

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.233 of 2015

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of CMA No.2011/2015

27.02.2015

Plaintiff present in person.

M/s. Ikram Siddiqui & Sohail Ahmed, advocates alongwith Defendant No.1.

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Nazar Akbar.J. Plaintiff has filed this suit for declaration and injunction in respect of the property bearing Plot No.D-23, Block-N, North Nazimabad measuring 1000 sq.yds. (hereinafter the “suit property”) On **25.02.2015**, the defendant No.1 who is an old woman of over 70 years in response to the summons appeared in Court alongwith Mr. Ikram Ahmed Siddiqui, advocate. She has brought original title documents of the suit property which I had examined in Court. Therefore, counsel for the Plaintiff was directed to call the Plaintiff in person alongwith the original documents available with him and the copies whereof have been filed with the plaint. The Plaintiff is present in person alongwith originals of the annexures to the plaint except annexure “P” which by itself a Photostat copy of true certified copy of lease deed executed by KDA in favour of one Adam Ali. Original of this lease deed is with Defendant No.1. From the narration of facts in the plaint it appears that the father of the Plaintiff has purchased the suit property from one Shaikh Abdul Rasheed son of Shaikh Abdul Hameed through an agreement of sale dated **18.5.1995** (Annexure P-5). On the said date Shaikh, Abdul Rasheed was not owner of the suit property. Even in the recital of the said agreement of sale nothing has been mentioned that how and from where the said Shaikh Abdul Rasheed has derived title or become owner of the suit property to sale it. However, there

is one agreement of sale dated **13.12.1974** (Annexure P-1) between Adam Ali and the said Shaikh Abdul Rasheed but even this agreement of sale has not been referred to in the agreement of sale dated **18.5.1995** (Annexure P-5) between said Abdul Rasheed and the Plaintiff. Similarly in sale agreement between Adam Ali and Abdul Rasheed (Annexure P-1) indenture of lease in favour of Adam Ali has not been mentioned. The said Abdul Rasheed also had an unregistered General Power of Attorney executed by Adam Ali (Annexure P-2) on stamp paper of Rs.500/-, which is also of the same date on which the agreement of sale has been executed. Again even this unregistered General Power of Attorney was not referred to in the agreement of sale (Annexure P-5). It does not disclose the details of title documents in respect of suit property that who owns and how. The said Shaikh Abdul Rasheed from whom the father of the Plaintiff purchased the suit property also executed a General Power of Attorney (Annexure P-6) in favour of the present Plaintiff, Shaikh Muhamamd Ayub son of Shaikh Muhammad Yaqoob. The perusal of this power of attorney (Annexure P-6) again does not show that how and when Shaikh Abdul Rasheed has become owner of the suit property to appoint his attorney to deal with it. There are no detailed of any sale / purchase by or through any registered documents conferring the title of the suit property on Shaikh Abdul Rasheed and, therefore, in 1995 Shaikh Abdul Rasheed had no marketable title with him as the agreement of sale does not confer any right, title and interest in the immoveable property.

2. It is strange that how and why the suit has been filed by the Plaintiff against Defendant No.1 who is 70 years old lady by alleging that lady is approaching the suit plot and thereby the Plaintiff got threatened about his right / title in the suit plot. I have checked original title documents available

with Defendant No.1. She acquired this property through registered indenture of lease on **13.2.1998** from Adam Ali son of Yousuf Ali and she also has the original indenture of lease between KDA and Adam Ali son of Yousuf Ali with her. Not only the originals of these two documents are with her but she also has an original agreement to sell prior to execution of registered sale deed in her name as well as originals of all the documents including KDA allotment order dated **11.6.1963** and payment challan in respect of the suit property, receipt of payment from Adam Ali and possession order and acknowledgment of possession issued by KDA.

3. It is pertinent to mention here that the Plaintiff has filed Photostat copy of the true copy of indenture of lease between Adam Ali and KDA obtained by him in 1995, on the basis of Roznamcha Entry dated **23.10.1995** and newspaper cuttings dated **24.12.1995** as he claimed that original lease-deed, possession order and acknowledgment of possession (annexures P, P-3 and P-4) were misplaced by him on **20.10.1995** (annexure P-7) just after five months of having purchase the suit property through sale agreement by his father. Unfortunately only title documents were misplaced and sale agreements and power of attorneys were not misplaced. Strangely enough original of these documents are available with Defendant No.1 since 13.02.1998 when the original owner Adam Ali duly executed registered sale deed in her favour and handed over the same to her alongwith originals. Further surprising is that neither Shaikh Abdul Rasheed ever obtained search certificate of suit property from 1974 when he entered into an agreement of sale with Adam Ali till 1995 when he sold it to Plaintiff's father. Similarly, despite loss of originals from him, since 1995 till date the Plaintiff also has never tried to obtain search certificate

from Sub-Registrar's office (Defendant No.5) to ascertain that who is the recorded owner of the suit property from 1995 till date.

4. The Plaintiff is seeking declaration of ownership rights in the suit property merely on the basis of sale agreement dated **24.12.1995**, which he has entered into one Abdul Rasheed who himself was not owner of the suit property at any point of time.

In view of the above facts and examination of the originals available with either party prima facie the Plaintiff has no lawful title of the suit property and there is likelihood of raising construction or creating third party interest by him, therefore, the Plaintiff is restrained from creating any third party interest in the suit property and/or raising any construction. Nazir of this Court is directed to inspect the suit property and take photographs and place on record, so that the restraining order passed herein may not be breached by the Plaintiff. Notice alongwith copy of this order must also be sent to the so called performa Defendant No.5 Sub-Registrar T-Division No.VI-A with directions that he should not enter any transaction in respect of the suit plot including power of attorney pending the suit. The application is disposed of in above terms.

5. In view of the above discussion and order, the Plaintiff is directed to satisfy the Court that how this suit is maintainable. How the Plaintiff can invoke jurisdiction of this Court **Section 42** of the Specific Relief Act, 1877 for declaration of ownership rights in the suit property merely on the basis of 20 years old sale agreement and in absence of any "registered instrument" as required under **Section 54** of the Transfer of Property Act, 1882?

JUDGE