

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 812 of 2001

Present :
Mr. Justice Nadeem Akhtar

Date of hearing : 27.11.2012.

Plaintiff : International Brands (Pvt.) Limited,
through Mr. Arshad Mohsin Tayebaly Advocate.

Defendant : Maulana Noor Muhammad Qureshi, called absent.

J U D G M E N T

NADEEM AKHTAR, J.- This Suit has been filed by the plaintiff against the defendant praying that he may be permanently restrained from creating any further encroachments on the plaintiff's land ; namely, Industrial Plot No. F/2-X, measuring 1.77 acres (8,566.80 sq. yds.), S.I.T.E. Survey Sheet No. 34 and 35, Survey Sheet No. 35-L/13, situated in Trans Liyari Quarters, S.I.T.E., Karachi (**the suit property**), and that possession of such portion of the suit property be handed over to the plaintiff which is illegally occupied by the defendant in the

name of 'Madrassa Jamia Abu Bakar Tartitul Quran and Janaza Gah', along with a Masjid.

2. The brief facts of this case are that, through a registered lease dated 07.03.1960, Sindh Industrial Trading Estates Limited (S.I.T.E.) granted a 99 years lease in favour of Pakistan Tobacco Company Limited (PTC) in respect of Plot No. F/2 measuring 36.18 acres. The said land was subsequently subdivided in a number of plots, including the suit property. In the year 1965, PTC (the lessee) constructed a Masjid with a Hujra on an area of 7,015 sq. ft. within the area / limits of the suit property, for religious use and benefit of its workers. The Masjid was named by PTC as 'Mubarak Masjid'. Thereafter in or about 1989-1990, PTC shifted its factory by handing over the suit property to the management, supervision and control of the plaintiff. It was agreed by PTC that the suit property will be transferred to the plaintiff for lawful consideration. Accordingly on 06.06.1996, PTC assigned all its lease hold rights, title and interests in the suit property in favour of the plaintiff through a registered Deed of Assignment. Prior to the said assignment / transfer in favour of the plaintiff, the same was consented to and confirmed by the competent authority (S.I.T.E.) vide its letter dated 22.04.1996.

3. It is the case of the plaintiff that the defendant is the Pesh Imam of 'Sharfia Masjid', Jodia Bazar, Karachi, and he has was never appointed by PTC as the Pesh Imam of 'Mubarak Masjid' constructed by PTC on the suit property. However, the defendant claims himself to be the Pesh Imam and Khateeb of 'Mubarak Masjid' without any lawful authority. In the year 1995, before assigning the suit property to the plaintiff, PTC noticed that the defendant had started raising unauthorized construction adjacent to 'Mubarak Masjid', without the knowledge, consent or approval of PTC. It transpired that the said unauthorized construction was raised by the defendant for living there along with his family. Upon PTC's complaints to the Government of Sindh and the District Magistrate, an inquiry was held wherein the defendant was granted not

only full opportunity of hearing, but also to prove his title in respect of the unauthorized construction. As the defendant failed to establish his alleged title, the said unauthorized construction was demolished by the District Magistrate strictly in accordance with law, and the possession thereof was restored to PTC.

4. It has been averred that the defendant continued to claim the portion of the demolished construction, and in order to succeed in his plans, he started a movement by deliberately involving other religious organizations and named on his own the said portion as 'Madrassa Jamia Abu Bakar Tartitul Quran and Janaza Gah'. It has also been averred that only 'Mubarak Masjid' and the Hujra attached therewith were constructed by PTC on the suit property, and no other construction or Madrassa ever existed or was constructed thereon. As the defendant was persistently creating pressure under the shelter of a purported religious movement, the District Magistrate passed an order on 20.05.1996 prohibiting PTC under Section 144 Cr.P.C. from entering into the limits of the structure adjacent to 'Mubarak Masjid' located in the suit property . Being aggrieved with the said order, PTC filed Constitutional Petition No.D-803/1996 before this Court, wherein S.I.T.E. and the Assistant Commissioner and S.D.M. filed comments categorically confirming that the defendant was raising construction illegally near 'Mubarak Masjid', which was demolished and the possession was handed over to PTC. Vide Order dated 04.06.1996 passed in the said Petition, the impugned order was set aside by a learned Division Bench of this Court, the parties were directed to appear before the Magistrate, who was required to reconsider and modify his said order. It was further ordered that meanwhile status quo shall continue to operate.

