

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.348 of 2016

Date	Order with Signature of Judge
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Present: **Mr. Justice Nazar Akbar**

Plaintiff : Khalil Ahmed, through
Mr. Aminuddin Siddiqui, Advocate.

Versus

Defendant No.1 : District Registrar for Registration.
Defendant No.2 : Sub-Registrar, Landhi Town.

Defendant No.3 : M/s. Sunbeam Hosiery Factory.(Nemo)
Defendant No.4 : Mr. Muhammad Akhtar. (Nemo).

Defendant No.5 : Province of Sindh.
Mr. Shahryar Qazi, Addl. A.G.

Date of hearing : **13.04.2021**

Date of Decision : **05.07.2021**

JUDGMENT

NAZAR AKBAR, J. The Plaintiff has filed this suit on **08.02.2016** under **Section 77** of the Registration Act, 1908. This suit is in fact a kind of remedy of appeal against the order of Registrar of Properties, in case he refuses to register a document in accordance with Registration Act, 1908. The plaintiff is aggrieved by the concurrent findings whereby orders of defendants No.2 (Sub-Registrar) under **Section 71** ibid refusing to register a gift deed on appeal under **Section 72** ibid has been upheld by defendant No.1 (District Registrar).

2. Brief facts of the case are that an industrial plot of land bearing No.80-D, Sector 17, measuring 2778 sq. yards, situated at Korangi Industrial Area Karachi (the suit property) was originally leased out by Karachi Development Authority (KDA) in favour of M/S Sunbeam

Hosiery Factory (Defendant No.3) through lease deed dated **06.11.1976**. It is averred that defendant No.3 sold the suit property to one Mr. Muhammad Akhtar (Defendant No.4) through sale agreement dated **09.01.1979** for a total sale consideration of Rs.83,340/- and pursuant thereof a sale deed as No.3332 dated **14.10.1984** was registered. Defendant No.4 after payment of all dues of KDA as well as Excise & Taxation, obtained PT-1 in respect of the suit property and also applied for transfer of the suit property in his name in the record of KDA. The KDA mutated the suit property in the name of Defendant No.4 by virtue of mutation order dated 17.05.1990. Subsequently, Defendant No.4 sold the suit property to the Plaintiff for a total sale consideration of Rs.10,00,000/- by virtue of sale deed dated **17.09.1995** bearing registration No.2735, Book No.I, Sub-Registrar T-Division-II, Karachi and M.F Roll No.2097 of Photo Registrar, Karachi dated 04.10.1995. It was averred that the original sale deed was lost during shifting of office of Plaintiff and subsequently the Plaintiff obtained certified true copy of the sale deed from Defendant No.2. After purchase of the suit property, the Plaintiff submitted required documents for transfer/mutation with the KDA and after payment of all required dues/charges, the suit property was mutated in the name of Plaintiff vide mutation order dated **03.10.2006**. The Plaintiff also obtained search certificate in respect of the suit property from 20.05.1984 till 22.06.2006 from the office of Sub-Registrar, Landhi Town, Karachi which also contained the entries of earlier two sale deeds in respect of the suit property. The Plaintiff also obtained NOC for sale of the suit property from the then CDGK (KDA Wing) vide letter dated **27.11.2006**. However, when the Plaintiff approached the office of Sub-Registrar, Landhi Town, Karachi to register the sale deed, the plaintiff was informed that it

cannot be registered due to a caveat by M/s. Sunbeam Hosiery Factory. Moreover, Defendant No.2 had not provided copy of any caveat/application/objection as alleged, therefore, the Plaintiff filed constitution petition bearing C.P No.D-573/2014 before this Court. The said petition was disposed of by order dated 13.05.2015 with direction to the Plaintiff to approach Defendants No.1 and 2 for registration of the documents and Defendants No.1 and 2 were also directed to pass an appropriate speaking order in accordance with law within two weeks. Subsequently, the Plaintiff moved a contempt application against the Defendants. The said application was disposed of by order dated 20.10.2015 with direction to the Plaintiff to approach the Defendants along with application and the Defendants (alleged contemnors) were also directed to decide the matter of the Petitioner within seven days. On **22.06.2015**, the Plaintiff submitted a declaration of oral gift of the suit property before Defendant No.2, who dismissed the said instrument in a piecemeal with observations that first sale deed dated **14.10.1984** was not executed by Defendant No.3 and without appearance of Defendant No.3, the said sale deed was executed. It was further averred that it was the duty of the then Sub-Registrar to raise such objection but no objection was raised by him at the time of registration of said sale deed. It was averred that Defendant No.3 had signed each and every paper of the sale deed so the question of his non-appearance was afterthought. Defendant No.1 in his order dated **01.02.2016** observed that the Plaintiff produced fake certified true copy of the suit property, which is based on surmises and conjectures, as the said documents were produced before defendant No.2, who did not raise any objection or noted any comments in his order dated 04.11.2015. The Plaintiff filed appeal before defendant No.1 against

the order of defendant No.2, which was also dismissed by defendant No.1. Therefore, the plaintiff filed the instant suit under Section 77 of the Registration Act, 1908 against the defendants with the following prayers:

- a) To declare that the impugned order has been passed by the defendants in violation of Registration Act, 1908.
- b) Direct the defendants to register the gift deed/ instrument of transfer in respect of subject property in accordance with Registration Act, 1908.
- c) Any other and or better relief that this forum may deem fit in the circumstances of the case.
- d) Cost of the suit.

