

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 296 of 2021

Plaintiff : Pir Mohammad Yousuf Jan Sarhandi, since deceased through his legal heirs, through Mr. Abdul Qadir Khan, Advocate.

Defendants : Abdul Baqi Mahar and 8 others
No. 1 to 9 (Nemo)

Defendant : Hasnain Khan Mahar, through
No. 10 Mr. Ovais Ali Shah, Advocate.

Defendants : Province of Sindh, through Secretary Board
No.11 & 12 of Revenue and another (Nemo)

Date of Hearing : 17.12.2024
Date of Order : 17.12.2024

ORDER

ZAFAR AHMED RAJPUT, J: - By this order, I intend to dispose of C.M.A. No. 17825 of 2022, filed on behalf of the defendant No. 10 under Order VII, rule 11, CPC, seeking rejection of the plaint in the suit.

2. Precisely stated, the facts of the case are that the plaintiff has instituted the instant suit seeking declaration, possession, specific performance, cancellation, mesne profits and permanent injunction, alleging therein that he is the lawful owner of House No. 14/II, measuring 500 square yards, situated at Street No. 23, Khayaban-e-Tauheed, DHA Phase-V, Karachi (“**suit property**”) by virtue of Registered Sale Deed No. 3441, dated 31.05.2005; that the defendant No.1 was his friend and had been residing in the suit property as a tenant since 2005; that he and his family applied for asylum in the United Kingdom, at that juncture, the defendant No.1 provided him with financial assistance; that his asylum application was refused and on his return to Pakistan, he entered into a Sale Agreement (“**Agreement**”) with the defendant No.1, on 15.03.2015, in respect of suit property, agreeing the sale consideration at Rs.8,00,00,000/-; an amount of Rs.1,50,00,000/-, previously advanced by the defendant No.1 as financial assistance to him was adjusted towards sale consideration, while the remaining amount of Rs. 6,50,00,000/- was agreed to be paid within five years in installments, and a proposed conditional conveyance deed was registered on 13.11.2017, vide Registration No.4239, in the names of defendants No. 4 to 10, who were described as the

benamidar/children of the defendant No.1; however, the original title documents remained in his custody in terms of the Agreement, and the suit property was not mutated in favour of the defendants in the records of DHA or the Cantonment; that the defendant No.1 paid an additional amount of Rs.1,50,00,000/- on 16.05.2019, thereby bringing the total amount paid towards the agreed sale consideration to Rs.3,00,00,000/-; that the defendant No.1 failed to pay the remaining amount of Rs.5,00,00,000/- within the stipulated period of five years, which expired in March 2020, but despite such default, the defendant No.1 continued to occupy the suit property as a tenant; and in collusion with the defendants No.2 to 10, he instituted Civil Suit No.988/ 2020 before this Court on 18.08.2020 without impleading him as a party and succeeded to obtain a restraint order in respect of the suit property, wherein he concealed the alleged tenancy arrangement and claimed his ownership over the suit property; that upon expiry of the stipulated five-year period and failure to pay the balance sale consideration, the defendant No.1 ceased to have any right to purchase the suit property or to obtain the original title documents, and that the amount of Rs.3,00,00,000/- already paid became liable to forfeiture under the terms of the Agreement; that one of the sons of defendant No.1 falsely reported the original registered sale deed as lost and obtained a duplicate thereof from the office of the Sub-Registrar, despite his (*plaintiff's*) assertion that the original document remained in his custody. Hence, the plaintiff has instituted the instant suit seeking the following reliefs:

- a) To declare that Plaintiff is the lawful owner of property bearing House No. 14/II measuring 500 Sq yds double story Street 23 Khayaban-e-Tauheed DHA V, Karachi.*
- b) To declare that in pursuance of the Irrevocable Contract/ Agreement dated 15-03-2015 existing between the Plaintiff and Defendant No.1 and without payment of its Cost by the said Defendant No. 1 to the Plaintiff within the stipulated period of five years, the Conveyance Deed Registration No. 4239 dated 13-11-2017, in respect of property bearing House No. 14/II Street 23 Khayaban-e-Tauheed DHA V, Karachi be treated as cancelled, as the same had lost its sanctity, validity, legitimacy and efficacy; being a fraudulent transaction.*
- c) To direct the Defendant No. 1 to 10 to deposit Rs. 200,000/-Rupees Two lac only as mesne profits per month with effect from 1st September 2020 with Nazir of this Hon'ble Court per rules up to the date of final decision and the date of handing over the vacant possession of the rent premises (Suit Premises) to the Plaintiff.*

