

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.710 of 2003

Muhammad Nawaz ----- Plaintiff

Versus

Mohammad Raees & others -----Defendants

Dates of hearing: 22.09.2016, 19.10.2016 & 08.11.2016

Date of judgment: 13.01.2017

**Plaintiff: Through Mr. Agha Zafar Ahmed,
Advocate.**

Defendant No.2: Through Mr. S. Ehsan Raza, Advocate.

Defendant No.8: Through Mr. Shabbar Rizvi, Advocate.

J U D G M E N T

Muhammad Junaid Ghaffar, J. Through this Suit the plaintiff primarily seeks Cancellation of Sale Deed dated 15.04.2003, executed in favour of defendant No.2 on the ground that the same was executed under duress and coercion. Additionally, the plaintiff seeks Damages and so also Declaration that the plaintiff is not liable to pay money to defendants No.1, & 3 to 6 on account of debts repayable by defendant No.7 to the said defendants.

2. Precisely, the case as stated appears to be that that the plaintiff was owner of a House bearing No.B-143, Block-J, measuring 400 Sq. Yds. North Nazimabad, Karachi, KDA Scheme No.2 (Suit Property) and on 13.04.2003 a messenger came to the plaintiff asking him to attend the Police Station North Nazimabad in connection with an inquiry and when the plaintiff went to the Police Station he was informed that his brother and two cousins

have been named in F.I.R No.118/2003 alongwith defendant No.7 for offences under Sections 406, 409, 420, 506/B-489/34 PPC as defendant No.7 owed money to defendant No.1 amounting to Rs.36,26,000/-. It is further stated that thereafter the plaintiff was detained in the Police Station till such time he was bailed out by the Court. It is further stated that on 14.04.2003 at about 4:30 a.m. the defendants No.1, & 3 to 6 came to the Police Station and plaintiff's custody was handed over to them, whereafter he was taken in a private car to his home and on gun point was forced to go inside and bring the original papers of the Suit Property and was asked to sign documents captioned as "PLEDGE" and "deposit of original documents" as a surety for the amount allegedly outstanding against defendant No.7. The plaintiff took the file of Suit property and he was brought back to Police Station, North Nazimabad, and once again handed over to the Police and on 14.04.2003 at about 1:00 p.m, the defendants No.1 & 3 to 6 again took the plaintiff to the Office of Sub-Registrar "T" Division VIII-B and he was presented before the Registrar and was forced to sign certain documents, which he believed to be a Pledge of the documents, but in fact it was a Sale Deed in favour of defendant No.2. Thereafter, he was set free by the Police and subsequently he made several complaints by himself and his wife to various authorities but no action was taken against the said defendants. It is the case of the plaintiff that the alleged Sale Deed was without due consideration, under duress and coercion and therefore, is void, hence instant Suit.

3. After issuance of summons and notices, Written Statements were filed and the plaintiff led its evidence through P.W.1 Muhammad Nawaz, P.W-2 Abdul Qayyum Rashid, P.W-3 Syed Muhammad Kalimuddin, whereas, defendants led its evidence through D.W-1 Muhammad Raees, D.W-2 Yaseen Khan, D.W-3 Mirza Afaq Baig, D.W-4 Syed Muhammad Tehseen, D.W-5 Kashif Muhammad and D.W-6 Aamir Muhammad. On 08.08.2007 the following Issues were settled:-

- i. Whether the sale transaction of the suit property is in violation of section 54 of the Transfer of Property Act, 1882?

- ii. Whether defendant No. 2 has lawfully purchased the suit property from plaintiff on the payment of sale consideration alleged to have been paid to the plaintiff?
- iii. Whether the plaintiff was made to sign the sale deed before the Sub-Registrar "T" Division VIII-B by all defendants relating to suit property under duress, coercion and by using force of weapon?
- iv. Whether the plaintiff and defendant No. 7 who is his nephew, are in collusion and plaintiff has put him (defendant No. 7) in the row of defendant's malafidely with ulterior motives?
- v. Whether the suit has been filed by the plaintiff is the result of business dispute between the defendant No. 7 and defendants No. 1, 3 to 6 and there is no concern with the defendant No. 2?
- vi. Whether plaintiff has any cause of action?

4. Learned Counsel for the plaintiff has contended that the plaintiff is though related to defendant No.7 (nephew) but had no concern insofar as his business was concerned, and therefore was not liable to pay any amount to defendants on his behalf. He has further submitted that the Sale Deed in question was executed per force, whereas, no sale consideration was ever paid to the plaintiff and therefore in terms of Section 54 of the Transfer of Property Act, the same is void. He has further contended that neither any Sale Agreement was ever executed nor the same has been placed on record by the defendants nor any sale receipt or acknowledgement of payment has been brought on record by the defendants and therefore the Sale Deed in question is a void document notwithstanding the recital in the said Sale Deed that payments have been made. He has read out the evidence of D.W-1 Muhammad Raees, D.W-2 Yaseen Khan, D.W-3 Mirza Afaq Baig, D.W-4 Syed Muhammad Tehseen and has contended that their evidence is contradictory in respect of payment of sale consideration to the plaintiff, and therefore the valid ingredients of a proper Sale Deed are not proved by their evidence, hence, the Sale Deed is liable to be declared as void and accordingly cancelled. He has relied upon the cases reported as **PLD 1986 SC 519 (Muhammad Sharif and others v. Allah Dad Khan), 2016 YLR 1233 (Farzand Ali and others v. Bashir Ahmad), 2015 CLC 994 (Fakhar-ud-din through L.Rs v. Muhammad Iqbal and others), 2015 CLC 549 (Mst. Akbar Jan through L.Rs and 9 others v. Mst. Kalsoom Bibi and 6 others), 2007 SCMR 729 (Rehmatullah and others v. Saleh**

