

Judgment Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Present:
 Mr. Justice Muhammad Iqbal Kalhoro
 Mr. Justice Muhammad Osman Ali Hadi

High Court Appeal No.360 of 2022
(Aun Sajeed Hashmi vs. Ms. Sadia Muhammad Zahoor & others)

For date of hearing
& order : **23.04.2025**

Mr. Kamal M. Khan, advocate for the appellant
 Ms. Sofia Saeed, advocate for respondent No.2
 Mr. Imran Taj, advocate for respondent No.1
 Ms. Afsheen Aman, advocate for respondent No.9
 Mr. Junaid Hussain AAG

JUDGMENT

Muhammad Iqbal Kalhoro, J:- Respondent Nos.1 & 2 filed a Suit No.1095/2003 before this Court on original side impleading various respondents including appellant as respondent No.5. Essentially, the claim of the appellants in the suit was that they were lawful owners of the property bearing Plot No.JM-3/303, (G-1, 2, 3, 1/1, ½ entire) total admeasuring 1175 square yards, Jamshed Road, Karachi and are in possession thereof. Later on, they came to know that defendant No.5/appellant had faked a conveyance deed in respect of the property and was claiming its ownership, hence, they filed suit with the following prayers:-

- “1. Declare that the plaintiffs are lawful owners of the Plot bearing No JM-3/303, (G-1, G/2, G/3, 1/1, ½ entire) total admeasuring 1175 square yards by virtue of registered Conveyance Deed dated 24th day of February 2003;
- II. Cancel any other documents if registered in the name of any person or persons, more specifically in the name of defendants No.5 and declare that it has no legal value in view of the registered Conveyance Deed dated 24-2-2003 in favour of the plaintiffs;
- III. Declare that (illegal sealing of the plaintiffs' suit property bearing No.JM-3/303 admeasuring 1175 square yards, Jamsheed Quarters, Karachi including adjacent plot bearing No.JM/313 by the defendant No.7 as well as demolishing of the protective wall of the plaintiffs' plot is illegal, void ab initio and liable to be declared as such;
- IV. Declare that the defendant No.6 has no jurisdiction to issue notices under Section 160 Cr.P.C. dated 18-9-2003 and 23-9-2003 and consequently declare that the notices under Section 160 Cr.P.C. dated 18-9-2003 and 23-9-2003 are illegal, void, ab initio;

- V. Mandatory injunction suspend the operation of the notices under Section 160 Cr.P.C. dated 18-9-2003 and 23-9-2003 issued by the defendant No.6 as well as sealing notice of the defendant No.7 in respect of the property bearing No.JM-3/303, admeasuring 1175 square yards Jamsheed Quarter, Karachi and direct the defendant No.7 to immediately re-erect the protective wall around the plaintiffs' plot and the adjacent plot bearing No. JM-313 at their own costs and expenses;
- VI. Permanent injunction restrain the defendants specifically defendants No.5, 6 & 7 or any person or persons for, under or on behalf of the Defendants including (without limitation) their servants, employees, agents, attorneys /partners / Directors or officers from dispossessing the plaintiffs and interfering, demolishing or creating any third party interest in the lawful possession of the plaintiffs' plot bearing No.JM-3/303, admeasuring 1175 square yards Jamshed Quarters, Karachi.
- VII. Money decree grant damages to the plaintiffs to the tune of Rs.75 Lacs each which will be paid by the defendants (No.5, 6 & 7 jointly and severally due to the illegal demolition of protective wall around the plaintiffs' plot bearing No.JM-3/303 and adjacent plot of the plaintiffs bearing No.JM-313, Jamshed Quarters, Karachi and causing harm their reputation;
- VIII. Declare that the Conveyance Deed dated 31-7-1978 executed between Abrar Hussain and the defendant No.5 and Rectification Deed dated 9-6-1988 and PTD dated 15-1-1964 are illegal, void, ab initio and has no legal value in view of the order of Honourable Supreme Court of Pakistan dated 12-7-1995 in CPLA No.375-K/1994, whereby Mst. Rashida Begum was declared owner of the property in question as well as in view of PTO dated 25-10-1963 and PTO dated 10-2-1992 issued by the defendant No.1, therefore, not only illegal registered Conveyance Deed dated 31-7-1978, Rectification Deed dated 9-6-1988 and alleged illegal PTD dated 15-1-1964 are illegal, void ab initio documents, hence liable to be cancelled;
- IX. Declare and cancel the same in view of the Honourable Supreme Court judgment dated 12-7-1995 as well as PTO dated 25th October 1963 issued in the name of Mst. Rashida Begum, who was real owner of the property and after her demise her legal heirs become owner of the property in question, the said property was transferred in the name of legal heirs of the said deceased on 10-2-1992, thereafter, Muhammad Akhtar Moondia purchased the property through registered Conveyance Deed from whom the plaintiffs purchased the property in question. In view of the aforesaid documents i.e. Conveyance Deed dated 31-7-1978, Rectification Deed dated 9-6-1988 and alleged illegal PTD dated 15-1-1964 are nothing but fictitious, forged, fabricated and collusive documents and liable to be cancelled;
- X. Permanent injunction restrain all the defendants specially defendant No.5 or any person or persons acting for, under or on behalf of them including (without limitation) their servants, employees, agents, attorneys or officers from dispossessing, demolishing, interfering or creating any third party interest in the suit property of the plaintiffs bearing No.JM-3/303, Jamshed Quarter, Karachi admeasuring 1175 square yards;
- XI. Permanently restrain the defendant No.4 from registering any lease or sub-lease in respect of the property bearing No.JM-3/303, admeasuring 1175 square yards, Jamshed Quarter, Karachi;