d) To direct the Defendants to immediately vacate the Suit Property and restore the possession to the Plaintiff under intimation to the Nazir of this Court and in case of failure by the Defendants, the Nazir be directed to seek necessary assistance of the Police (with Lady Police) and hand over peaceful vacant possession of the Suit Property to the Plaintiff.

e) To restrain permanently the Defendants, their agents, labourers workers, attorney, men or persons on its behalf, from creating any third-party interest, delivering possession as well as from selling, gifting and transferring the property bearing House no. 14/II 500 Sq yds Street 23 Khayaban-e-Tauheed DHA V, Karachi, till final decision of the above suit.

3. The defendants No. 1, 3 and 4 have contested the suit by filing their written statement, wherein they averred that the suit property was conditionally sold at the request of the defendant No.1 in favour of his children; that the condition of the sale was that the transaction would remain subject to payment of the entire sale consideration; that the defendant No.1 requested the plaintiff to execute and register the conveyance deed in favour of his children in advance, as the defendant No.10 was residing in a rented house and his prospective in-laws were allegedly delaying his marriage on that account; that the conveyance deed was registered, and other sale-related transactions were also carried out between the plaintiff and the defendant No.1; that it was agreed that, upon payment of the outstanding amount, the plaintiff would hand over the original title documents and complete file of the suit property to the defendant No.1 and until such payment, mutation of the property in the DHA and Cantonment records would not be effected in favour of the defendant No.1's children; that the defendant No.10 instituted Suit No.988/2020 despite having been prohibited by the defendant No.1 from initiating any proceedings against the plaintiff; that the defendant No.10 allegedly sought to take advantage of the conveyance deed, which had purportedly been executed conditionally, with a view to assert his rights over the suit property; that the defendant No.1 remained willing to pay the outstanding balance, and the plaintiff was willing to allow him further time to arrange the remaining sale consideration; that the other family members were unaware of the institution of the said suit.

4. Learned counsel for the defendant No.10 has contended that the defendants are members of the same family, the defendant No.1 is the father of the defendants No.3 to 10, while the defendant No.2 is their mother and the

first wife of defendant No.1; yet, the defendants No.1 & 2 have been living separately since 2009; that the defendants No.4 to 10 are the co-owners of the suit property, while the defendants No.2, 6 and 10 are in possession thereof pursuant to the conveyance deed; that, owing to their cordial relationship with the plaintiff, the defendants initially occupied the suit property as tenants in 2005 under an understanding that they would eventually purchase it from the plaintiff; that relying upon such understanding, the defendants demolished the dilapidated structure and constructed the property according to their requirements; that the alleged transaction was duly completed through the conveyance deed; that family differences had existed for some time, the situation materially worsened in mid-December 2019 when the defendants No.1 & 4 started interfering with the peaceful possession of the defendants No.2, 6 and 10, creating disturbances at the suit property, consequently, the defendants No.5 to 10 instituted Suit No. 988 of 2020 before this Court, seeking, *inter alia*, to restrain the defendants No.1 & 4 from forcibly entering the suit property and a declaration that the defendants No.4 to 10 were its lawful owners; that the present suit, orchestrated by the defendants No.1 & 4, has been instituted with mala fide intent; that the plaintiff is attempting to obtain a declaration in respect of the suit property on the basis of forged and fabricated documents; that the suit is barred by limitation, having been instituted after expiry of the prescribed period of three years; that the timing of institution of the present suit further demonstrates its mala fide nature, as the same was filed only after the defendants No.5 to 10 had obtained the interim order against the defendants No.1 & 4 in Suit No. 988 of 2020; that, for purposes of a suit for declaration under Section 42 of the Specific Relief Act, 1877, the plaintiff must establish an existing legal right or interest in the property, and even if the alleged Agreement is assumed to exist, it neither creates nor establishes any right, title or interest in the suit property in favour of the plaintiff; that, after executing the conveyance deed and receiving the full and final sale consideration, the plaintiff ceased to have any right, title or interest in the suit property; therefore, he is not entitled to seek any relief in respect thereof on the basis of the alleged Agreement, tenancy agreement or any other purportedly fabricated document; that the plaintiff is not entitled to seek declaration, possession or any other relief concerning the suit property, and the plaint is liable to be rejected as being barred by limitation, founded upon forged and fabricated documents, collusive, mala fide and otherwise not

