

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 217 of 2019

Date	Order with Signature(s) of Judge(s)
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For hearing of CMA No. 1838/2019.

10.12.2020

M/s. Asghar Ali and Samiullah, Advocates alongwith plaintiff.
Mr. Muhammad Nouman Jamali, Advocate for defendant No. 3.
Mr. Pervaiz Ahmed Mastoi, AAG.

By means of listed application (C.M.A. No. 1838 of 2019), the plaintiff seeks interim injunctive order directing the defendants No. 3 & 4 not to create any third party interest in the suit land.

2. Learned counsel for the plaintiff contends that Mst. Fahmida d/o Ali Muhammad, the plaintiff, was the owner of 12 Acres Qabooli land comprising Survey Nos. 345 & 352 in Sector 1-A of Deh Gujru and Survey Nos. 22, 24 & 16 in Sector 17-A of Deh Songal, Scheme-3, Karachi, in lieu whereof she was allowed exchange of 2 Acres of land in Sector 34-A, situated in Deh Dozan, Scheme No.33, Karachi (“**the suit land**”) by the Member, Land Utilization, Board of Revenue vide Suo Moto Revision Order dated 12th March, 1991. He further contends that Mst. Fahmida d/o Ali Muhammad w/o Haji Jokhio, the defendant No. 1 in the present suit, filed a bogus Suit bearing No. 964 of 2008 before this Court against Mst. Fahmida d/o Ali Muhammad w/o Mushtaq and province of Sindh claiming herself the owner of the suit land, which was subsequently withdrawn by her unconditionally on 14th July, 2010. He further contends that the present plaintiff is infact real Mst. Fahmida d/o Ali Muhammad, who was in peaceful possession of the suit land till the month of October 2018 when the defendant No. 4, namely, Bashir Magsi forcibly occupied the same by turning her Chowkidar out from the suit land and since the defendants No. 3 & 4 have no title over the suit land and they are simply acting on behalf of defendant No. 1, who by playing fraud filed Suit No. 964 of 2008; hence, cause of action accrued to the plaintiff to file instant suit for declaration,

possession and injunction. He also contends that the plaintiff has made out a prima facie case for the grant of interim injunctive order and balance of convenience also lies in her favour, who will suffer irreparable loss if interim order is not passed in this case.

3. On the other hand, learned counsel for defendant No. 3 maintains that the suit is not maintainable in law, as the plaintiff has no locus standi or any right and cause of action in respect of the suit land to file the instant suit, as she is an impersonator. He further maintains that the plaintiff is a fake lady, pretending herself as real Mst. Fahmida d/o Ali Muhammad and claiming right of ownership in the suit land on the basis of photostat copy of the documents obtained from Suit No. 964 of 2008, which infact pertain to Mst. Fahmida d/o Ali Muhammad w/o Mushtaq, defendant No. 1 in Suit No. 964 of 2008 (who has not been made party in this suit) and she being the real owner of the suit land in the year 1998 executed registered General Power of Attorney in favour of Haji Noor Ahmed s/o. Fateh Muhammad Mughal, who thereafter in the year 2007 sold out the suit land to defendant No. 3 (Nusrat Mirza Chughtai) and such sale deed was executed in the year 2017. He further maintains that in the year 2017 the plaintiff for the first time obtained CNIC pretending herself to be Mst. Fahmida d/o Ali Muhammad but did not chose to see CNIC of original Mst. Fahmida attached with the written statement, which depicts that the real Mst. Fahmida is a literate lady and makes signature in English language and in the year 1987 she executed General Power of Attorney in favour of Haji Noor Ahmed and her all documents carry her signatures in English language; as such, the defendant No. 3, who purchased the suit land from real Mst. Fahmida through her Attorney, is the lawful owner of the suit land under valid title, cancellation whereof, so also of the registered General Power of Attorney executed by real Mst. Fahmida in favour of Haji Noor Ahmed has even not been sought by the plaintiff. He further maintains that the plaintiff was never in possession of the suit land; hence, his co called dispossession does not arise. He further maintains that the plaintiff has failed to

make out a prima facie case in her favour for the grant of interim injunctive order and balance of convenience is not in her favour but the same lies in favour of defendant No. 3 and infact it is the defendant No. 3, who shall suffer irreparable loss, if interim order is passed in this case, as she had made huge investment to raise a residential project.