***Khan and others*), 2000 SCMR 346 (*Abdul Rahim and another v. Mrs. Jannatay Bibi and 13 others*).**

5. On the other hand, learned Counsel for defendant No.2 has contended that it is for the plaintiff to prove his case and not the defendants as burden is upon the plaintiff. He has further contended that the property in question has already been sold out in the year 2005 and was always in the physical possession of defendant No.2, whereas, the plaintiff has not sought any consequential relief of repossession, therefore, instant Suit is otherwise liable to be dismissed. He has further contended that instant Suit was filed almost after two months of the signing and executing the Sale Deed in question, whereas, the plaintiff has failed to prove any of his allegations through any corroborative evidence. He has contended that there is no restriction in sale and purchase of a property on cash basis. In support of his contention he has relied upon the cases reported as 1999 YLR 1610 (*Farmaullah and others v. Qalandar and 5 others*), 1999 YLR 910, 2001 CLC 239 (*Fida Hussain and 2 others v. Province of Punjab through Secretary Settlement, Board of Revenue, Punjab, Lahore and 4 others*), 1980 CLC 1483 (*Khawaja Muhammad Naeem and others v. Tasleem Jan and others*), 1969 DLC 416 (*Mono Mohini Devi v. Sirajuddin Ahmed Bhuiya*) and 2008 MLD 877 (*Raja Shamsher Mehdi v. Malik Muhammad Riaz and another*).

6. The Counsel for defendant No.8, who is subsequent purchaser has contended that he was not in knowledge that any litigation is going on, whereas, he was subsequently arrayed as a defendant and is in possession of the property in question.

7. I have heard all the learned Counsel and perused the record as well as the evidence led by the parties. The facts, as stated hereinabove, reflect that it is the case of the plaintiff that the property was never sold by him to defendant No.2 and therefore the Sale Deed in question in favour of said defendant be cancelled. The case of the plaintiff as set up in the Plaint is that the Sale Deed in question was executed by him under duress, coercion and intimidation of defendants No.1 & 3 to 6. It is his case that though he made an effort to get an F.I.R registered against the said

defendants, however, due to non-cooperative attitude of the concerned police officials, he was unable to do so. Learned Counsel for the plaintiff was questioned as to whether any effort was made by the plaintiff to get an F.I.R registered in accordance with law i.e. an Application under Section 22-A Cr.P.C., to which learned Counsel replied in negative. It further appears that the plaintiff in his affidavit-in-evidence and also his cross-examination has contended that on 13.04.2003 a messenger of Police Station North Nazimabad came to his residence and informed him that he was required in Police Station in connection with an inquiry conducted by one Irfan Haider, Sub Inspector, whereby, he was informed that his brother and cousins have been named in F.I.R No.118/2003. In para-8 & 11 of his affidavit-in-evidence he further states as follows:-

8. I say that on 13-04-03 (Exact date 14.04.2003) a messenger from P.S. North Nazimabad came to my residence and informed me that I was required in Police Station in connection with an inquiry conducted by one Irfan Hyder Sub-Inspector, whereby, I was informed that my brother Qadir, cousin Irshad have been named in the F.I.R No.118/03 under section 406-409-420-506/B-489/34 PPC.

“11. I say that on 14-03-03 at about 4:30 a.m., the defendant No.1,3,4,5 and defendant No.6 came in the police station and I was handed over to the said defendants, where after the said defendants boarded me in a private car and reached my house/suit property and threatened me on gun point to bring out the title documents of the suit property without disclosing anything to house members. I went inside my house alongwith defendant No.3 and defendant No.4 and my family members and my tenant witnessed this event. I took the file of the title documents of the suit property.”

8. When veracity of this piece of evidence led by the plaintiff is examined, it appears that the plaintiff firstly states that a messenger from P.S. North Nazimabad came to my residence and informed me that I was required in Police Station in connection with an inquiry conducted by one Irfan Hyder Sub-Inspector and secondly that on 14.03.2003 (correct date is 14.4.2003) at about 4:30 a.m. the defendants No.1 & 3 to 6 came to the Police Station and thereafter he was taken to his home alongwith defendants No3 & 4 and the entire incident was witnessed by his family members and his tenant and now to corroborate this evidence, he was required to produce supporting witnesses i.e. his family members and the

tenant. Insofar as his family members are concerned he did not produced any of them which according to him had witnessed such incident and only his tenant P.W-3 Kaleemuddin came in the witness box. This witness in his affidavit-in-evidence states in Para Nos.4 & 5 as follows:-

“4. I say that a police messenger came at the suit property and asked the plaintiff to accompanying him to the P.S North Nazimabad on 13-04-03.