maintainable.

5. On the other hand, learned counsel for the plaintiff has maintained that the plaint is not liable to be rejected under Order VII, rule 11, CPC, as the matter involves intricate and disputed questions of fact which can only be determined after recording and appreciating the evidence of the parties; that the plaintiff is the lawful owner of the suit property, who was induced to enter into the sale transaction on the basis of the Agreement without being aware of any connivance between the defendant No.1 and his legal heirs; that relying upon the assurances of the defendant No.1, the plaintiff executed a conditional conveyance deed in favour of the defendant No.1's legal heirs in accordance with the terms of the Agreement; that the plaintiff had no knowledge that the defendants would breach the Agreement and withhold the balance sale consideration, thereby compelling him to institute the present suit; that an amount of Rs.5,00,00,000/-, out of the agreed sale consideration, remains outstanding and payable by the defendant No.1 to the plaintiff; that, except the defendant No.1, none of the remaining defendants had any role in negotiating or concluding the sale transaction concerning the suit property; that the original title deeds and the complete file relating to the suit property remain in the plaintiff's custody, as the balance sale consideration has not been paid in accordance with the Agreement; that upon the defendant No.1's failure to pay the remaining sale consideration, no lawful right or interest accrued in favour of the defendant No.10, his siblings, or their mother; that the receipt relied upon by the defendant No.10 as proof of payment is forged and fabricated; that the plaintiff possesses the requisite legal status, interest and character to maintain the present suit and that the same is not barred under Section 42 of the Specific Relief Act, particularly when it has been instituted to enforce his rights arising from the defendants' alleged breach of the Agreement; that the suit is not barred by limitation, as the question of limitation constitutes a mixed question of law and fact which cannot properly be determined without recording evidence; that the cause of action arose repeatedly from 15.03.2015 to 15.03.2020, whenever the defendants assured the plaintiff that the outstanding sale consideration would be paid within the stipulated period of five years, and finally arose when the defendant No.10, along with his siblings, instituted Suit No.988 of 2020 on 18.08.2020, asserting a claim over the suit property; that the defendants had instituted Suit No.988 of 2020 seeking a declaration of their ownership of the suit property on the basis of the

purported conveyance deed, but intentionally did not implead the present plaintiff as a party therein, and upon learning of the proceedings, he filed an application under Order I, rule 10, CPC on 10.11.2020; that the C.M.A. under reference has been filed merely to obstruct the proceedings, avoid payment of the outstanding sale consideration, and evade liability towards rent or mesne profits; that the defendant No.10 had falsely claimed to have incurred substantial expenditure on major alterations to the suit property, whereas only minor external repairs had been carried out by the plaintiff in connection with the defendant No.10's marriage, and no permission for any major construction or alteration had been obtained from the DHA; that in view of the disputed questions concerning the Agreement, payment of the sale consideration, genuineness of the receipts, conditional nature of the conveyance deed, limitation, tenancy, rent, mesne profits, and the defendants' alleged ownership, the plaint could not be rejected at the preliminary stage under Order VII, rule 11, CPC; hence, the C.M.A. under reference being misconceived and mala fide is liable to be dismissed with costs.

6. I have considered the submissions of learned counsel for the parties and examined the material available on record.

7. The scope of an application under Order VII, rule 11, CPC is limited. In this regard, the Court is required to examine the averments contained in the plaint, read with the documents relied upon by the plaintiff, and presume such averments to be correct for the limited purpose of determining whether the plaint discloses a cause of action or is barred by any law or even otherwise not maintainable in law. The defence set up by the defendants, or disputed documents relied upon in support thereof, ordinarily cannot form the basis for rejection of the plaint. Where determination of the objection involves disputed questions of fact or mixed questions of law and fact requiring evidence, the jurisdiction under Order VII, rule 11, CPC cannot appropriately be invoked.

