commissioner to inquire into the erstwhile market value of the two buildings. The Nazir submitted a report dated 28-11-2014, but before that report could be considered, CMA No. 3985/2012 was dismissed for non-prosecution on 30-04-2019. Therefore, on 07-05-2019 the Defendant No. 9 moved a fresh application, CMA No. 7119/2019, under Order VII Rule 10 CPC.

5. The Defendant No. 9 is an Advocate by profession and represents himself. He contends that on 30-04-2019, when CMA No. 3985/2012 was dismissed for non-prosecution, he was on *umrah* and on general adjournment; hence he moved a fresh application under Order VII Rule 10 CPC. Since the question is to pecuniary jurisdiction, one that had been raised by the Defendant No. 9 at the earliest opportunity in 2012 and taken note of by the Court, I am of the view that the dismissal of the previous application for non-prosecution would not come in the way of a fresh application especially when the latter can also be treated for restoration of the former as it is within limitation.

6. There are varying reports as to the market value of the subject buildings. Per the Nazir's report dated 28-11-2014, the market value of Building No. 193 both in the 2012 and 2014 was not more than Rs. 2,800,000/-; and that the market value of Building No. 194 in the year 2012 and 2014 was not more than Rs. 3,500,000/-. Apparently, the market value of Building No. 194 had also been inquired into by this Court vide order dated 01-04-2011 passed in SMA No. Nil/2010, a proceeding filed earlier by the Plaintiff but later withdrawn. The Nazir's report dated 01-04-2011 in SMA No. Nil/2010 was that the market value of Building No. 194 was between Rs. 3,000,000/- and Rs. 5,000,000/-. Alongwith CMA No. 7119/2019 is another report dated 22-04-2010 made by the Mukhtiarkar (Revenue) Malir Town to the Deputy District Officer (Revenue) Malir Town stating that the market value of Building No. 194 was between Rs. 5,000,000/- and Rs. 6,000,000/-.

7. The Defendant No. 9 submitted that even taking the aggregate market value of the two buildings at any of the above estimates, the suit had been over-valued at Rs. 16,000,000/-, and if properly valued, the suit should be returned to be presented before the Senior Civil Judge Malir. On the other hand, the Plaintiff contends the suit attracts section 7(iv)(c) of the Court Fees Act, 1870 where the Plaintiff has discretion to value the suit as she deems appropriate.

8. Heard the learned counsel and perused the record.

9. The Defendant No. 9 contends that the suit was required to be valued at the 'market value' of the buildings involved. The suit valuation clause of the plaint also cites 'market value' to value the suit, though it is now contended by the Plaintiff that the correct provision for suit valuation was section 7(iv)(c) of the Court Fees Act. Though the Defendant No. 9 did not specify the provision of law applicable to value the instant suit, but in arguing 'market value' he presumably refers either to section 7(iv-A) of the Court Fees Act read with section 8 of the Suits Valuation Act, 1887, or to section 7(v) of the

Court Fees Act, 1870 where a suit is to be valued on the basis of the value of the immovable property involved, *albeit* it is only section 7(v) of the Court Fees Act that expressly refers to 'market value'. Since the suit is not for right/title to immovable property based on any sale, gift, exchange or mortgage thereof, section 7(iv-A) of the Court Fees Act is not attracted. While section 7(v) of the Court Fees Act entails that a suit for possession of a house is to be valued at its market value, the instant suit is not for possession *per se*.

10. The subject matter of the suit are two separate though adjoining buildings, and the prayer clause shows that different relief have been sought with regards to the two buildings. Hence, the suit is multifarious within the meaning of section 17 of the Court Fees Act, and at least for the purposes of court fees, each subject matter had to be valued separately. It is another matter that by virtue of the Court Fee (Sindh Amendment) Ordinance 1977¹, notwithstanding the First Schedule to the Court Fees Act, 1870, court fees payable thereunder even in a multifarious suit cannot exceed Rs. 15,000/-.²

11. A perusal of the plaint shows that with regards to Building No. 194, the suit is one for administration, and the considered legal position is that such a suit is one for accounts falling under section 7(iv)(f) of the Court Fees Act.³ As regards Building No. 193, the suit is essentially one for declaration that said building is the property of the deceased held *benami* by the Defendant No.1, and for consequential relief in that regard, which would fall under section 7(iv)(c) of the Court Fees Act.

12. For suits falling under section 7(iv) of the Court Fees Act, the plaintiff has a certain discretion to value relief for purposes of court fee, and then in such suits, by virtue of section 8 of the Suits Valuation Act, the value determinable for computation of court fees and the

¹ PLD 1977 Sind Statutes 98.

² See *Umeed Ali v. Government of Sindh*, PLD 2007 Karachi 224.

³ *Muhammad Sulaiman Malik v. Royal Trust Corporation of Canada* (PLD 1983 Kar 382).

value for the purposes of jurisdiction is the same. In other words, the instant suit is of a nature not required by the Court Fees Act and the Suits Valuation Act to be valued on the basis of the value of the immovable property involved. The Defendant No. 9 was also not able to show that Rules have been framed for the Province of Sindh under section 3 of the Suits Valuation Act for determining value of land for purposes of jurisdiction so as to trigger section 4 of the Suits Valuation Act. In any case, given the fact that in the year 2010 the Mukhtiarkar (Revenue) Malir Town had opined that the market value of one building could be Rs. 6,000,000/-, making the market value of both buildings around Rs. 12,000,000/- in the year 2010, it cannot be said that the valuation of the suit at Rs. 16,000,000/- in the year 2012 was completely arbitrary.

For the reasons foregoing, I do not see any reason to interfere in the suit valuation made by the Plaintiff. Therefore, CMA No. 7119/2019 under Order VII Rule 10 CPC is dismissed.

JUDGE

Karachi:
Dated: 19-05-2020