

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
Suit No.1871/2010

Date	Order with Signature of Judge
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JUDGMENT

Date of hearing : 03.12.2013

Plaintiff : Abdul Ghani Jokhio, through
Mr. Munawwar Malik,
Advocate.

Defendant No.1 : Sheikh Muhammad Aslam

Defendant No.2 : Sheikh Muhammad Ishaque

Defendant No.3 : M/s. Maymar Housing
Services, (Pvt) Ltd.,

NAZAR AKBAR, J:- The plaintiff has filed this suit for specific performance of contract and permanent injunction stating therein that vide sale agreement dated 30.9.2010, defendant No.2 sold his house No.A-005-D, Sector Y, Sub-Sector III, Maymar Housing Society, Gulshan-e-Maymar, K.D.A. Scheme No.45, Karachi, to the plaintiff for a total sale consideration of Rs.43,00,000/- (Fourty Three Lac Rupees) only. Entire sale consideration was paid to the defendant through his son Defendant No.1 through cash and cheques and they handed over possession, of the suit property, to the plaintiff, on 24.9.2010 alongwith all the original documents. Presently the house is in possession of Plaintiff's tenant. According to the learned counsel the back ground of the transaction is that

Defendant No.1, in all, took from the plaintiff, a sum of Rs.77,17,000/- (Rupees Seventy Seven Lac Seventeen Thousand, in the month of July, August and September 2010. This amount was paid through cheques and cash, detail of which is given in para-2 of the undertaking given by Defendant No.1 to the Plaintiff, on 24.9.2010. The amount was paid against purchase of cars and two generators, from customs, through defendant No.1, who was introduced to the plaintiff through a common friend, one Sher Khan. Defendant No.1 neither could deliver goods nor returned the money. Hence he executed an undertaking on 24.9.2010 in presence of witnesses Syed Badshah and Sarwar Hussain. Defendant No.1 sold the suit property to the Plaintiff, for the sum of Rs.43,00,000/- (Rupees Fourty Three Lacs) and for the remaining amount of Rs.34,17000/- (Rupees Thirty Four Lacs Seventeen Thousand) executed Promissory Note and Receipt, for which a separate suit will be filed.

It is further contended by the leaned counsel that after receiving three files of original documents, plaintiff came to know that the suit property was originally allotted to Mrs. Hajra Shazia Humayoun, in the year 1992, whereafter it was transferred to Syed Syed Shakir Hussain Rizvi, who transferred the same to one Muhammad Naqeebullah, who sold it to Syed Raza Ali Shah,

who transferred to Dr. Ayaz Ahmed. It is further stated that at the time of execution of undertaking and sale agreement, the property was purchased by defendant No.2 and Dr. Ayaz Ahmed had already moved an application for transfer of the plot in the name of defendant No.2. It was during this period that defendants executed Sale Agreement and promised to execute transfer documents. The Defendant No.1 and 2 started creating hurdles in the transfer and avoided to issue transfer letter, on the basis of which defendant No.3 was supposed to transfer the suit property in the name of the plaintiff. In this regard plaintiff served a legal notice upon defendant No.3, who is a builder of the project on 22.10.2010, which was replied by him on 29.10.2010.

2. It is contended by the learned counsel for the Plaintiff that Plaintiff came to know that both defendants No.1 & 2 are habitual cheaters and have defrauded other people in a similar manner and criminal cases of cheating and fraud are registered against them at P.S Gizri (FIR No.491/2010 under Section 420-506/B PPC) and P.S Defence (FIR No.601/2010 under Section 420-506/B, PPC) the Defendant No.1 was arrested and is facing trial before the courts concerned, while the defendant No.2 is absconder. It is further stated

that instead of signing transfer documents, the defendants made an attempt on the life of the Plaintiff and such case (FIR No.462/2010) was registered against them at P.S Gizri. They also attempted to dispossess the Plaintiff from the suit property, through "Gundas" and local police. Learned counsel further stated that defendants are bound to complete the transfer documents and perform their part of the sale agreement. Particularly so when full amount has been paid to them. It is further contended by the learned counsel that Defendant No.3 is a formal party. However, he may be directed not to transfer the suit property, in his record, to any other person, except the plaintiff, till final disposal of the suit.

3. In the light of above facts and circumstances, the plaintiff filed the present suit and prayed for the following reliefs:-

- i. Decree be passed in favour of the Plaintiff and against the defendants for specific performance of Sale Agreement dated 30.9.2010 and undertaking dated 24.9.2010 with direction to defendant No.2 to execute transfer documents particularly "No Objection Letter" to defendant No.3 for transfer of Allotment Order in favour of the Plaintiff, in respect of H.No.A-005-D, Sector-Y, Sub-Sector-III, Maymar Housing Society, Gulshan-e-Maymar, K.D.A., Scheme-45, Karachi and upon their failure to do so, defendant No.3 be directed to transfer the suit property and issue Allotment Order in the name of the Plaintiff.

ii. Permanent injunction against the defendants, restraining them from transferring the suit property in any manner whatsoever, to any other person, except the plaintiff and also from dispossession the Plaintiff from the suit property.

iii. Costs of the suit may also be awarded.

iv. Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case, may also be granted.

4. The notices issued to the defendants, which were served on them but nobody appeared on behalf of the defendants. The perusal of diary sheet dated 21.11.2011, shows that learned Additional Registrar, on 25.10.2011 debarred the Defendant No.1 from filing the written statement and on 21.11.2011 the Defendant No.2 was also declared exparte by this Court. It appears that service against the Defendant No.3 was held good on 12.11.2012 and 15.10.2012 he was also declared exparte.

5. In support of his pleadings the plaintiff has filed affidavit-in-exparte proof as Exh.PW-1/3 and other documents as Exh.PW-1/4 to Exh.PW-1/28 (a) and he also produced photocopies of documents marked as 'X' 'X/1' and 'X/2'.all original documents.

6. I have examined the evidence and also heard learned counsel for the Plaintiff. The plaintiff

has produced original documents issued from the office of the Defendant No.3 including payment receipts. The Defendant No.3 has not disputed the veracity of the claim of Plaintiff against the Defendants No.1 & 2. The Plaintiff is also in possession of the premises, which is sufficient to accept the claim of the plaintiff as nobody has ever challenged the possession of the plaintiff. Even otherwise the plaintiff's evidence has gone unrebutted and unchallenged. Therefore, there is no option but to believe the unchallenged version of the plaintiff.

7. In the circumstances mentioned above, the suit of the plaintiff is decreed as prayed with cost.

Karachi

JUDGE

Dated: _____

SM