XII. Grant any other / better relief(s) which this Honourable Court may deem fit and proper under the circumstances of the case, may kindly be passed;

XIII. Grant costs of the proceedings.”

2. Respondent No.5, being summoned, appeared and contested claim of appellants by filing a written statement. He executed irrevocable power of attorney dated 02.01.2003 in favour of one Mr. Umar Abdul Hassan, his nephew, to represent him in the suit. During pendency of the suit, on 19.10.2010, two CMAs No.10623/10 and 10624/2010 were filed before the learned Single Judge. Former application was for urgency and the later was U/O 23 Rule 3 read with Section 151 CPC seeking decision of the suit on the basis of compromise on following terms;

- “1. That the Defendant No.5 do hereby withdraw, forgo and surrender all his claims and objections in respect of the suit property bearing Plot No.JM-3/303 (G-1, 2, 3, 1/1, 1/2 entire) total admeasuring 1175 sq. yards situated at Jamshed Road, Karachi in favour of the two Plaintiffs as they are the lawful, absolute and genuine owners of the aforesaid property.
2. That the Defendant No.5 has also no objection, hence both the parties pray that the aforesaid property be de-sealed by the Nazir of this Hon'ble Court and physical possession of the same may kindly be handed over to the Plaintiffs immediately.
3. That after the above compromise is effected, both the Plaintiffs and Defendant No.5 shall have no claim against each other.”

Both the applications were taken up, urgency was granted and application U/O 23 Rule 3 read with Section 151 CPC was allowed as prayed and the suit was decreed in the terms and conditions set out in the application. Appellant when come to know of the aforesaid order, filed an application u/s 12(2) CPC for setting aside the same. This application has been dismissed vide order dated 03.10.2022, which order the appellant has impugned in this appeal.

3. We have heard learned counsel for the parties. Learned counsel for the appellant has argued that appellant has impugned this order on the ground that his attorney was not competent to file application for compromise in the suit; that he was not present or had appeared before the Court and had not signed any compromise application; that he had not filed any affidavit in support of said application; ; that his signature on the compromise application has been faked; that the order decreeing the suit on the basis of compromise was obtained through fraud and

misrepresentation of facts; that he is owner of the property and in his possession since inception.

4. On the other hand, learned counsel for respondents have supported the impugned order. Learned AAG, has however submitted that any order in accordance with law may be passed.

5. We have considered submissions of the parties and perused material available on record. The order, whereby compromise application was allowed, shows that the suit was not fixed on that date. It was taken up only on urgent application. The order does not show that appellant/defendant No.5 or for that matter, any party was present before the Court and had verified the fact of filing application, nor it seems the contents of the application were confronted to the parties. The application seeking compromise between the parties contains signature of the attorney as well as of appellant, which itself is an anomaly as throughout the proceedings, appellant was being represented by his attorney in terms of irrevocable power of attorney, therefore, signing of this particular application by appellant himself looked strange but the learned Judge proceeded to dispose of the application without taking notice of such oddity. Neither the signature of attorney, nor of his signature on the application have been verified by the advocate but the learned Single Judge has assumed that the said signatures are verified and accepted the application. Then, the application for compromise was filed through attorney of the appellant in terms of irrevocable power of attorney but that power of attorney does not confer such authority on attorney to enter into compromise with the other party in the said proceedings.

6. When all these facts were agitated in application u/s 12(2) CPC by the appellant before the learned Single Judge seeking setting aside of the impugned order, she did not take into account the same. On the contrary, learned Single Judge having been influenced by the fact of presence of CNICs as mentioned in the order, presumed that the parties were present at the time of disposal of compromise application and proceeded to dismiss the application. In our view, mere mention of CNICs of the parties does not mean that they were present before the Single Judge. Because the order dated 19.10.2010 challenged u/s 12(2) CPC does not reflect so firstly, and secondly we have not found CNIC number of any party mentioned in the said order. That said usually the copies of CNICs are filed by the parties along with the pleadings, therefore, mere presence of

the CNICs along with application and a mention that the same have been verified, without there however being any evidence in this regard, does not mean that the parties were present before the Judge and had accepted the contents of application.

7. In such facts and circumstances, the grounds taken by appellant in his application u/s 12(2) CPC that the order decreeing the suit on the basis of compromise was obtained through fraud and misrepresentation of the facts cannot be ruled out. The suit otherwise was fixed for recording of evidence and the issues were already framed, at such stage compromise on the terms as are as mentioned above: deprivation of defendant No.5/appellant of all his claims and receding of objections by him should have caused alarm to the Single Judge, and she ought to have called the parties before her to verify the terms and conditions of the compromise application, instead of rushing to pass order on the application in haste. It is strange that the Single Judge on the very date when the compromise application was filed, and when only two advocates were present without any party, allowed the application and decreed the suit. We, therefore, allow the application u/s 12(2) CPC and set aside the impugned order as well as order dated 19.10.2010 decreeing the suit. As a result, the Suit No.1095/2013 stands revived. Since the issues have already been framed in the suit, the parties are directed to lead their evidence for a decision on merits of the case.

This High Court Appeal is disposed of in above terms along with pending application(s).

JUDGE

JUDGE

Rafiq/P.A.