

IN THE HIGH COURT OF SINDH, KARACHI

Civil Misc. Appeal No. 55 of 2019

Syed Ibrar Hussain Bukhari..... V.....Muhammad Abdullah and others

J U D G M E N T .

Date of hearing : 13th October, 2020.
 Date of Judgment : 13th October, 2000.
 Appellant : Mr. Bashir Ahmed, advocate.
 Respondents : Mr. Rab Nawaz Khan, advocate.

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Kausar Sultana Hussain, J:- This Miscellaneous Appeal under Section 384 of Succession Act, 1925, assails decision dated 27.08.2019 passed by the learned IIIrd Additional District Judge South, Karachi, whereby the application under Sections 278 of Succession Act, 1925 filed by the respondents for grant of letter of administration has been granted, in favour of Mst. Mariam Bai/respondent No. 1, hence, the appellant prefer this appeal.

2. A short factual background of the case is that the deceased Muhammad Abdullah was allotted a piece of land bearing No. A-15, measuring 139 sq.meters in the Boat building Yard West Wharf by the Trustees of the Port of Karachi and during the lifetime he entered into a Sale Agreement / undertaking dated 8.6.2003 wherein it was admitted that he had received sale consideration of Rs.9,00,000/- out of total 10,00,000/- for the half portion 69.5 sq.meters of plot in question and the possession was handed over to Syed Ibrar Hussain Shah Bukhari viz; the appellant and undertook to get the half plot viz; 69.5 sq.meters transferred in the name of appellant; unfortunately the deceased above named was died on 26.6.2003, therefore, the appellant

approached the legal heirs for the transfer of the half portion of plot in question in the name of the appellant. The widow of the deceased above named, namely Mst. Mariam filed SMA No. 170 of 2018 and claimed the entire property of plot in question and the appellant has filed objections and submitted the details of the Suits No.1501 of 2017 and 73 of 2018. Suit No. 73 of 2018 is filed by the appellant against the legal heirs of the deceased above named and the Trustees of the Port of Karachi and Estate Manager KPT as defendants in the Court of IIIrd Senior Civil Judge, Karachi-West, which was still pending for adjudication. Copies of plaint, objection, agreement / undertaking and receipt of payment signed by deceased named above and Rs.2,00,000/- to the respondent No.2 Muhammad Hussain, were brought on record in SMA No. 170 of 2018 by the learned counsel for the appellant, but the learned trial Court ignoring all the facts, pendency of civil suit for specific performance, allowed the said SMA No. 170 of 2018 in favour of the legal heirs of the deceased Muhammad Abdullah.

3. The learned counsel for the appellant has submitted while arguing the matter that the deceased Muhammad Abdullah entered into a Sale Agreement/Undertaking dated 8.6.2003 with the appellant in respect of his allotted piece of land No.A-15, measuring 139 Square Meters in the Boat building Yard West Wharf by the Trustees of the Port of Karachi. In support of his contention the learned counsel took me to the allotment letter dated 24.5.2000 available at page 53 of the file, which shows that land in question was allotted to the deceased by the K.P.T for five years w.e.f. 01.07.1998 (expiry date is 30.6.2003), while the allottee Muhammad Abdullah died on 26.6.2003, five days

before expiry of the allotment letter. The learned counsel for the appellant further argued that the widow of said Muhammad Abdullah had filed S.M.A. No. 170 of 2018 in the Court of District & Sessions Judge Karachi-South in respect of the properties left behind by the deceased Muhammad Abdullah from where the said S.M.A was transferred and decided by the learned IIIrd Additional District & Sessions Judge, Karachi-South. Per learned counsel, the appellant had filed his objections in said S.M.A No. 170 of 2018 to the extent of the property belong to the deceased i.e. Plot No. A-15, at Boat Building yard West Wharf whereby the respondents were duly informed regarding filing Suits No. 1501 of 2017 and 73 of 2018 by the appellant against respondents and he further informed them about Sale Agreement dated 8.6.2003 executed between deceased Muhammad Abdullah and appellant, but the Court without leading evidence and hearing the parties on the legality of said agreement decided the said S.M.A in favour of respondent No.1, hence the said impugned order of learned IIIrd Additional District Judge, Karachi South may be suspended.

4. On query, made by this Court regarding legal sanctity of said Sale Agreement allegedly executed between the deceased Abdulah and the appellant on 8.6.2003 about 23 days before expiry of the allotment of the tenement but the learned counsel for the appellant was unable to describe the legal status of such transaction. Per record the deceased admittedly was a tenant of K.P.T land for five years w.e.f. 1.7.1998 to 30.6.2003.

5. The learned counsel for the respondent has denied the legal status of the Sale Agreement / undertaking produced by the appellant

before the learned trial as well as before this Court and pointed out that the deceased Muhammad Abdullah under the Rules No.231 framed in Manual for the Estate Department, Karachi Port Trust was not authorized to execute Sale Agreement or transfer his tenancy right to anyone without permission of the executive Engineer of the Board, hence the claim of the appellant is not maintainable. He prayed for dismissal of the present Civil Misc. Application of the appellant.

6. After hearing arguments and perusal of record I am of the view that at the very outset, I have to ascertain the locus standi of the appellant as well as the legal status of such document i.e. Sale Agreement / undertaking relied upon by the appellant in support of his claim. Admittedly, the land in question belong to K.P.T, which was lease out to the deceased on rent for commercial purposes (selling launch material) and last allotment of the said tenement was issued in his favour for five years w.e.f. 01.07.1998 to 30.6.2003. The appellant claimed that the deceased Muhammad Abdullah on 8.6.2003 executed a Sale Agreement against total sale consideration of Rs.10,00,000/- out of which he received Rs.9,00,000/- from appellant and handed over possession of half portion of the tenement to the appellant comprising of a shop. The relevant rule No. 231 provided in Manual for the Estate Department, Karachi Port Trust does not permit to anyone, who has acquired leasehold rights on purely rented basis for commercial or commercial-cum-residential purposes by way of charge, mortgage, sale, exchange, gift or otherwise assign or sublet or in any way part with the possession of the premises allotted to him. The same rule further disallow to the lease holder to change the sub-tenancy without

permission of the Board first obtained in writing and the Board shall have full authority to refuse the permission without assigning any reason. In instant matter the appellant nowhere has mentioned either in his objection submitted in SMA No. 170 of 2018 nor in his present Civil M.A that the deceased Muhammad Abdullah had obtained prior permission in this regard. He has also not brought on record any documents, which could prove that he had paid the alleged amount to the deceased for purchasing the tenement as such his claim to pay Rs.9,00,000/- to the deceased is also remained unproved. In the light of above discussion it is clear that the appellant has no any such locus standi to claim his legal right over the K.P.T land / tenement in question. The applicant has also failed to point out any illegality or irregularity in the impugned order dated 27.8.2019 passed by the learned IIIrd Additional District & Sessions Judge, Karachi-South, hence I found no force in contention of the appellant to consider it. Consequently, the present Civil Misc. Appeal is dismissed alongwith all pending listed applications with no order as to cost.

7. Above are the reasons, for short Order dated 13.10.2020.

J U D G E

Faheem/PA