

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1393 of 2000

Plaintiff : Mst. Noor Jehan
through Mr. Ajmal Haider, Advocate.

Defendant No.1 : Aamir (Exparte)

Defendant No.2 : Essa Khan
Defendant No.3 : Anwar Khan
Mirza Rafiq Beg, advocate for
Defendants No.2 & 3 (absent)

Defendant No.4 : Hamid (Exparte)

Defendant No.5 : The District Registrar, City Courts Buldg.
(Exparte)

Defendant No.6 : Sub-Registrar T-Div, VII, Saki Hassan.
(Exparte)

Defendant No.7 : Sub-Registrar T-Div, XVI, City Courts Buldg.
(Exparte)

Defendant No.8 : Moosa Khan
Mirza Rafiq Beg, advocate for
Defendants No.8 (absent)

Date of Hearing : 18.12.2014

JUDGMENT

NAZAR AKBAR, J. Briefly stated the facts of this case are that the Plaintiff is lawful owner of immovable properties viz. 1) Flat Premises No.D-06 in "Rufi Paradise" Plot No.118/6, Gulistan-e-Jauhar, Karachi acquired by her as per Possession Order issued from Rufi Builders dated **20.8.1998** and later on sub-leased in her name; and 2) House No.25 measuring 39 sq.yds situated at Ghulam Hussain Street Napiere Road, Karachi acquired by her through declaration of Oral Gift and duly mutated in her name in the record of CDG (South)

Karachi (hereinafter the suit properties). Defendant No.1 developed brotherly relation with the Plaintiff who is a widow to such extent that she used to call him younger brother likewise he used to call her Baji. Accompanying a girl, Defendant No.1 posing the said girl to be his legally wedded wife used to frequently visit plaintiff at her residence. Once Defendant No.1 came to know that the flat premises where the plaintiff is residing with her minor children exclusively belongs to her decided to cheat her and concocted a story that his life is in danger as he had obtained loan from a **Sood Khaur Pathan** viz the defendant No.2 and he is required to refund of Rs.2,00,000/- with interest to him who wants cash Rs.1,00,000/- immediately and for the rest of Rs.1,00,000/- he needs guarantee in the shape of immovable property. Therefore, in order to save life of Defendant No.1 the Plaintiff arranged Rs.1,00,000/- after encashment of cheque out of the savings of her two minor children and handed over documents of her flat premises though sub lease thereof was yet to be issued to her. Defendant No.2 in the month of April, 2000 under pressure and by exerting undue influence in connivance of Defendant No.1 persuaded the Plaintiff to put her signatures on certain documents without disclosing contents thereof in the name of further security for the repayment of loan secured by Defendant No.1. These documents were to be returned to the Plaintiff after payment of remaining loan of Rs.1,00,000/- by Defendant No.1. It is also averred in the plaint that Defendant No.1 after taking the Plaintiff in his clutches cunningly deprived her of her valuable jewellery worth Rs.2,00,000/- by saying that the jewellery is needed for a few days

for his wife/girlfriend but did not return upto now and keeping the Plaintiff on sweet promises to return the same. Thereafter Defendant No.1 told the Plaintiff that Defendant No.2 for satisfaction of his loan repaid by Defendant No.1 requires confirmation of her signature before Defendant No.6 and fraudulently got an Irrevocable General Power of Attorney in respect of the flat premises registered in his favour in the office of Defendant No.6. He also succeeded in collecting sub lease of the aforesaid flat premises on forged authority letter / affidavit from the office of concerned Sub-Registrar, Defendant No.7, as per receipt issued from the said office. It is also averred in the plaint that Defendant No.1 knowing well that second immovable property i.e House No.25 measuring 39 sq. yds. Ghulam Hussain Street, Napier Road, Karachi is also owned by the Plaintiff and original documents of the same are missing managed to obtain certified copies thereof from the office of concerned sub-Registrar. Defendant No.4 with ulterior motive with the help of Defendant No.1 is blackmailing the Plaintiff by retaining true copies of property documents thus the said house is too in danger as the Defendant No.4 is not prepared to return the true certified copies thereof at any cost. The Defendants are trying to eject the Plaintiff from her flat premises and creating law and order situation and using filthy language against the Plaintiff to get the flat premises vacated. It has also come to the notice of the Plaintiff through Defendant No.2 and 3 that a sale agreement and a tenancy agreement of her flat premises has also been got signed by them from the Plaintiff and if the Plaintiff does not vacate the flat premises they will get it vacated through

police aid meaning thereby the gang of Defendant No.1 to 4 has fully trapped the Plaintiff to deprive her of the suit properties.

