

THE HIGH COURT OF SINDH, KARACHI

Suit No. 1192 of 2019

[Mrs. Fatima Bano versus Mujtaba Kamal and others]

Plaintiff : Mrs. Fatima Bano daughter of Ghulam Murtaza (late) through her Attorney namely; Malik Altaf Hussain son of Abdul Rehman, both are present in person.

Defendant 1 : Mujtaba Kamal son of Ghulam Murtaza (late) through Mr. Shah Imroz Khan, Advocate.

Defendant 2 : The Project Director Land, Orangi Township, KMC, through Mr. Junaid Alam Khan, Advocate.

Defendant 3 : Nemo.

Date of hearing : 08-11-2023

Date of Judgment : 08-11-2023

JUDGMENT

Adnan Iqbal Chaudhry J. - Suit has come up for examination of parties and settlement of issues. Per the Plaintiff, Plot No. LS-13 and Plot No. LS-14, Sector 7, Orangi Township, Karachi, with construction thereon [suit properties] vested in late Ajib-un-Nisa *vide* allotment transfer letters dated 04-10-1975 bearing Nos.LS-13 / 7 (50) / Orgi / P&C/9178 and LS-14/7(60)/Ogi/P&C/9179, issued by the K.D.A Resettlement Department; and that Ajib-un-Nisa left behind as legal heirs the Plaintiff as daughter and the Defendant No.1 as son.

2. Apparently, after the death of Ajib-un-Nisa, the suit properties were transferred only to the Defendant No.1 *vide* transfer orders dated 23-11-2017 bearing No. PD/PA/OTS/503/2017 and PD / PA / OTS/504/2017 issued by the Assistant Director Land, Orangi Township (KMC). The Plaintiff therefore filed the instant suit for a declaration that she is a co-owner of the suit properties by way of

inheritance from late Ajib-un-Nisa, and for cancelling the transfer orders dated 23-11-2017 that reflected only the Defendant No.1 as owner.

3. In paras 3 and 4 of his written statement, the Defendant No.1 admits that the Plaintiff is co-owner of the suit properties to the extent of the share she inherited from her mother, late Ajib-un-Nisa; and that he is willing to buy her share accordingly. Therefore, counsel for the Defendant No.1 submits that the parties are not at issue on the Plaintiff's share in the suit properties but at issue over the price of that share. When confronted with the fact that the suit is not for partition of the suit properties but for cancellation of the mutation orders that do not recognize her as her as co-owner, learned counsel for the Defendant No.1 concedes to a decree accordingly. Upon that, the Plaintiff's husband and Attorney, so also the Plaintiff, both present in person, do not press the prayer for mesne profits in prayer clause III.

4. In view of the foregoing admission by the Defendant No.1 that the Plaintiff is a co-owner of the suit properties to the extent she inherits from late Ajib-un-Nisa, and prayer clause III having been dropped by the Plaintiff, there is no triable issue of fact between them. The other defendants are *ex parte*. Consequently, in view of Order XV Rule 1 CPC, the suit is decreed in the following terms:

- (a) it is declared that the Plaintiff is co-owner of Plot No. LS-13 and Plot No. LS-14, Sector 7, Orangi Township, Karachi, with construction thereon [suit properties] to the extent of the share she inherited from her mother, late Ajib-un-Nisa, as per Muslim Personal law;
- (b) transfer orders of the suit properties, dated 23-11-2017 bearing No. PD/PA/OTS/503/2017 and PD/PA/OTS/504/2017, issued by the Assistant Director Land, Orangi Township (KMC) shall be delivered over by the Defendant No.1 for cancellation,

whereafter the Plaintiff and/or the Defendant No.1 may apply afresh for mutation of the allotment to both parties;

- (c) the Defendant No.1 shall not dispossess the Plaintiff from the portion of the suit properties which are in her possession except in accordance with law.

SHABAN*

JUDGE