

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2378 of 2015

Plaintiffs : Muhammad Riaz and others,
through Mr. Abrar Hassan,
Advocate.

Defendant No.3 : Board of Revenue, through Mr.
Ghulam Abbas, Advocate

Defendant No.13 : Hussain Developers, through Mr.
Haider Waheed, Advocate.

Suit No. 2253 of 2016

Plaintiff : M/s. Hussain Developers, through
Mr. Haider Waheed, Advocate.

Defendant No.2 : Board of Revenue, through Mr.
Ghulam Abbas, Advocate

Defendants
Nos. 11 to 17 : Muhammad Riaz and others,
through Mr. Abrar Hassan,
Advocate.

Dates of hearing : 16.09.2019 and 22.10.2019

ORDER

YOUSUF ALI SAYEED, J – The main protagonists in these Suits are the Plaintiffs in Suit No. 2378/15, being seven individuals who profess to collectively be the owners in possession of 5313 square yards of land in Survey No.432 of Deh Dih, Taluka Korangi, District Karachi Karachi, and the Defendant No.13, a partnership firm that claims title to 2-30 acres of land in Survey No. 286, Deh Dih, Korangi Town, Karachi, and has in turn filed Suit No. 2253/16 where the Plaintiffs in Suit No. 2378/15 have been arrayed as the Defendants Nos. 11 to 17. For convenience, further reference to these parties will be as per their designation as plaintiffs and defendant in Suit No. 2378/15.

2. Whilst the respective entitlements of the Plaintiffs and Defendant No.13 appear to ostensibly be in relation to two separate estates, the dispute giving rise to the Suits essentially turns on the assertion of the Plaintiffs that the Defendant No.13 has made attempts to dispossess them, with it being contrarily asserted by the Defendant No.13 that the title of the Plaintiffs is defective and that under the garb thereof they have in reality encroached on land forming part of its 2-30 acres.

3. The foundation of the Plaintiffs' case is that the Plaintiff No.1 is said to have acquired parcels of land admeasuring 3113 square yards and 2200 square yards in Survey No. 432 of Deh Dih, Taluka Korangi, District Karachi, from one Salman son of Shamim Ahmed (i.e. the Defendant No. 10 in Suit No. 2253/16), vide Sale Deeds dated 02.06.2014 and 23.06.2014, and then conveyed 2521.53 square yards out of the aforementioned 3113 square yards to the Plaintiffs No.2 to 7 vide a Sale Deed dated 06.08.2014, with each of the aforementioned sale deeds having apparently been registered before the Sub-Registrar, Bin Qasim Town, Karachi, bearing Registration Nos. 3140, 1304 and 1637 respectively, and with prior NOC's having apparently been obtained in that regard from the concerned Mukhtiarkar and the entries in favour of the Plaintiffs having then been progressively recorded in Form-II. The Plaintiffs have stated that a boundary wall was raised by them around their joint property, with two main gates, and four rooms have been constructed, where their chowkidars are residing.

4. As such, in terms of Suit No. 2378/15, whilst asserting their claim on such basis, the Plaintiffs have accordingly prayed that this Court be pleased to pass judgment and decree so as to inter alia:-

- “A. Declare that Plaintiff No.1 is lawful owner of commercial/ industrial/residential land admeasuring 2791.47 sq. yards out of 1.00 acres and 13 ghuntas from Survey No.432, Deh Dih, Taluka Korangi, District Karachi and Plaintiffs No.2 to 7 are lawful owners of 2521.53 sq. yards out of 3113 sq. yards from Survey No.432, Deh Dih, Taluka Korangi, District Korangi, Karachi vide Sale Deed bearing Registered No.3140 of Book No.1 dated 28.11.2012. M. F. Roll No.U-81466/8178 Photo Registrar, dated 28.11.2012 before Sub-Registrar Bin Qasim Town, Karachi.
- B. Restrain the Defendants from cancelling Survey No.432 Deh Dih, Taluka Koranig, District Koranig, Karachi.
- C. Restrain the Defendants, their servant, agent or their attorney, person or persons acting on their behalf from dispossessing, interfering in the peaceful possession of the Plaintiffs land i.e. 2791.47 sq. yards and 2521.53 sq. yards from Survey No.432 Deh Dih, Taluka Koranig, District Karachi, till final disposal of this Suit.
- D. Award damages of Rs.5 crore to the Plaintiffs.
- E. ...
- F. ...” [Sic]