2. In view of above circumstances, the Plaintiff has filed this suit for declaration, cancellation of documents, and permanent injunction seeking the following relief(s):-

- i. To declare that all documents got signed by the Defendant No.1 and Defendant No.2 such as blank cheques and Tenancy agreement, sale agreement authority letter have been obtained forcibly, fraudulently and are null and void in the eyes of law likewise an Irrevocable General Power of Attorney got registered before the Defendant No.6 in respect of her Flat premises for sale is fictitious document obtained through fraud.
- ii. To declare that Defendant No.1 has fraudulently deprived the Plaintiff from her gold jewellery worth Rs.2 lacs should be returned to her alongwith cash of Rs.1 obtained from the Plaintiff fraudulently.
- iii. To declare that the delivery of sub lease from the office of Defendant No.6 to Defendant No.2 is illegal and the Defendant No.2 has no right to retain the sub lease of the flat premises of the Plaintiff in any manner and should be returned to Plaintiff.
- iv. To declare that Defendant No.2 cannot dispose of transfer the flat premises of the Plaintiff to anyone else on the basis of forged General of Attorney nor he is authorized to utilize the fake tenancy agreement

fraudulently enter into with the Plaintiff thus has no value to treat the Plaintiff as his tenant nor the Plaintiff is bound to pay rent to the Defendant No.2 on the basis of false tenancy agreement.

- v. To restrain Defendant No.1 and 4 from utilizing certified copy of the titlement deeds of the suit property house No.25 or to transfer the said house to anyone else and to return the certified copy thereof to the Plaintiff.
- vi. To declare that the Plaintiff is the lawful owner of suit properties and the documents signed by her in respect of flat premises have been obtained through coercive measures fraudulently by the Defendant No.1 & 2 thus all these documents are null and void abinito and are cancelled.
- vii. That the Defendant No.5 be directed / ordered to issue directive to the concerned sub Registrar of the concerned area not to effect registration of any document pertaining to the suit properties of the Plaintiff on the basis of the documents obtained by the Defendant No.1 to 4.
- viii. For permanent injunction restraining the Defendant No.1 to 4 their agents, servants, nominees, employees, associates, workers, contractors, attorneys, subordinates and / or anyone else acting, on their behalf from dispossessing the Plaintiff from her flat premises bearing No.D-06, "RUFİ PARADISE" on Plot No.118/6, Block-16, KDA Scheme No.36, Gulistan-e-Jauhar, Karachi.

- ix. Cost of the Suit.
- x. Any other relief or relieves as the Hon'ble Court may deems think, fit and proper in view of the circumstances of the case.

3. Notices and summons were issued to all the Defendants and only Defendants No.2, 3 & 8 have filed their written statement on **12.12.2000**. Defendants No. 2 & 3 in their joint written statement have stated that following documents were signed by the Plaintiff after reading the same carefully:-

- a) Sale agreement executed between the Plaintiff and Defendant No.2 on 21.4.2000.
- b) Cash receipt for Rs.10,00,000/-
- c) Authority letter / affidavit signed by Plaintiff in favour of Defendant No.2
- d) General Power of Attorney presented and signed before the Sub Registrar T.Div-VII (Defendant No.6) before recording evidence.
- e) Tenancy agreement dated 22.4.2000 executed between Defendant No.2 and Plaintiff.
- f) Sub Lease was collected from the Office of Defendant No.7 i.e., Sub Registrar T.Div:XVI vide Authorigy Letter / Affidavit signed by the Plaintiff in favour of the Defendant No.2.

Defendant No.3 averred that he visited the house of Plaintiff only to collect monthly rent under the instructions of Defendant No.2 and not to eject her or create law and order situation. It was further submitted by the Defendants that Defendant No.2 has already sold out the suit property to Moosa Khan, the Defendant No.8 on **2.8.2000** after inviting objection through Public Notice, published in

the Daily Jasarat, on **25.7.2000**. It is also contended by Defendants No.2 & 3 that this suit is only a device to blackmail the Defendants and thereby extract money as in fact no cause of action has ever accrued to the Plaintiff against the Defendants No.2 & 3. Defendant No.8 in his written statement claim to be owner of the suit property by virtue of sale agreement dated **2.8.2000** with the Plaintiff through her duly constituted attorney, the Defendant No.2. It is pertinent to note that the Defendants have not filed any document mentioned in para-4 of the written statement except the alleged sale agreement dated 2.8.2000 and newspaper cutting of daily jasarat.