5. It has been stated that the Magistrate did not comply with the aforementioned Order of the learned Division Bench of this Court, due to which the plaintiff was constrained to file a contempt application against the Magistrate. The plaintiff has further stated that, as the sole and lawful owner of

the suit property, it has every right to enter upon the suit property, and to protect its valuable vested rights therein. For this purpose, the plaintiff on several occasions attempted to construct a boundary wall in order to delineate the suit property with the other sub-divided plots. However on every occasion, the defendant, his followers and supporters forcibly prevented the plaintiff from constructing the boundary wall. The plaintiff has alleged *inter alia* that the law enforcement agencies have failed to control the defendant ; the defendant was never appointed as the Pesh Imam of 'Mubarak Masjid' constructed by the predecessor-in-interest of the plaintiff (PTC), nor was he allowed to occupy any portion of the suit property or to raise any construction thereon ; the entire construction on the suit property, except 'Mubarak Masjid' and the Hujra, raised by the defendant was / is unauthorized and illegal, and is liable to be demolished ; and that the defendant is liable to be evicted from the suit property.

6. In the above background, this Suit has been filed by the plaintiff praying that the defendant be permanently restrained from creating any further encroachments on the suit property, and that possession of all that portion of the suit property be handed over to the plaintiff which is illegally occupied by the defendant in the name of 'Madrassa Jamia Abu Bakar Tartitul Quran and Janaza Gah', along with 'Mubarak Masjid'.

7. In his written statement, the defendant denied the ownership of PTC and the plaintiff in respect of the disputed portion of the suit property, as well as all the averments and allegations contained in the plaint against him. The defendant claimed that the piece of plot in his possession is outside the boundary wall ; the said plot is in possession of the management of the Mosque since 1928 ; the said plot was purchased after payment of consideration, but the title documents thereof got misplaced ; the Mosque and the Madrassa were constructed by the management of the Mosque, and not by PTC ; a mischief had been played in league with S.I.T.E. ; the management of the Mosque and the Madrassa is with

the defendant since 1978 ; he is the owner of the said plot ; and that he is working as the Pesh Imam of the Mosque since last 45 years.

8. On the basis of the pleadings of the parties, following three issues were settled by the Court :-

“ 1. Whether the plaintiff is the owner of the suit property being plot No. F/2-X, situated in S I T E Karachi ?

2. Whether the defendant has any right, title or interest in any portion of the land and construction on the suit property ? If so, what is the effect ?

3. Whether the defendant in physical constructive possession, occupation domain over the property / plot in question ? ”

9. In support of its case, the plaintiff examined its Manager and authorized officer as its witness, who produced a number of documents which were duly exhibited. However in my humble opinion, the under mentioned documents produced by the plaintiff's witness are relevant for the purposes of the issues involved in this Suit :

- (i) Exhibit P-2 : Registered lease dated 07.03.1960 granted by S.I.T.E. for 99 years in favour of PTC in respect of Plot No. F/2 measuring 36.18 acres, along with the site plan.
- (ii) Exhibit P-13 : Letter dated 18.07.1994 from S.I.T.E. to PTC, allowing sub-division of Plot No. F/2 measuring 36.18 acres into 36 plots, including the suit property (F/2-X), along with the site plan showing all the said 36 plots.

- (iii) **Exhibit P-14** : Letter dated 22.04.1996 from S.I.T.E. to PTC allowing and confirming assignment / transfer of the suit property in favour of the plaintiff, along with the site plan of the suit property.

- (iv) **Exhibit P-15** : Registered Deed of Assignment dated 06.06.1996 in respect of the suit property in favour of the plaintiff, along with the site plan of the suit property.

- (v) **Exhibit P-17 / P-29** : Statement dated 07.12.2000 of S.I.T.E. in C.P. No.D-803/1996 confirming that the plaintiff is the lawful and absolute lessee of the suit property, the Mosque thereon belongs to the plaintiff, and that the defendant never had any lawful right, title or interest upon the said property or on any portion thereof.

- (vi) **Exhibit P-30** : Report of the Assistant Commissioner and SDM, SITE, in C.P. No.D-803/1996 confirming *inter alia* that PTC was claiming rights in the suit property from 1965 till 1996, whereafter the suit property was sold out to the plaintiff, the Mosque with the Hujra was constructed in the year 1965 by PTC at its own cost for offering prayers by its workers, the defendant started raising construction on the suit property in the year 1995 without the permission and approval of PTC and the plaintiff, and that the defendant was bent upon encroaching the other portions of the suit property.