5. On the other hand, the Defendant No.13’s claim to ownership of 2-30 acres in Survey No. 286, Deh Dih, Korangi Town, Karachi is based on an allotment order No PS/MBR (LU)/260 dated 30.01.1992, said to have been issued by the Land Utilization Department, and a Lease deed dated 06.05.1992 said to have then been executed by the Defendant No. 3 in its favour, with the property being mutated accordingly in the record of rights/Deh Jo Form II, as per Entry No. 85 dated 03.06.1992. It has been pleaded that the Plaintiffs have occupied and laid claim to the 2-30 acres on the premise that Survey No. 286 was cancelled by the Director of Settlement Survey and Land Records Sind, Hyderabad vide Letter No.GD/SSK /1510 of 2011 dated 04.08.2011 and that after completion of legal

formalities the land was then designated as Survey No. 432, whereas it had been held in the subsequent Order dated 14.03.2013 of the learned Commissioner, Karachi in Appeal No. 02/2013 that such cancellation of survey numbers was incorrect and the very order on the basis of which Survey No. 432 was created had been set aside, hence any action predicated on such order was void and of no legal effect.

6. On the aspect of possession, whilst it has been averred that the 2-30 acres had been handed over in the year 1992, it has been pleaded that the Defendant No.13 then found it had been dispossessed by one Muhammad Siddiqui son of Gulzaman Khan on 12.12.2007, and had lodged FIR No.16/2008 dated 05.01.2008 at P.S. Korangi. As per the pleadings of the Defendant No.13, said Gulzaman Khan had also filed a suit before this Court bearing No. 934 of 2006 in relation to 15-17 acres of land in Naiclass 24, Deh Dih, Tappo Drig Road, Taluka Karachi, District, Karachi, in which the Defendant No.13 was added as a party on its own application under Order 1, Rule 10 CPC, with a like application also being filed by one Hazoor Bux Kalwar ("**HBK**"), purporting to act as attorney of one Atique Muhammad Khan ("**AMK**", i.e. the Defendant No.7 in Suit No. 2253/16), on the ground that the latter was the owner in possession of that land. Apparently, for its part, the Plaintiff had then in turn filed Suit No, 995 of 2011 seeking a declaration of its title whilst impugning the claim espoused by HBK, and also sought possession, with Suit No. 2253/16 thereafter being filed upon the Defendant No.13 upon being apprised of the claim advanced by the Plaintiffs vide their Suit, it being averred that the case of the Plaintiff's is defective as they claim to derive title from HBK, as attorney of AMK, whereas HBK's own claim of being the attorney of AMK has been repelled upon dismissal of Suit Number 435 of

2013 which had been filed by him in that purported capacity. As such, in terms of Suit No. 2253/16, the Defendant No.13 have accordingly prayed that this Court be pleased to pass judgment and decree so as inter alia:-

- “1. To declare that the Plaintiff is the true and lawful owner of land measuring 2-30 acres, Survey No. 286, out of Naiclass 24, Deh Dih, Korangi Town, Karachi.
2. To declare the actions of the Defendant No. 7, in falsely claiming to be attorney vide Power of Attorney dated 05.09.2009, of Mr. Ateeq Muhammad Khan who expired in the year 1999, as well as all actions emanating from such Power of Attorney, to be illegal, fraudulent, void and of no legal effect.
3. To declare that any sale, through any instrument, of any portion of property falling within Survey No. 286, out of Naiclass 24 Deh Dih, Korangi town, Karachi by the Defendant No. 7 to any person, including the Defendants No. 8, 9, and 10, to be illegal, fraudulent, void and of no legal effect.
4. To declare any sale, through any instrument, in Survey No. 286, Naiclass 24, Deh Dih, Korangi Town, Karachi by the Defendants No. 8 and 9, and the Defendant No. 10, to any person including the Defendants No. 11 to 17 to be illegal, fraudulent, void and of no legal effect.
4. To cancel Sale Deeds dated 17.12.2011 bearing Registration No. 4073 and 4074 before the Sub Registrar Bin Qasim Town, Karachi, executed by Defendant No. 7 in favour of the Defendants No. 8 and 9.
5. To cancel Sale Deeds dated 18.10.2012, having Registration No. 3140 before Sub Registrar Bin Qasim Town, Karachi, executed between Defendant No. 7 and Defendant No. 10.
6. To cancel Sale Deed 24.06.2014, having Registration No. 1304 before Sub Registrar Bin Qasim Town Karachi, executed between the Defendant No. 10 and Defendant No. 11.
7. To cancel Sale Deed dated 14.07.2014, having Registration No. 1637 before Sub Registrar Bin Qasim Town, Karachi, executed between the Defendant No. 11 and the Defendants No. 12 to 17.