4. Defendants No.1 & 4 were ordered to be proceeded exparte and Defendants No.5 to 7 were debarred from filing written statement and they were even otherwise formal party.

5. The Court on **04.11.2002** from the pleading of the parties framed the following issues:-

- i) Whether the Defendant No.2, in collusion of Defendant No.1, got the execution of Sale Agreement dated 02.08.2000 and Registration of General Power of Attorney dated 25.04.2000 before Defendant No.6, of suit property from Plaintiff? if so whether these documents are liable to be cancelled?
- ii) Whether Defendant No.2 got Tenancy Agreement dated 22.04.2000, signed of suit property from the Plaintiff fraudulently in collusion of Defendant No.2? if so whether the same is liable to be cancelled?
- iii) Whether Defendant No.2, got authority letter/affidavit dated 22.04.2000 signed from Plaintiff to collect Sub Lease of suit property from the Builder/after its registration fraudulently? if so whether the Defendant No.2, is liable to return the same to the Plaintiff?
- iv) Whether the Defendant No.2, has entered into a fake sale transaction vide Sale Agreement dated 02.08.2000 and

receipt of suit property with Defendant No8? if so whether these documents are liable to be cancelled?

- v) Whether Defendant No.4 in collusion of Defendant No.1, fraudulently collected certified copy of declaration of Gift dated 04.06.1990 of house No.25 from Registrar office? if so what is its effect?
- vi) Whether Defendant No.1 is liable to return all blank Cheques, Jewellery, diamond set worth Rs.2 Lacs, Cash of Rs.1,00,000/- original receipts of the jewellery to the Plaintiff?
- vii) To what relief the Plaintiff is entitled?
- viii) What should the decree be?

6. Plaintiff appeared as a witness and filed affidavit-in-evidence on 15.1.2007. Her examination-in-chief was recorded in Court on 8.8.2007 and she produced copies of the following documents as Ex.6/1 to Ex.6/23.

- i. Application form of Ruff Builders, Ex.6/3.
- ii. Schedule of payment, Ex.6/4.
- iii. Brochure, Ex.6/5.
- iv. Receipt Nos.14721, 14743, 4533, 4683, 9377 and 5465, Ex.6/6 to 6/11.
- v. Letters of Ruff Builders dated 20.08.1998 and 09.06.1998, Ex.6/12 and 6/13.
- vi. Undertaking of maintenance charges, Ex.6/14.
- vii. Letters of Ruff Builders dated 11.06.1999 and 26.02.2000, Ex.6/15 and 6/16.
- viii. Receipt No.6039, Ex.6/17.
- ix. Sui gas bill, Ex.18.
- x. Electric bill, Ex.19.
- xi. Sale agreement between Muhammad Younus and Haider Khan and receipt of Rs.10,00,000/-, Ex.6/20 and 6/21.
- xii. Tenancy agreement between Essa Khan and Mst. Noor Jehan, Ex.6/22.
- xiii. Sale agreement between Mst. Noor Jehan and Moosa Khan, Ex.6/23.

Despite several chances given by the Court for cross-examination of the Plaintiff, nobody ever turned up to cross-examine her. Ultimately on **20.9.2007** the side of the Defendants for cross-examination of

Plaintiff as well as for their evidence was closed and the case was adjourned for final arguments. The Defendants never turned up even to argue the case since 2007.

