

IN THE HIGH COURT OF SINDH AT KARACHI**Suit No. 1179 of 2012.****Ms. Shazia Carim & others----- Plaintiff****Versus****Ms. Atqa Naz & others----- Defendants****Date of hearing: 08.02.2016****Date of Order: 08.02.2016****Plaintiffs: Through Mr. Khawaja Shamsul Islam,
Advocate.****Defendants: Through Mr. Muhammad Ali Hakro, Advocate.****ORDER ON CMA NOS. 1345/13 and 9799/14 Under Order &****Rule 11 CPC.**

Muhammad Junaid Ghaffar, J.- Both these applications have been filed on behalf of defendants No.1 & 2 separately Under Order VII Rule 11 CPC for rejection of plaint and/or return of the same. Counsel for the defendants has contended that instant Suit, insofar as plaintiff No.3 is concerned, is incompetent and without any authority as the Suit has been filed without any proper authorization from the Board of Directors and hence the same be dismissed. He has further contended that the Suit is also not properly valued as the amount claimed in the instant Suit is Rs.3.5 Million, therefore, plaint is to be returned to the Court of competent pecuniary jurisdiction. He further submits that defendant No.1 was lawfully wedded to one Yusuf Mohammad Carim, the husband/father of plaintiff Nos.1 & 2 and the property in question was transferred in her name in 2011 on the basis of an Agreement to Sell and not on the basis of any Gift deed as alleged, whereas, the property stands transferred / mutated in her name by D.H.A. He has further contended that she being the exclusive and lawful owner, no cause of action arises against her and therefore the plaint is liable to be rejected. In support of

his contention he has relied upon the cases of *Khan Iftikhar Hussain Khan of Mamdot Vs. Messrs Ghulam Nabi Corporation Ltd. Lahore reported as PLD 1971 Supreme Court 550, M/s. STANDARD HOTELS (PRIVATE) LTD. Vs. M/s. RIO CENTRE and others reported as 1994 CLC 2413, SIRAJUDDIN PARACHA and 12 others Vs. MEHBOOB ELAHI and 3 others reported as PLD 1997 Karachi 276, Messrs SYED BHAIS (PVT.) LTD. Vs. GOVERNMENT OF PUNJAB and 3 others reported as PLD 2012 Lahore 52, Messrs NISHAT CHUNIAN LTD. Through Chief Officer Vs. PROVINCE OF PUNJAB through Secretary & 2 others reported as 2013 CLC 34.*

2. On the other hand learned Counsel for the plaintiffs has contended that insofar as authorization to file Suit on behalf of plaintiff No.3 is concerned, the plaintiffs No.1 & 2 are the only Directors of plaintiff No.3 and have filed instant Suit on their behalf as well as on behalf of plaintiff No.3, which is a family concern, whereas, such authorization is itself provided in the Articles and Memorandum of Association of the Company. Learned Counsel further submits that according to the averments of defendant No.1, she has bought the property in question on the basis of Agreement dated Nil in 2011 from the husband/father of plaintiffs No.1 & 2 at the price of Rs.12 Million, which has been paid in cash, whereas, she was an employee in plaintiff No.3 on a very meager salary. He has further contended that the Suit is in respect of property in question, which presently is valued at least Rs.40 Million, whereas, the claim of Rs.3.5 Million is in addition to the value of the property, hence it falls within the pecuniary jurisdiction of this Court. Per learned Counsel the plaint cannot be rejected in parts or in piecemeal and the cause of action, if any, is to be taken as a whole. In the circumstances he has prayed that both the listed applications be dismissed.

3. I have heard both the learned Counsel and have perused the record. Insofar as the objection with regard to incompetency of Suit on behalf of Plaintiff No.3 is concerned it would suffice to observe that even if such plea is accepted at this stage, the Suit would still continue admittedly on behalf of the remaining plaintiffs and therefore, no useful purpose would be served, whereas, the question that as to whether the Suit has been instituted on behalf of plaintiff No.3 unauthorizedly can be conveniently decided at the trial stage through proper evidence. In the

circumstances, this objection being misconceived is repelled. Insofar as the other objection regarding the pecuniary jurisdiction is concerned, the same also appears to be misconceived as the Suit is not only in respect of recovery of Rs.3.5 Million but also for declaration in respect of the Gift Deed on the basis of which allegedly the property in question has been transferred in the name of defendant No.1 as stated by the plaintiffs. Apparently the property is valued at a much higher value, whereas, the Plaintiff has valued the Suit for Rs. 30 Million which is very much within the pecuniary jurisdiction of this Court for which appropriate Court fee has also been deposited. In the circumstances, this objection is also hereby repelled.

4. Insofar as non-accrual of any cause of action against defendant No.1 is concerned, it may be observed that the claim of the plaintiff is to be examined on the basis of averments made in the plaint, wherein, it has been specifically alleged on behalf of the plaintiffs that the property in question has been fraudulently transferred in the name of defendant No.1, which in fact belonged to the husband/father of plaintiff Nos. 1 & 2. The Court at the pre-evidence stage cannot come to a conclusive decision with regard to authenticity of a document on the basis of which the parties are claiming ownership in respect of any property. In the instant matter, the defendant No.1 claims that she has purchased the property from deceased Yusuf Mohammad Carim on the basis of Sale Agreement dated Nil in the year 2011 for a total sale consideration of Rs.12 Million, which was paid by her in cash, whereas, the plaintiffs assert that the property belongs to their deceased husband/father and same has been fraudulently transferred in the name of defendant No.1 on the basis of a Gift Deed, which they have challenged through instant Suit. It is also pertinent to note that Counsel appearing on behalf of defendants No.1 & 2 while arguing the matter has submitted before this Court that the Gift Deed is fake, whereas, the property in question has been purchased by defendant No.1 on the basis of Sale Agreement. These questions with regard to the ownership of the property in question are disputed questions and therefore, the Court while hearing an application under order VII Rule 11 CPC, wherein, the only plaint can be rejected on legal grounds, cannot come to a definite conclusion with regard to the ownership of the property. In fact there appears to be no legal ground

independently available for the defendants to have filed these applications under Order VII Rule 11 CPC, for rejection of plaint.

5. In the given facts and circumstances of the case and the discussion hereinabove, I had dismissed both the applications by means of a short Order on 08-02-2016 with costs of Rs.5000/= each, to be deposited in the Sindh High Court Clinic Fund and these are the reasons for the same.

Judge

Ayaz