8. To grant permanent injunction against the Defendants No. 7 to 17, and their attorney/agents or any persons acting on their behalf, from claiming to have any right, title or interest in the suit property, from dispossessing or attempting to dispossess the Plaintiff from the same, and from selling/conveying or creating any further interests in the suit property on the basis of illegal documents in their possession / executed in their favour.
9. To grant possession to the Plaintiff of such portion of the suit property as having been illegally occupied by the Defendants or any persons acting through them, before or during pendency of the instant suit.
10. ...
11. .
12. ...” [Sic]

7. The Applications presently arising for consideration in this backdrop are CMA 17558/15, which has been filed under Order 39, Rules 1 and 2 CPC by the Plaintiffs in Suit No. 2378/15, seeking an injunction as against their dispossession at the hands of the Defendants, with an interim Order having been made on 11.01.2016 directing the parties to maintain status-quo, whereas CMA Nos. 14822/26 and 14823/16 have been filed by the Defendant No.13 in its Suit No. 2253/16, with it being sought in terms of the former that possession of the 2-30 acres be handed over, and, somewhat incompatibly, in terms of the latter that the Plaintiffs be restrained from raising construction or creating any third party interest until the disposal of that Suit, with an interim Order to that effect having been made on 25.10.2016.

8. Proceeding on these Applications, learned counsel for the Plaintiffs referred to and placed reliance on the registered Sale Deeds and resultant entries in favour of the Plaintiffs in the Revenue Record, and alleged that the 02-30 acres claimed by the Defendant No.13 did not relate to Deh Dih Naiclass-24, but to Survey No.286, Naya Malir, which, per learned counsel, had been cancelled by the Director of Settlement Survey and Land Records Sind, Hyderabad vide Letter No.GD/SSK /1510 of 2011 dated 04.08.2011 and out of the survey number, Survey No.432 has been created in which the land of the Plaintiffs is situated. He pointed out that the Defendant No.9, being the concerned Mukhtiarkar, had also confirmed the Plaintiffs title in terms of the Written Statement submitted in Suit No. 2378/15, and contended that the claim of the Defendant No.13 was baseless and unfounded. He also pointed out that after filing of Suit No. 2378/15, the Nazir had inspected the suit property and verified that possession thereof was with the Plaintiff, with the interim Order of 11.01.2016 directing the parties to maintain status-quo then being made accordingly being made in light of the Nazir's report. He submitted that under Section 52 of Land Revenue Act, a presumption arose in favour of the Plaintiffs as the entries in the Revenue Record were in their favour.

9. Learned counsel for the Defendant No.13 emphasized that vide Order dated 14.03.2013, the learned Commissioner, Karachi in Appeal No. 02/2013 the cancellation of Survey No. 286 by the Director of Settlement Survey and Land Records Sind, Hyderabad vide Letter No.GD/SSK /1510 of 2011 dated 04.08.2011 had been set aside. He assailed the chain of title whereby the Plaintiffs claimed ownership, submitting that the Plaintiffs claimed to be in possession on the basis of title to 3113 square yards out of 01-13 acquired through Salman (i.e. the Defendant No. 10 in

Suit No. 2253/16), who had himself acquired the same vide a Sale Deed executed in his favour by HBK as the attorney of AMK, whereas it had come to the fore in Suit No.435/2013 purportedly instituted by HBK on behalf of AMK that whilst the purported Power of Attorney was dated 02.09.2009, AMK had passed away on 29.01.1999, hence, the power of attorney could not have been genuine, and even if it had been so, the same would even otherwise have stood revoked upon the demise of the principal, prior to the transactions forming part of the Plaintiff's chain of title. It was contended that, as such, there was no legal basis for the Plaintiffs to remain in occupation and it was sought that they be directed to hand over possession of the 2-30 acres to the Defendant No.13.

10. Having considered the arguments advanced at the bar, it merits consideration that the competing claims of the Plaintiff's and Defendant No.13 as to title and the overlap, if any, to the extent of the 2-30 acres is a matter that would be decided at the final stage, on the basis of the evidence that may be brought on record. Suffice it to say that at this stage, in the face of the registered Sale Deeds underpinning the chain of title espoused by the Plaintiff's, as well as the entries in their favour in the Revenue Record, as confirmed by the concerned Mukhtiarkar, coupled with the factum of possession, a prima facie case appears to have been made out, and the balance of convenience lies in favour of maintaining such possession pending final adjudication of the Suits on merit, when the questions raised by the Defendant 13 for impugning the Plaintiff's title and possession, and the prayers advanced for cancellation of such Sale Deeds as well as restoration of possession, could properly be determined. In the meanwhile, the interests of the Plaintiffs as well as the Defendant No.13 can best be preserved on the terms of the interim arrangement subsisting in the Suits.

11. As such, the interim Orders made on 11.01.2016 and 25.10.2016 in Suit Nos. 2378/15 and 2253/16 respectively are hereby confirmed and CMA Nos. 17558/15 and 14823/16 stand disposed of in such terms accordingly, whereas CMA No. 14822/26 stands dismissed.

JUDGE

Karachi
Dated _____