8. In the present case, the plaintiff has specifically pleaded that he is the owner of the suit property; that the defendant No.1 was inducted therein as a tenant; that the Agreement was executed between them; that the registered conveyance deed dated 13.11.2017 was executed conditionally in favour of defendants No.4 to 10; that only Rs.3,00,00,000/-, out of the agreed sale consideration, was paid, and that the balance amount of Rs.5,00,00,000/-

remained outstanding. The plaintiff has further pleaded that the conditions subject to which the conveyance deed was executed were not fulfilled; that the original title documents remained in his custody, and that the defendants subsequently asserted ownership over the suit property. These averments, if taken at face value for the purposes of the present application, sufficiently disclose a cause of action. The plaint contains specific assertions regarding the execution and alleged conditional nature of the transaction, payment and non-payment of the sale consideration, possession of the suit property, the alleged tenancy, and the plaintiff's entitlement to cancellation, possession, mesne profits and permanent injunction. Whether the alleged Agreement and tenancy arrangement are genuine; whether the conveyance deed was conditional or absolute; whether the entire sale consideration was paid; whether the receipts relied upon by either side are genuine; whether the defendants were tenants or owners; and whether the plaintiff is ultimately entitled to the reliefs claimed are matters which can only be determined upon appreciation of evidence.

9. The allegation that the suit is founded upon forged, fabricated or backdated documents likewise cannot be conclusively adjudicated in proceedings under Order VII, rule 11, CPC. The genuineness, execution, legal effect and evidentiary value of the documents relied upon by the respective parties constitute disputed matters requiring determination on the basis of evidence. Similarly, the legal and factual effect of the registered conveyance deed, including the plaintiff's assertion that it was executed subject to a separate arrangement with the defendant No.1, cannot be determined merely on the basis of the competing pleadings.

10. The objection regarding limitation also does not warrant rejection of the plaint at this stage. The plaintiff has pleaded that the cause of action arose upon failure of the defendant No.1 to pay the balance sale consideration within the agreed period and subsequently when the defendants asserted ownership over the suit property by instituting Suit No.988 of 2020. Whether these assertions are factually correct, whether the alleged Agreement affected the accrual or computation of limitation, and the precise date from which the cause of action is to be reckoned are matters requiring examination of the relevant documents and evidence. Thus, the bar of limitation is not apparent on the face of the plaint so as to attract Order VII, rule 11(d), CPC.

11. Likewise, the contention that the plaintiff lacks the requisite legal status or interest to maintain the suit, cannot be accepted at this preliminary stage. The plaintiff has asserted a subsisting legal interest in the suit property and has sought consequential reliefs including cancellation, possession, mesne profits and permanent injunction. Whether he ultimately succeeds in establishing the asserted right or interest is a matter to be determined on the merits of the suit and cannot be conflated with the question whether the plaint discloses a cause of action.

12. It is well settled that where the averments contained in the plaint give rise to disputed questions of fact or mixed questions of law and fact, the appropriate course is to frame the necessary issues and adjudicate the controversy after recording evidence, rather than terminate the proceedings summarily under Order VII, rule 11, CPC. In the present case, the objections raised by the defendant No.10 substantially depend upon acceptance of his version regarding the conveyance deed, payment of sale consideration, possession, tenancy, genuineness of the documents and limitation. These matters cannot appropriately be adjudicated on the basis of the defence at the preliminary stage.

13. For the foregoing reasons, I am of the considered view that the plaint cannot be said to be devoid of a cause of action, nor is the suit, on the basis of the averments contained in the plaint alone, shown to be barred by any law. The objections raised by the defendant No.10 involve disputed questions of fact and law which require adjudication upon the basis of evidence. Consequently, the application under Order VII, rule 11, CPC, being devoid of merit, is dismissed.

14. Above are the reasons of my short order dated 17.12.2024.

JUSTICE