

## ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.102 of 2008

Dated	order with signature of Judge
<u>For Final Disposal.</u>	

Plaintiff- Mst. Zahida Jahangir through Mr. Muhammad Zahid Khan,  
advocate.  
None for the defendant-Mansoor Ali.

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**NAZAR AKBAR, J.,** The plaintiff has filed this Suit against the defendant for Specific Performance and Perpetual Injunction with the following prayers:-

- (a) Declare the suit for specific performance of Agreement dated 01.10.1996 in favour of the plaintiff in respect of the suit House over Plot No.54-M, admeasuring 475 square yards, Block 2, PECHS, Karachi, directing the defendant to complete the formalities of execution of Sale Deed in favour of plaintiff in terms of clause 7 of the Agreement dated 01.10.1996.
- (b) In case the defendant fails to perform his part for execution in consonance with the terms of the Agreement, the Nazir of this Honourable Court or any other responsible officer of this Honourable Court may be appointed to execute the requisite document to effect transfer of the suit property in the name of the plaintiff.
- (c) Restrain the defendant, his agents, employees, attorney(s), servants or any other else by him or on his behalf, permanently from transferring, alienating or creating third party interest in respect of suit property, prejudicing the right, entitlement, interest or possession of the plaintiff.
- (d) Costs of the suit throughout.
- (e) Any other alike or equitable relief deemed fit or proper in the circumstances of the case.

2. The case of the plaintiff, in nutshell, is that defendant was allotted Plot bearing No.54-M, admeasuring 474 square yards, situated in Block 2, PECHS, Karachi (hereinafter referred to as the “**suit property**”) vide Allotment Order No.1793 dated 14.5.1950 by PECHS Society Limited,

Karachi, as such possession of the suit property was delivered to him on execution of Sub-License in Form 'A' in his favour. The defendant by spending huge money constructed a residential house on the suit property.

3. The defendant went to United Kingdom in connection with his official engagements, however, he executed Power of Attorney dated 15.6.1970, duly attested by Notary Public of London, England, to one Haji Mian Mahmood Alam son of (late) Mian Ghulam Mustafa in respect of the suit property. The defendant through his attorney namely Haji Mian Muhammad Alam son of (late) Mian Ghulam Mustafa had entered into an Agreement to Sell dated 01.10.1996 with the plaintiff for the sale of the suit property for the total sale consideration amounting to Rs.4,000,000/- (four million) and on the terms and conditions contained therein.

4. The defendant pursuant to the said Agreement to Sell received full and final sale consideration of the suit property, handed over possession and original title documents of the suit property to the plaintiff so also got executed and registered sub-Power of Attorney in favour of husband of the plaintiff so that transfer of the suit property could be conveniently effected. The spouse of the plaintiff, in whose favour sub-Power of Attorney was executed, died on 19.7.1999. The plaintiff, therefore, approached the defendant and his attorney but they did not response, resultantly seeking remedial under the law, plaintiff filed Civil Suit No.826/2002 in this Court, however, vide order dated 18.12.2006 the said Suit was withdrawn by the plaintiff with permission to file fresh suit subject to law.

5. The plaintiff time and again approached to the defendant through his attorney but the said attorney died before implementing the power of attorney under execution, hence the instant suit with the above prayers.

6. After filing of the above suit, notices were issued to the defendant but could not be served. Publication was also effected in daily Dawn Newspaper dated 03.5.2010 but despite publication no one come forward on behalf of the defendant, therefore, vide order dated 17.8.2010 passed by the Addl. Registrar (OS) service was held-good and by order of Court dated 01.11.2010, the defendant was declared ex-parte with direction to learned counsel for the plaintiff to file affidavit-in-ex parte proof.

7. The matter is coming up for final disposal for the last several dates. On 11.12.2010, affidavit-in-ex parte proof of plaintiff was filed in the office alongwith photo-stat copies of title documents. Examination-in-chief of plaintiff was recorded in Court on 31.10.2013 and the plaintiff has placed on record original title documents of the suit property as Exhibits PW-1/2 to PW-1/26.

8. The perusal of file reflects that despite service no one has come forward to contest the matter on behalf of the defendant, though number of opportunities were afforded to him, even when the examination-in-chief of the plaintiff was recorded, the side of defendant was unrepresented and cross-examination to plaintiff was marked as Nil.

9. I have carefully examined the evidence as well as issue of service summons to the defendant. The record shows that publications have been made and attempts have been made to serve the defendant through High Commission of Pakistan in England. Copies of courier reports are available on the Court file. The very fact that the Plaintiff herself is in possession of suit premises since 1996 and the original documents which, amongst other, include Form 'A' sub-license issued by the Pakistan Employees' Cooperative Housing Society, Ltd., Karachi in favour of defendant, approved building plan on the suit plot alongwith original receipts of different nature are sufficient proof of entitlement of Plaintiff, to establish her contract of sale of suit premises with the defendant.

Therefore she is entitled to get the documents of title duly registered in her name. Accordingly the suit of the plaintiff is decreed as prayed. The defendant is directed to execute, admit and register Sale Deed of the suit property in favour of the plaintiff and complete all other formalities for mutation/transfer of the suit property in favour of the plaintiff. In case the defendant fails to execute, admit, and register Sale Deed of the suit property in favour of the plaintiff, then in such an eventuality, the Nazir of this Court is directed to execute, admit and register Sale Deed and complete all other formalities on behalf of defendant for mutation/transfer of the suit property in favour of the plaintiff.

Karachi,  
Dated: \_\_\_.11.2013.

JUDGE