4. I have heard learned counsel for the parties and perused the material available on record.

5. It appears from the perusal of case file that one Mst. Fahmida d/o Ali Muhammad owned and possessed 12 Acres Qabooli land comprising Survey Nos. 345 & 352 in Sector 1-A of Deh Gujru and Survey Nos. 22, 24 & 16 in Sector 17-A of Deh Songal, Scheme-3, Karachi, which was utilized by the K.D.A. authorities in outer development and for reservation of park in Scheme-33 without acquisition and payment of compensation thereof; hence, she approached Deputy Commissioner, Karachi-East for adjustment/exchange of the land, which was allowed in Sector 34-A of the same Scheme-33; however, since the said Deputy Commissioner was not authorized to allow adjustment/exchange of land, Suo Moto Revision Notice under Section 164(2) of Land Revenue Act, 1967 was issued by the Commissioner, Karachi Division to her to show cause as to why exchange/adjustment of land in her favour should not be cancelled. While said proceedings were pending, Member (Land Utilization) Board of Revenue, Sindh issued notice dated 2nd January, 1990 to her in exercise of his Suo Moto power under Sub-Section 4 of Section 164 of Land Revenue Act, 1967, which she challenged in Civil Suit No. 107 of 1990 before learned 3rd Senior Civil Judge, Karachi-East; however, subsequently on 2nd March, 1991 the same was withdrawn by her and then she appeared before Member (Land Utilization), Board of Revenue, Sindh in the aforementioned Suo Moto Revision, which was decided in her favour vide order dated 12th March, 1991 by confirming the exchange of land to her by Deputy Commissioner, Karachi-East subject to

payment of differential Malkno at the rate of Rs.10,000/- per acre. Said Mst. Fahmida d/o Ali Muhammad w/o Mushtaq Ahmed deposited the differential amount in respect of exchanged land, which fact is evident from the Challan No. 1254 dated 11th October, 2008 of Treasury Office, City Curt Building, Karachi (*Copy of Challan is available at page No. 147 with counter affidavit of defendant No. 3*). Said Mst. Fahmida obtained Possession Letter of the suit land on 11th April, 1987 (*copy of possession letter is available as annexure "P/7" at page 39 of the memo of plaint*), which bears her signature in English language. It further appears that on 4th April, 1988 said Mst. Fahimda executed General Power of Attorney in favour of Haji Noor Ahmed, which was registered at No. 1627 with the Sub-Registrar, T-Division-XIV, Karachi (*copy whereof is available as annexure "D" at page 43 of the counter affidavit of defendant No. 3*), which is also signed by her in English language with NIC No. 509-57-138991.

6. It also appears from record that on 9th July, 2008 another Mst. Fahmida d/o Ali Muhammad w/o Haji Jokhio resident of Khalifa Mohallah, Gharo, Taluka Mirpur Sakro at Gharo, District Thatta filed Suit No. 964 of 2008 for possession, declaration against Mst. Fahmida w/o Mushtaq and Province of Sindh claiming to be the owner of the suit land, which was contested by Mst. Fahmida w/o Mushtaq by filing written statement through her Attorney Haji Noor Ahmed. Subsequently, amended plaint was filed by adding the present defendant No. 3 (Nusrat Mirza Chugthai) in the said suit as defendant No. 3; however, on 12th July, 2010 plaintiff of the said suit filed an application bearing C.M.A. No. 7721 of 2010, under Order XXIII, rule 1 C.P.C. seeking unconditional withdrawal of the said suit, which was allowed and the said suit was dismissed by this Court, vide order dated 14th July, 2010. Thereafter, on 10th August, 2010 an application being C.M.A. No. 8332 of 2010, under Section 151 C.P.C. was filed on behalf of the plaintiff in the said suit by her counsel, through her Attorney, namely, Syed Mehmood Akhtar Naqvi for recalling the order dated 14th July, 2010 claiming therein that the said suit was withdrawn unconditionally in absence of the