3. Notices of the instant suit were sent to private Defendants No.3 and 4 through all modes including publication but no one appeared, therefore, the matter was ordered to be proceeded ex-parte against them by order dated 10.09.2018. The official Defendants No.1 and 2 were also sent summons of the instant suit and letters were also written by the office of learned Advocate General, Sindh but they have never appeared, therefore, the matter was also ordered to be proceeded ex-parte against them by order dated 30.11.2018. Defendant No.5 (Province of Sindh) has also chosen not to contest the matter, as no written statement was filed by them, therefore, by order dated 23.04.2019 the matter was also ordered to be proceeded ex-parte against them. However, defendant No.2 on 13.5.2019 filed statement stating therein that the act done by defendant No.2 was according to law and the suit property was put in the banded list. Since the matter was proceeded ex-parte against all the defendants and even otherwise it is in the nature of an appeal against the orders impugned herein, therefore, neither issues were required to be framed nor evidence was led and the matter was fixed for final disposal since 23.04.2019.

4. I have heard learned counsel for the Plaintiff and learned Additional Advocate General and perused the record.

5. Learned counsel for the plaintiff has attempted to shift the claim on the Registrar for having acquired the suit property with a defective title. Surprisingly the original of main document is missing from the record of the plaintiff and therefore, he has relied on the certified copies of his own title documents i.e sale deed executed between the plaintiff as a buyer and one Muhammad Akhtar as a seller in 1984. The learned Sub-Registrar has refused to register the document on the ground that the very title document on which the plaintiff claims ownership on scrutiny was not duly registered on the ground that the original owner M/s Sunbeam Hosiery Factory Limited have never appeared before the Registrar for registration of the said sale deed in favour of Muhammad Akhtar who claimed to have purchased the suit property from the original owner in 1995. Therefore, since the sale deed registered at No.3332 dated **14.10.1984** was not registered in accordance with **Sections 34 & 35** of the Registration Act, 1908 it has not conferred title of the suit property on Mr. Muhammad Akhter.

6. Mr. Shehryar Qazi, learned Additional Advocate General, Sindh has contended that a man holding the defective document cannot insist that the Registrar of Properties should ignore a defect at the time of subsequent registration of the same document. He has also pointed out and it is also mentioned in the appellate order that not only the title document in favour of the plaintiff was defective but original of the defective document has been declared missing and even the true certified copy produced by the plaintiff was a fake true

certified copy since it did not match with the record maintained in the office of the Registrar of Properties.

7. It is strange that how a title document of the property was lying in the office, and only one document was lost during shifting of the office. Be that as it may, no date and time of having lost the original title document has been mentioned in the memo of plaint and at the same time the true certified copy of the alleged lost sale deed for the purpose of registration of gift to his own son is a fake certified copy. It has been categorically observed by the Registrar in the impugned order that the plaintiff has relied on a fake certified true copy of the sale deed No.3332 dated **14.10.1984**. The contention of the plaintiff that the Sub-Registrar has not objected to the certified copy in his order does not mean it was not fake. The Plaintiff has not been able to prove that it was not a fake certified copy of the so-called original sale deed which said to have been lost by him. The very fact that the original has been lost and the plaintiff is not having even a simple photocopy of the original to compare with the record of the registration office further confirms that he had approached the office of Sub-Registrar with unclean hands to execute document in favour of his son. The plaintiff to succeed in his attempt to get the gift deed properly register has to cross three main obstacles in his way (1) the seller Muhammad Akhtar from whom the plaintiff said to have acquired the title himself had no marketable title; (2) whatever marketable title said to have been acquired by the plaintiff from the said Muhammad Akhtar, too, is not available with the plaintiff and even photocopy of the lost original title document is not available with the plaintiff to justify that he really and lawfully had acquired the title from said Muhammad Akhtar; and (3) even the true certified copy obtained or said to have been obtained by the plaintiff was not

true certified copy of the original record available in the office of Registrar. It was found to be fake.

