

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
Suit No.361/2011

<u>Date</u>	<u>Order with Signature of Judge</u>
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Date of hearing : 24.10.2014

Plaintiff : Rais Khan through L.Rs
Mr. Imtiaz Ali Effendi, advocate.

Defendant No.1 : Mst. Aysha Bi through LR.s.

Defendant No.2 : Mufti Abdul Qayyum through LR.s.

None present for the Defendants.

JUDGMENT

NAZAR AKBAR, J:- The plaintiff has filed this suit for specific performance, declaration, and permanent injunction. The Plaintiff claimed that by an agreement in writing dated 02-04-1983, the Plaintiff contracted to purchase Plot No.99 in Block-6 admeasuring about 302 square yards or thereabout, situated in Pakistan Employees Co-operative Housing Society, Ltd., Karachi from the Defendant for a total sale consideration of Rs.60,000/- (Rupees Sixty Thousand Only) (hereinafter referred to as the suit property). However, the Plaintiff paid a sum of Rs.1,00,000/- (Rupees One Hundred Only) as the full and final payment towards the sale consideration of the suit property the receipt of which was duly acknowledge by the Defendant in the same agreement to sell as well as a separate receipt was also executed by the Defendant. The Defendant also executed registered General Power of Attorney in favor of the Plaintiff's wife namely; Mrs.Iftikhar-un-Nisa on 07th April, 1983, duly registered at 318 Pages 145 to 148 Book No.IV Addl., 44, Sub Registrar T. Div., East Karachi, dated: 07-04-1983, and also

delivered vacant physical possession of the suit property to the Plaintiffs. However, the present market value of the suit property is Rs.1,75,00,000/-(Rupees One Crore Seventy Five Lacs Only).

2. It is further contended by the Plaintiff that the husband of the Defendant, namely; Late Mufti Muhammad Arif Qureshi was full-fledged member of the Pakistan Employees Co-operative Housing Society, Karachi, vide membership No.3669, who acquired allotment No.6068 dated:07-07-1969 by virtue of which he was allotted a piece of residential plot of land bearing No.99, admeasuring 302 square yards or thereabout, Survey Sheet No.35/P-1 situated in Block-6, Pakistan Employees Co-operative Housing Society, Ltd., Karachi (the suit property), which Plot was transferred in the name of the Defendant vide, P.E.C.H.S. transfer letter No.PECHS/635/83 dated 02.4.1983 after the death of aforesaid Mufti Muhammad Arif Qureshi.

3. It is further contended that since from the date of execution of the aforesaid Sale Agreement, the Defendant did not have a registered sub-license Form 'A' and 99 years lease in Form 'B' of the Pakistan Employees Co-operative Housing Society, Ltd., in her favour, the Defendant was not in a position to execute a Sale Deed in favour of the Plaintiff pursuant to aforesaid Sale Agreement dated 02.4.1983, therefore, wife of the Plaintiff by virtue of the aforesaid General Power of Attorney executed Form 'A' sub-license with PECHS Ltd., Karachi in favour of the Defendant as duly constituted attorney of the Defendant before the Sub-Registrar T-Div. IX, Karachi, Registered No.1061, pages 49 to 51, Volume 168, Book

No.IV Addl. Dated 02.6.1983, and retained the possession of the original thereof.

4. It is further submitted that Plaintiff lost contact with the Defendant as the Defendant was not traceable anywhere in the city despite hectic efforts made by the Plaintiff to locate the Defendant, so that after execution of 99 years of lease on Form 'B' by the PECHS in the name of the Defendant, could get the Sale Deed registered in the Plaintiff's favour by the Defendant. However, in the year 2005 the wife of the Plaintiff in the capacity of the duly constituted attorney of the Defendant, executed 99 years lease of the suit property with the PECHS Ltd., again in the name of the Defendant before the Sub-Registrar T-Div. IX, Karachi.

5. It is further contended that Mrs. Iftikhar-un-Nisa died on 28.3.2010 leaving behind the legal heirs as stated in the title of the Plaintiff as L.Rs of the Plaintiff who also tried to contact the Defendant, whose legal representatives as mentioned in the title of the plaintiff informed the L.Rs of the Plaintiff that the Defendant had expired. The L.Rs of the Plaintiff requested and tried to convince the L.Rs of the Defendant to execute proper Sale Deed pursuant to the Sale Agreement executed by the Defendant in favour of Plaintiff in respect of the Suit Property on 02.4.1983, but the L.Rs of the Defendant are not paying any heed to the requests of the L.Rs of the Plaintiff, the L.Rs of the Plaintiff served a Legal Notice dated 01.03.2011 on the L.Rs of the Defendant, calling upon them to perform specifically the Sale Agreement dated 02.4.1983 by executing a Sale Deed but in vain, hence this suit, the date of refusal to perform the contract, therefore, 01.3.2011.