7. I have heard learned counsel for the Plaintiff and perused record and evidence. My para-wise findings on the issues are as follows:-

8. **Issues No.1 to 5** can conveniently be decided jointly since these issues are regarding fraudulent acts of the Defendants whereby they have managed to obtain signatures of the Plaintiffs on various documents i.e. general power of attorney/ agreement to sell as well as authority letter and affidavit of the Plaintiff to collect sublease from the builder once it is registered. Plaintiff has categorically state that she has not executed any irrevocable general power of attorney and other document to divest herself of the suit properties. The Defendants who are supposed to be the beneficiary of the said documents were under legal obligation to prove the execution of these documents by the widow/ Plaintiff. It is not disputed by the Defendants even in their written statement that the Plaintiff is not in possession of flat and she does not happen to be the owner. The Defendants have not come forward to establish the documents said to have been executed by the Plaintiff in favour of the Defendants. Defendant No.8 who claims to be owner by virtue of sale agreement dated 2.8.2000 till date has not filed any suit for specific performance of the said sale agreement in respect of the flat in question. This conduct of the Defendants that they have given up to pursue any right accrued to them under the said documents by itself is sufficient

to appreciate that they are aware of the legal sanctity of these documents and they know their claims cannot withstand the test of cross examination. It is an admitted position that original of these documents are with the Defendants, who have fraudulently obtained the same. Therefore, the Plaintiff has filed true certified copies of the registered documents including indenture of lease in her favour in respect of Flat No.D-06 in "Rufi Paradise" on Plot No.118/6, Gulistan-e-Jauhar, Karachi as well as true certified copy of Irrevocable General Power of Attorney in favour of the Defendant No.2. Since the burden of proof of execution of power of attorney was on the Defendants but they have failed to discharge the burden. They have not stepped into witness box to challenge the claim of the Plaintiff for cancellation of these documents and return of original of the same to her. Therefore, all these documents as prayed by the Plaintiff are liable to be declared as void and nullity in the eyes of law and of no legal consequences. All these issues are answered in affirmative.

9. **Issue No.6** Plaintiff has stated on oath that the Defendant No.1 has fraudulently persuaded her to give him cash Rs.100,000/- as he was in dire need of money to pay the loan obtained by him from defendant No.2 in whose favour on his persuasion even power of attorney was also got registered by the plaintiff on misrepresentation. And around the same time defendant No.1 got hold of jewellery of plaintiff for a few days and did not return the same. The plaintiff has repeated these averments from her plaint on oath in her affidavit-in-evidence. The circumstances in which the Defendant No.1 was able to

pursued the Plaintiff to hand over original documents of the properties give credence to the claim of the Plaintiff that she was persuaded to advance cash of Rs.100,000/- and jewellery worth Rs.2,00,000/- to Defendant No.1. She has re-affirmed her claim on oath in her examination-in-chief in Court. It is settled principle of law that statement made on oath in Court has to be accepted as true and correct unless shaken in cross-examination or otherwise proved to be not true by more strong and cogent evidence. The failure of Defendant No.1 to cross-examine the Plaintiff is sufficient to believe that Plaintiff has been deprived of her jewellery worth Rs.200,000/- and cash of Rs.100,000/- by Defendant No.1 and therefore, he is liable to refund the jewellery or equivalent amount of Rs.200,000/- as well as cash of Rs.1,00,000/- which he obtained from the Plaintiff. This issue is decided in the affirmative.

10. **Issue No.7** In view of the above findings on issues No.1 to 6 Plaintiff is entitled to the relief she has claimed, therefore, I hereby declare and hold as follows:-

- i) The plaintiff is absolute and lawful owner of the following properties:-
 1. Flat Premises No.D-06 in "Rufi Paradise" Plot No.118/6, Gulshan-e-Jauhar, Karachi.
 2. House No.25, measuring 39 sq. yds. Situated at Ghulam Hussain Street, Nepier Road, Karachi.
- ii) The power of attorney executed by her in favor of defendant No.2 in any of the office of defendants No.5, 6 and 7 stand cancelled and void. The official defendants are directed to make entry of the cancellation of the said power of attorney set to

have been executed on or about 22.04.2000 as revoked and cancelled. Similarly any other registered or unregistered documents in respect of any of the suit properties of the plaintiff including so-called agreement to sell and rent agreement dated 21.04.2012 and 22.04.2012 respectively are declared to be null and void.

- iii) The defendants are directed to give up and return the original of the same to the plaintiff so that she may destroy the same.
- iv) The defendant No.1 is directed to pay a sum of Rs.300,000/- to the plaintiff with interest at the rate of 10% per annum from the date of filing of the suit till realization.
- v) The defendants are permanent restraining to raise any claim/ right or interest in the suit properties of the plaintiff.

11. **Issue No.8** In view of the above, the suit is decreed with cost against the defendants No.1 to 4 and 8 jointly and severally in the above terms.

Karachi
Dated:16.2.2015

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