8. The contention of the learned counsel for the plaintiff that the suit property already stand transferred in the relevant official record does not carry any weight. Any document other than a registered sale deed is not or cannot be treated as title document and, therefore, the document referred by the plaintiff like PT-I or transfer document in the office of KDA and other documents are of no help to the plaintiff as none of these documents can be considered as title document. The perusal of record shows that despite having acquired the property through alleged sale-deed registered at 3332 dated 14.10.1984, the plaintiff applied for change of property in his name after he has lost the original title document. Annexure 'Z-1' is first certified copy is dated **26.09.2005** and the plaintiff on **24.11.2006** has applied for change of name in the official record on the basis of the said true certified copy which was found fake by the Registrar Properties. On careful examination of even the copies of so called title documents of the plaintiff viz; a registered sale deed bearing Registration **No.3332** dated **14.10.1984** I have noticed that these certified copies are fake on their face. The plaintiff himself has placed on record two certified copies of his title document as Annexures Z-1 and Z-2. First certified copy (**Annexure Z-1**) was obtained on **26.9.2005** for the purpose of getting the name of owner changed in the official document in different government departments. The second certified copy was obtained on **20.01.2016** (Annexure Z/2) for the purpose of presenting it as title document while executing in favour of his son. Both are copies of alleged sale deed between M/s.Sunbeam Hosiery Factory, the original owner and Mr. Muhammad Akhter from whom the plaintiff claimed to have subsequently purchased the suit

property in **1995**. The perusal of sale deed i.e. one between original owner and Muhammad Akhter shows it bears registration **No.3332** dated **14.10.1984** though it was not presented on the said date for registration. In fact this sale deed (Annexure Z-1 & Z-2) was presented to the Sub-Registrar on **20.1.1979** under **Registration No.414** and it was adjourned for want of title documents. Annexure Z-1 bears a note dated 20.1.1979 under signature of Sub-Registrar which read "**Kept Adj, for title deed**". Then from **20.1.1979** till **14.10.1984** the position remained the same when another note was written below the earlier note which reads "**Received Title deed. The document is ordered for Registration dated 14.10.1984**". Perusal of Annexure Z-2 which certified copy is dated **20.01.2016** shows that the noting reproduced above from Annexure Z-1 is different from the noting of Sub-Registrar on Annexure Z-2. On annexure Z-2, the first note dated 20.1.1979 reads "**Adjourned**" only and does not disclose why adjourned and the other note reads "**Registration refusal on behalf of Vender order on behalf of the Vendee and registered No.3332 at page No.50 to 54 Volume No.86 dated 14.10.1984**". Even the two certified copies of one and the same documents filed by the plaintiff are not same. Therefore, the observation of the Registrar of Properties that even true certified copy of the document was fake bear testimony from the record. The plaintiff in the instant suit has not challenged the findings whereby the document relied upon by the plaintiff to seek registration of gift-deed was declared a "fake" true certified copy. Learned counsel for the plaintiff has not referred to any of the provisions of Registration Act which can compel the registering authority to accept the so-called gift deed for registration between the father and his son on the basis of defective title and fake true certified copy of the defective title.

9. In view of the above, since not a single document relied upon by the plaintiff was lawfully obtained by the plaintiff, the execution of another document at the request of holder of defective title was definitely contrary to the law as no registering authority is supposed to register a document by ignoring the mandatory requirement of **Section 34** and **35** of the Registration Act, 1908 dealing with the mandatory duty of Sub-Registrar to hold an “enquiry before registration”. The facts of the case of the plaintiff discussed above by all mean were such that no prudent mind could have allowed registration of the instrument.

10. Another factual and legal aspect is that a document once presented for registration before the Sub-Registrar is not supposed to be kept adjourned for five years for registration under a different registration number. It is supposed to be registered **within four months** from the date of its presentation as provided under **Section 23 & 24** of the Registration Act, 1908, which reads as under:-

23. Time for presenting documents. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer **within four months from the date of its execution.**

24. Documents executed by several persons at different times. Where there are several persons executing a document at different times, **such document may be presented for registration and re-registration within four months from the date of each execution.**

It is a mystery that a sale-deed between the original owner and Mr. Muhammad Akhter was presented on **20.1.1979** before Sub-Registrar containing five pages showing **registration No.414** but at the back of its last page on **14.10.1984** in Annexure Z-1 new

registration number is not mentioned whereas on the other certified copy (Annexure Z-2) after eleven years of earlier certified copy another registration No.3332 has been shown at the back of its last page on **14.10.1984** and yet the plaintiff insists that this certified copy is to be treated as valid registration of sale deed in favour of Muhammad Akhtar from whom he had purchased the same in **1995**. The perusal of these documents clearly shows that no sale deed bearing registration No.3332 was registered on **14.10.1984** as on the said date there is no record of appearance of the parties before Sub-Registrar nor it could have been registered by Sub-Registrar after five years of its presentation on **20.01.1979**. In fact nobody has appeared before the Sub-Register for confirmation of execution of the document in 1984 nor such document has ever been presented for registration in 1984. Therefore, on this score too, order of refusal of registration of gift deed by the Sub-Registrar and concurrence by the Sub-Registrar on the basis of fake registered sale-deed does not call for interference.

11. In view of the above, the instant suit is dismissed with no order as to cost.

JUDGE

Karachi
Dated: 05.07.2021

SM