6. It is further contended that the Defendant through legal representatives was not ready and willing to perform her part of the contract by execution of a proper Sale Deed in respect of the suit property in favour of the Plaintiff. In the light of events that have taken place, it is just and proper that the Defendant (through legal heirs) be directed by this Court to execute a proper Sale Deed in respect of the suit property in favour of the Plaintiff so as to make the transaction of Sale complete or in case if the Defendant through L.rs refuses to do so, the Nazir of this Hon'ble Court may be directed to execute the Sale Deed in respect of the suit property in favour of the Plaintiff.

7. That after the death of the Plaintiff the legal heirs of the Plaintiff have all along been and still are in possession of the suit property since the time agreement dated 02.04.1983 was executed and are ready and willing to perform their part of the contract by executing a proper conveyance Deed/Sale Deed before the concerned authority inasmuch as after making payment of the entire sale consideration in respect of the suit property amounting to Rs.1,00,000/- to the Defendant and the Plaintiff is in actual physical possession of the suit property up to now. Therefore, the plaintiff filed instant suit with the following prayers:

- a) Direct the Defendant to execute the Sale Deed in respect of property bearing of residential plot of land bearing No.99, admeasuring 302 square yards or thereabout, Survey Sheet No.35/P-1, situated in Block-6 PECHS Karachin in favour of the Plaintiff or in the alternative, if the Defendant refuses to do so, direct the Nazir of this Hon'ble Court to execute the Sale Deed and pass a Judgment and Decree to this effect.

- b) Declare that property bearing of residential plot of land bearing No.99, admeasuring 302 sq.yds or thereabout, Survey Sheet No.35/P-1 situated in Block-6, PECHS Karachi is the exclusive property of the Plaintiff who has purchased the same from the Defendant and that the Defendant has already received Rs.1,00,000/- as full and final payment of the sale consideration in respect of the suit property at Karachi at the time of execution of the Sale Agreement dated 02.4.2983 and General Power of Attorney dated 02.6.1983 in respect of the said property, coupled with delivery of possession of the suit property to the Plaintiff, and also direct the Defendant to execute the Sale Deed in favour of the Plaintiff with the Nazir of this Hon'ble Court and pass a Judgment and Decree to this effect.
- c) Grant Permanent Injunction restraining the Defendants or any one of them or any one working through or under them from transferring, selling, alienating or otherwise disposing-off the aforesaid suit property i.e residential plot of land bearing No.99, admeasuring 302 sq.yds or thereabout, Survey Sheet No.35/P-1 situated in Block-6, PECHS Ltd., Karachi.
- d) Pronounce Judgment that the suit property bearing of residential plot of land bearing No.99, admeasuring 302 sq.yds or thereabout, Survey Sheet No.35/P-1 situated in Block-6, PECHS Karachi has been sold by the Defendant to the Plaintiff and that the Plaintiff is the only person who is entitle to have the same in his or his nominees name, by execution of the proper sale deed, and if the Defendant refuses to do so, direct the Nazir of this Hon'ble Court to execute the Sale Deed and pass a Judgment and Decree to this effect.
- e) Award cost of the suit.

Grant any other such/additional further relief or reliefs deemed fit and proper by this Hon'ble Court in the circumstances of the case.

8. The notices were issued to the defendants, but nobody appeared on behalf of the defendants. The perusal of diary of learned Additional Registrar, dated 15.12.2011, shows that service

was held good and by Court order dated 18.3.2013 Defendants were declared exparte.

9. In support of his pleadings the plaintiff has filed affidavit-in-exparte proof and additional affidavit-in-exparte proof as Ex.3/1 and 3/2 and other documents as Ex.3/3 to Ex.3/39. All the relevant original documents are in possession of Plaintiff.

10. I have examined the evidence and also heard learned counsel for the Plaintiff. The plaintiff has produced original documents which are sufficient to accept the claim of the plaintiff as nobody has ever challenged the claim 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. Therefore, the plaintiff suit is decreed as prayed. The Defendants are directed to execute a proper sale deed in favour of the Plaintiff in respect of the suit property within 15 days from today and in case of their failure the Nazir of this Court is directed to execute the relevant documents to perfect the title of the Plaintiff.

JUDGE

Karachi,
Dated:_____

SM