5. I say that in the early morning of 14.04.03, I saw the plaintiff alongwith two persons later found to be defendant No.3 and defendant No.4 getting inside the suit property of the plaintiff and coming back with a file in the hand of plaintiff which was later snatched by the defendant No.3 and defendant No.4.”

9. When this witness was cross-examined on these assertions in the affidavit-in-evidence he has replied as follows:-

“The incident which I have stated in para 4 of my affidavit was occurred in my presence. Voluntary says that plaintiff was not present. The Police messenger very rashly asked to send the plaintiff to PS.

In para 4 it is stated that “messenger came at the suit property and asked the plaintiff to accompany him whereas, today I have stated that plaintiff was not present and messenger harshly asked to send the plaintiff at PS. My statement which I have given today is correct.”

I know Raees personally.

It is correct that in para 7, I have described about defendant No.1 to 6 unknown but I know Raees.”

10. Now this is the only witness, who has been examined by the plaintiff to support his assertion that on 14.04.2003, the incident, as narrated by him, happened. However, when the evidence of P.W-3 is minutely examined, the assertion that the police messenger came at the Suit Property and asked the plaintiff to accompany him to Police Station North Nazimabad is not corroborative, but, is rather negated, as he states that plaintiff was not present at such event. He was again put a question to that effect that whatever he has stated in Para-4 of his affidavit-in-evidence is contrary to what he has responded. The witness once again submits that whatever he has stated today in Court before the Commissioner is correct. The witness has further stated that in para-7 of his affidavit-in-evidence that several unknown persons,

who later on found to be defendants No.1 to 6 visited the Suit Property but when he was confronted as to whether he knows defendant No.1 to which he replied in affirmative that I know Raees (defendant No.1) personally. On the one hand he says that some unknown persons came to the Suit property and on the other he says that he knows Raees personally. Similarly the Plaintiff says that defendant Nos.1, 3, 4, 5 & 6 took him from the Police Station for collecting the property documents, whereas, the supporting witness states that only defendant No.3 & 4 came to the Suit property. Now the plaintiff's entire case for proving this incident rests on this witness, who is giving contradictory evidence and therefore he cannot be termed as a reliable witness. His evidence does not seem to be sound and based on proper reasoning and is not confidence inspiring for the Court to take the same into consideration and therefore insofar as the claim of the plaintiff that any such incident happened on 14.04.2003 as stated in Para-11 of his affidavit-in-evidence is not proved.

11. On the other hand, though the Learned Counsel for the plaintiff has made an effort to prove and substantiate his case on the weaknesses of the defendants' witnesses, however, I may observe that it is by now a settled proposition of law that it is for the plaintiff to first prove and justify its case on its own evidence to shift the burden on the defendants, and only thereafter, any reliance could be placed on the weaknesses of the defendants' witnesses. It is settled law that a party must succeed on the strength of its own case and not on the weakness of the other side. (***See Kazi Noor Muhammad v. Pir Abdul Sattar Jan-PLD 1959 (W.P.) Karachi 348-DB-SHC***). The entire case of the plaintiff rests on his assertion that the sale deed in question was executed by him under coercion, however, he has miserably failed to prove any such coercion, either by any independent evidence or by his own conduct. The defendants in this case have examined the two attesting witnesses of the Sale Deed and after going through their cross-examination, I do not see that their evidence has been shaken and seems to be confidence inspiring for the Court to consider the same. Merely for the fact as alleged on behalf of the plaintiff that there is some contradiction as to payment of the cash

amount and the manner in which the same was paid could not *ipso-facto* be taken into consideration for cancelling the Sale Deed in question. Both of them have admitted in evidence that payment was made to the plaintiff in their presence and therefore, such piece of evidence is enough for the defendants to justify their stance. The said two attesting witnesses had led their evidence, which has not been shaken in the cross-examination; therefore, it is to be regarded as acceptable. Moreover, the plaintiff did not made any effort(s) to bring in any independent witness, including the Registrar before whom the Sale Deed was registered to support his contention and as discussed hereinabove, he even failed to make any effort in accordance with law so as to get an F.I.R registered against the alleged highhandedness of the Police Authorities in supporting the defendants and so also for not registering an F.I.R on his behalf regarding the alleged unlawful actions of defendants.

12. In view of hereinabove facts and circumstances of the case, the Issues are answered in the following manner:-

ISSUE No.1	-----	Negative.
ISSUE No.2	-----	Affirmative.
ISSUE No.3	-----	Negative.
ISSUE No.4	-----	Not required to be answered.
ISSUE No.5	-----	Not required to be answered.
ISSUE No.6	-----	Negative.

13. Accordingly, instant Suit is dismissed, however, with no order as to costs.

Dated: 13.01.2017

JUDGE