10. The plaintiff's witness was not cross examined either by the defendant or by his counsel, although the counsel for the defendant was present and was provided opportunity for cross examining the witness. Accordingly on 31.08.2006, it was ordered by this Court that as the plaintiff's witness had not been not cross examined, the matter be fixed for the evidence of the defendant. Despite the above direction, the defendant did not appear before the Court to

lead his evidence. By Order dated 01.03.2007, the side of the defendant was closed. For the re-opening of his side, the defendant filed C.M.A. No. 2648 of 2007, which was dismissed on 20.09.2007.

11. Mr. Arshad Mohsin Tayebaly, the learned counsel for the plaintiff, submitted that an application was filed by the defendant for the deletion of his name from this Suit as the defendant, which was dismissed on 05.05.2004. The defendant then filed another application praying that his name may be deleted, and 'Mubarak Masjid-Wa-Jamia Abu Bakar Tarteelur Quran Trust Karach' with its other Trustees be arrayed as defendants in this Suit. This application was also dismissed on 17.11.2009. The learned counsel for the plaintiff further invited my attention to the following Orders passed in this Suit :

- (i) Vide Order dated 21.06.2001, it was observed that prima facie it appeared that the suit property belonged to the plaintiff and the defendant admittedly was the Imam of the Mosque and he was trying to build a Madrassa without the permission of the plaintiff. The plaintiff was allowed to build a boundary wall around the premises of the Madrassa pending final outcome of its stay application. The Nazir was deputed to inspect and supervise the construction of the boundary wall.
- (ii) In the Order dated 25.06.2001, it was recorded by the Court that the counsel for the defendant had conceded that the defendant did not have any documents of ownership / license etc.
- (iii) In the Order dated 12.09.2001, the undertaking of the defendant was recorded by the Court to the effect that the area equivalent to 2,412.51 sq.yds. mentioned in the Nazir's report shall be maintained by him, and that he shall not carry out any construction outside the said area. The defendant was directed to restrict himself within the area shown by the Nazir's report dated 11.09.2001.

- (iv) Vide Order 30.10.2001, the plaintiff was allowed to raise the construction of the boundary wall under the supervision of the Nazir without disturbing the possession / construction of the Mosque or the Madrassa, subject to the final adjudication as to the title of the parties.
- (v) On 12.12.2001, the Nazir's report was taken up by the Court, which revealed that the representatives of the defendant were creating hindrance in the construction of the boundary wall, and as such he could not implement the Order passed on 30.10.2001 by this Court. The Nazir had also reported that even the Police was not in a position to control the defendant or his representatives. In view of the above, the Nazir was allowed by the Court to seek assistance from Rangers for implementation of the earlier Order.

12. The learned counsel for the plaintiff argued that the purpose of referring to the above Orders is to show the conduct and malafides of the defendant, and to highlight the contradictory stands taken by him in the inquiry before the Magistrate and also before this Court. He submitted that the defendant is the self-proclaimed Pesh Imam and Khateeb of 'Mubarak Masjid', and has been in illegal occupation and use thereof and the Madrassa, which was constructed by PTC on the suit property mainly for its workers and the same became the exclusive property of the plaintiff in the year 1996. Only PTC had, and after acquiring the suit property from PTC only the plaintiff has, the right to appoint the Pesh Imam and to manage the affairs of the Mosque and the Madrassa. He further submitted that the defendant has tried to usurp the land in question by actually organizing movements and by exploiting the sentiments and emotions of the public in the name of Islam. He contended that the situation had become very serious in the past and there is a strong likelihood that a serious law and order situation may once again arise. The learned counsel also submitted that the illegal actions of the defendant are still continuing, as on the one hand he is not letting the plaintiff construct the boundary wall despite this Court's Order, and on the other hand he has encroached upon further portions of the suit property by raising illegal construction thereon. It was prayed by the learned

counsel that, as all the law enforcement agencies have failed to restrain the defendant from his illegal activities, the Suit may be decreed as prayed by the plaintiff.

