

IN THE HIGH COURT OF SINDH KARACHI

Suit No. 2121 of 2016

Mansoor Ahmed	Plaintiff
versus		
Muhammad Zulfiqar & others	Defendants

Mr. Kashif Hanif, Advocate for plaintiff.
None present for the defendants.

Date of hearing : 04.10.2024
Date of Judgment : 29.10.2024

JUDGMENT

OMAR SIAL, J.: This suit concerns a dispute concerning the title and possession of the following property: Plot No. B-295, Block No.L, North Nazimabad, Karachi (“**the Suit Property**”). Mansoor Ahmed, the Plaintiff, claims his title based on a registered conveyance deed dated 07.07.2014 executed between him and his predecessors in title, namely Abdul Sattar and Mansoor Ahmed. The transfer in the name of Ahmed has also been duly mutated in the City District Government Karachi records vide letter dated 03.09.2015. Issues erupted when Ahmed attempted to take over the possession of the Subject Property and was unlawfully desisted by Muhammad Zulfiqar, a watchman of the property employed by its previous owners. In this case, he is Defendant No. 1, whereas his family members are Defendants No.2 to 9. After that, protracted and various litigation ensued between the parties, including the instant suit.

2. The contesting defendants, Muhammad Zulfiqar and family (Defendants No.1 to 9) and the official defendants (11 to 15), did not enter an appearance before this court and were ordered to proceed ex parte via Order dated 21.11.2022. Therefore, even though officially the version of Muhammad Zulfiqar and their family has not come

before me, their stance can be gleaned from the other litigation they pursued in paragraph 5 below.

3. Ahmed's narration in the plaint is corroborated through primary evidence led by his attorney, Sheikh Shamim Akhter, and reiterated on oath by Abdul Muqteet. Through Akhter, Ahmed has demonstrated the trail of his title to the Suit Property, which is as follows.

- i. On 25.10.1967, KDA executed an Indenture of Lease in favor of Mst. Farkhanda Khatoon.
- ii. Upon Mst. Farkhanda Khatoon's demise, her share devolved upon her legal heirs: Din Muhammad Wagan (husband), Ghazala Haidery, Shabnam Zubair, and Bushra Shehreyar (all nieces). The necessary mutation was done.
- iii. Upon Din Muhammad Wagan's demise, his share devolved to his legal heirs: Irshad, Rizwan Ahmed Waggan, Imran Khan Waggan, and Noman Wagan. The Suit Property was mutated in the names of the said heirs on 09.04.2013.
- iv. On 15.05.2013, the four heirs of the late Din Muhammad Wagan, mentioned as serial (iii), sold their 50% share to Muzaffar Ahmed via a registered Conveyance Deed.
- v. On 20.09.2013, vide a Conveyance Deed, the heirs of Farkhanda Khatoon, i.e., Ghazala Haidery, Shabnam Zubair, and Bushra Shehreyar (at serial ii), sold their share to Abdul Sattar.
- vi. On 07.07.2014, Abdul Sattar and Muzaffar Ahmed sold their shares to Mansoor Ahmed via a conveyance deed. This was duly recorded in the mutation letter dated 03.09.2015.

4. It is settled law that the presumption of correctness is attached to registered documents and those kept as part of the public record as stipulated in Articles 92 and 129(e) of the Qanun-e-Shahadat Order, 1984.¹ Ahmed has demonstrated his title and its trail by exhibiting registered documents and mutation letters issued by

¹ Muhammad Mumtaz Shah (Deceased) v. Ghulam Hussain Shah (Deceased), 2023 SCMR 1155, "It is trite that once a document has been proved in accordance with law, the genuineness of its contents can be presumed and the rule the "the document speaks for itself" (acta probant sese ipsa) can be deployed. Even otherwise, the rationale behind the presumptions attached to written documents stem out of both principle as well as policy."

CDGK/KDA. That in itself, in the absence of any evidence to the contrary, is sufficient to grant the prayer as sought by Ahmed.

5. Ahmed's case is further bolstered by the litigation in the lower courts and the details he provided in his plaint and evidence. Before the instant suit, Muhammad Zulfiqar and family had instituted Suit No.689/2016 before the 9th Senior Civil Judge at Karachi (Central) for the declaration and cancellation of title documents of Ahmed based on occupational rights. I note that Muhammad Zulfiqar and their family had impleaded not only Ahmed but also his predecessors in title. A perusal of this suit further reveals that no title documents exist in favor of Muhammad Zulfiqar and their family, as none have been mentioned, let alone annexed to the plaint. However, mention is made of an earlier Suit 671/2004 through which Zulfiqar's father sought specific performance of an agreement to sell of the suit property. Admittedly, this suit was dismissed for non-prosecution on 22.04.2010 and the said dismissal was upheld on 10.11.2011 in Civil Miscellaneous Appeal 11/2011. Suit 689/2016's plaint was also ultimately rejected under Order 7, Rule 11(c) on 29.10.2016 for want of court fee despite various opportunities for Zulfiqar and family to tender the same. No appeal was preferred against the same, which tells of Zulfiqar and his family's interest in the litigation.

6. The registered title documents, in conjunction with the contents and the fate of the litigation initiated by Zulfiqar and family, leave no doubt in my mind that Ahmed has discharged his burden of proof as espoused under Article 117 of the Qanoon-e-Shahadat Order, 1984, and is entitled to the relief of declaration. Accordingly, I declare that Ahmed holds the title to the Suit Property. The record reflects that pursuant to the law-and-order situation that would develop on the site, a magistrate sealed the property. While it was sealed, this Court, on 03.10.2023, ordered the status quo to be maintained. The impact of the status quo order was that till today, the property remains sealed. The property shall be de-sealed in the presence of Nazir, who will take over possession and hand over the property to Ahmed after

due verification and completion of all codal formalities. The Nazir's fee for this exercise will be Rs. 50,000, to be paid by the Plaintiff.

7. Regarding damages, Ahmed has sought Rs. 15,000,000 and Rs. 100,000 per month against mense profits. Damages are primarily of two kinds: general and special damages. General damages can be granted for the mental stress and trauma caused to Ahmed "as the natural and probable consequence of the *defendant's act*."² But for the litigation and resistance shown by Zulfiqar and his family, Ahmed would not have been deprived of enjoying his property and having to pursue litigation, which naturally breeds mental stress. Accordingly, general damages of Rs. 500,000 are granted to Ahmed, to be paid to him by Defendants 1 to 9 within one month. No special damages are awarded as none have been pleaded or proved through evidence.

8. The suit stands decreed in the above terms.

JUDGE

² 2012 CLD 6, Abdul Majeed Khan v. Tasween Abdul Haleem & others