plaintiff of the said suit by making her forged thumb impression, whereafter on 22nd November, 2011 said Mst. Fahmia w/o Haji Jokhio, plaintiff of the said suit, appeared and examined by this Court. In her statement, she deposed that she had earlier appeared in Court alongwith her counsel for the withdrawal of the case and she did not know if any application was filed on her behalf for restoration of the said suit and that she did not know anything about the said case and she did not remember if she issued any power of attorney in favour of any one in respect of the said case; hence, vide order dated 20th March, 2013 C.M.A. No. 8332 of 2013 was dismissed.

7. It also reflects from the record that subsequently on 18th October, 2018 Mst. Fahmida d/o Ali Muhammad w/o Mushtaq, through her Attorney Haji Noor Ahmed, executed Sale Deed in favour of M/s. Bismillah Housing Services, owned by Muhammad Ilyas s/o. Dawood Paryani and defendant No. 3 with Sub-Registrar, Gulshan-e-Iqbal Town, Karachi. It also appears from perusal of record that Mst. Fahmida d/o Ali Muhammad w/o Mushtaq on 13.10.1975 at the age of 18 years firstly obtained her NIC bearing No. 509-57-138991, second NIC in the year 2001 bearing No. 514-57-189349 and CNIC (3rd NIC) on 25.08.2003 bearing No. 42301-8778032-4. Photostat copies of said three NICs were filed by the learned counsel for defendant No. 3 vide statement dated 19.08.2019, which reflect that she used to make her signature in English language. It also reflects from Possession Letter referred to above that she had made her signature thereon in English language, while Mst. Fahmida d/o Ali Muhammad, the plaintiff in the instant suit, though born on 2nd March, 1962 first time obtained her CNIC bearing No. 42201-5192107-0 on 16.03.2017, which does not bear the name of her deceased husband as admittedly she is a widow and NADRA report does not reflect if before that date any NIC manual or computerized was ever issued to her. It further reflects that the plaintiff in the instant suit has made her signature in Urdu language. Today she is present in Court and she admits that she cannot sign in English; hence, it is yet to be determined through recording evidence of

the parties, if the plaintiff is the actual Mst. Fahmida d/o Ali Muhammad, who previously owned the suit land and not Mst. Fahmida d/o Ali Muhammad w/o Mushtaq, from whom the defendant No. 3 has derived title of the suit land being one of the owners of M/s. Bismillah Housing Services through a registered conveyance deed, cancellation thereof even has not been sought by the plaintiff.

8. Keeping in view the aforesaid facts of the case, I am of the tentative opinion that there is nothing on record to show that the plaintiff is actual Mst. Fahmida, who previously owned the suit land; therefore, she has failed to establish arguably the existence of right claimed by her in the instant suit and to make out prima facie case for the grant of injunction in her favour. The balance of convenience also does not lie in favour of the plaintiff but in favour of defendant No. 3, who having purchased the suit land has incurred heavy investment thereon for the construction of a residential project; thus, it is the defendant No. 3, who would suffer more inconveniently by granting injunction than the plaintiff by withholding the same. In similar terms, it is the defendant No. 3, who shall suffer irreparable loss than the plaintiff; as such, I am inclined to grant discretionary relief of injunction; therefore, this application (C.M.A. No. 1838 of 2019) is dismissed with no order as to costs.

9. Before parting with this order, I may clarify that the observations made hereinabove are tentative in nature and will not be taken into consideration by this Court while deciding main suit after examining the evidence to be produced by the parties.

Athar Zai

JUDGE