13. The defendant and his counsel were called twice on the date of the hearing, but no one appeared on behalf of the defendant. Moreover, the witness of the plaintiff was not cross examined either by the defendant or by his counsel, although the counsel for the defendant was provided opportunity for cross examining the witness. No evidence was led or produced by the Defendant. After perusing the pleadings of the parties, examining the evidence on record and hearing the learned counsel for the plaintiff, my findings on the issues involved in this Suit are as under :

ISSUES No.1 :

14. Issue No.1 is whether or not the plaintiff is the owner of the suit property being Plot No. F/2-X, situated in S.I.T.E. Karachi ? As noted above, in order to prove its exclusive ownership and title, the plaintiff has produced the registered Lease Deed dated 07.03.1960 (Exhibit P-2) granted by S.I.T.E. for 99 years in favour of PTC in respect of Plot No. F/2 measuring 36.18 acres, along with the site plan, and the letter dated 18.07.1994 (Exhibit P-13) from S.I.T.E. to PTC, allowing sub-division of Plot No. F/2 measuring 36.18 acres into 36 plots, including the suit property (F/2-X), along with the site plan showing all the said 36 plots. The plaintiff has also produced the letter dated 22.04.1996 (Exhibit P-14) from S.I.T.E. to PTC allowing and confirming assignment / transfer of the suit property (Plot No. F/2-X) in its favour, along with the site plan of the suit property, and the registered Deed of Assignment dated 06.06.1996 (Exhibit P-15) in respect of the suit property in its favour, along with the site plan of the suit property. The above documents clearly establish that the suit property was owned by PTC, who assigned and transferred the same in favour of the plaintiff

in the year 1996 through a registered instrument in a lawful manner and with the approval of the competent authority ; namely, the S.I.T.E. The presumption attached to a registered instrument also supports the case of the plaintiff. The previous owner / assignor never challenged the assignment and transfer in favour of the plaintiff. More importantly, the defendant never disputed the ownership of the plaintiff, although he claims to be in possession of the disputed portion since 1978, and was the main respondent in the Constitutional Petition filed by the plaintiff and had also participated in the inquiry before the Magistrate. The entire contents of Exhibits P-2, P-13, P-14 and P-15 produced by the plaintiff and the implications thereof against the defendant have remained un-rebutted.

15. Instead of disputing the ownership of the plaintiff, the defendant has simply claimed that the disputed portion which is in his possession is outside the boundary wall. In his written statement, the defendant has claimed that the said plot is in possession of the management of the Mosque since 1928, and that the same was purchased after payment of consideration. However, no details have been given, such as, who the sellers and the purchasers were, how much sale consideration was agreed, when and in what manner it was paid, who had built the Mosque in 1928 and who had been managing it since then till 1965 when the defendant purportedly started managing it, and who had appointed him as the Pesh Imam of the Mosque. According to the defendant, the title documents of the plot purportedly purchased in 1928 got misplaced. He has not mentioned in his written statement about the particulars of the purported documents, how the same got misplaced, and what efforts did he or the alleged management make to obtain duplicate or certified copies thereof from the concerned authorities. The record of every immovable property is maintained by the concerned authorities, and the same can be traced if serious and genuine efforts are made. Another stand, which is completely opposite to his above stand, has been taken by the defendant in his written statement that he is the owner of the disputed portion. It is important to note that the defendant never initiated any legal

proceedings either for adjudging the plaintiff's title as illegal, or for declaring himself to be the lawful owner of the disputed portion. The combined effect of all the above has made the claim of the defendant extremely doubtful and suspicious.

16. The plaintiff has also produced the statement dated 07.12.2000 (Exhibit P-17 / P-29) filed by S.I.T.E. in plaintiff's C.P. No.D-803/1996, confirming that the plaintiff is the lawful and absolute lessee of the suit property, the Mosque thereon belongs to the plaintiff, and that the defendant never had any lawful right, title or interest upon the said property or on any portion thereof. It would not be out of place to mention here that the suit property, including the disputed portion, falls under the jurisdiction of S.I.T.E., and only S.I.T.E. is the competent authority to allow transfers, record mutations and to confirm the ownership of lands falling under its jurisdiction. Therefore, the above statement by the competent authority is of great importance. The defendant did not file any objections to the above statement, although he was the main respondent in the said Petition. The entire contents of Exhibit P-17 / P-29 produced by the plaintiff and the implications thereof against the defendant have also remained un-rebutted.

17. The Plaintiff has also produced the Report (Exhibit P-30) filed by the Assistant Commissioner and S.D.M., S.I.T.E., in plaintiff's C.P. No.D-803/1996 confirming *inter alia* that PTC was claiming rights in the suit property from 1965 till 1996, whereafter the suit property was sold to the plaintiff, the Mosque with the Hujra was constructed in the year 1965 by PTC at its own cost for offering prayers by its workers, the defendant started raising construction on the suit property in the year 1995 without the permission and approval of PTC and the plaintiff, and that the defendant was bent upon encroaching the other portions of the suit property. The defendant did not file any objections to this Report also, although he was the main respondent in the said Petition and had also

participated in the inquiry before the Magistrate. The entire contents of Exhibit P-30 produced by the plaintiff and the implications thereof against the defendant have also remained un-rebutted.

18. The entire evidence produced by the plaintiff has remained unchallenged and unrebutted. The defendant did not lead or produce any evidence. The pleadings of the defendant cannot be treated as a substitute of his evidence. In view of the above and also in view of the strong and convincing evidence produced by the plaintiff, Issue No.1 is answered in the affirmative, and it is held that the plaintiff is the owner of the suit property being Plot No. F/2-X, situated in S.I.T.E. Karachi.

ISSUE No.2 :

19. In view of my finding on Issue No.1, Issue No.2 ; namely, whether the defendant has any right, title or interest in any portion of the land and construction on the suit property, is answered in the negative.

ISSUE No.3 :

20. The defendant has not come forward to prove that he is in physical possession and occupation of the plot in question. The entire evidence produced by the plaintiff contrary to the above assertion of the defendant, has remained un-rebutted. Even otherwise, the defendant is not in possession of any title document, and there are serious contradictions in his written

statement. Even if the defendant is in possession or occupation of the said plot as claimed by him, his possession is unauthorized and illegal, and is that of a trespasser. Issue No.3 is answered in the above terms.

21. Since it has been held that the defendant has no right, title or interest in the disputed portion of the suit property, and his possession thereof is illegal, he has no right to claim ownership, or even the possession, of the said portion of the suit property. The defendant is liable to be evicted from the said portion of the suit property, and the plaintiff is entitled to have the possession, enjoyment and use of the same. The learned counsel for the plaintiff made a categorical statement at the bar that the plaintiff has no intention whatsoever either to demolish or disturb 'Mubarak Masjid' or the Madrassa attached therewith, or to use any of the same for any other purpose. He submitted that 'Mubarak Masjid' and the Madrassa attached therewith shall be used strictly for prayers and religious purposes. He further submitted that the plaintiff, being the lawful owner of the suit property, should be at liberty to appoint the Pesh Imam of its own choice, and to manage all the affairs of the Mosque and the Madrassa without any interference either from the defendant or from anyone else. The learned counsel further submitted that, except for 'Mubarak Masjid' and the Madrassa attached therewith, the entire construction raised and the encroachments made illegally by the defendant are liable to be demolished and removed.

22. In view of the reasons discussed above, this Suit is decreed in favour of the plaintiff against the defendant, in the following terms :

A. The plaintiff is entitled to the actual, physical, vacant and peaceful possession of the entire portion of the suit property, which is in possession of the defendant or his representatives, and the defendant is

liable to immediately handover to the plaintiff the entire said portion of the suit property, including 'Mubarak Masjid', the Madrassa attached therewith and the encroached land adjacent to it, which are in his possession or are in the possession of his representatives ;

- B. The defendant and his representatives are permanently restrained from claiming or asserting any right, title or interest in any portion of the suit property, including 'Mubarak Masjid', the Madrassa attached therewith and the encroached land adjacent to it, or from interfering in the ownership rights and peaceful possession of the plaintiff in any manner whatsoever ;
- C. The plaintiff shall not demolish or disturb 'Mubarak Masjid' or the Madrassa attached therewith, and shall use the same only for offering prayers and religious purposes ;
- D. The plaintiff shall be at liberty to appoint the Pesh Imam of its own choice for 'Mubarak Masjid', and to manage all the affairs thereof and the Madrassa without any interference from the defendant and / or his representatives. The plaintiff shall also be at liberty to demolish the illegal construction and to remove the encroachments, strictly in accordance with law and without disturbing 'Mubarak Masjid' and the Madrassa attached therewith ; and
- E. The costs of the Suit are also awarded to the plaintiff.

J U D G E

