

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 983 of 2008

BEFORE:**Mr. Justice Arshad Hussain Khan****Abdul Sattar V/s Irfan & another**

Plaintiff: Abdul Sattar s/o Moosa Abdullah

Defendants: Irfan & Abdul Razzak

Date of
hearing: 13.08.2018Date of
judgment: 30.08.2018**JUDGMENT**

ARSHAD HUSSAIN KHAN, J. This suit was filed on 14.07.2008 against the defendants for Declaration and Permanent Injunction with the following prayer:-

- a) *For a declaration that the plaintiff is lawful owner of properties viz (i) Allah hoo fishing launch, Col. No.31909, (ii) a house on Plot No.1606, Block No.3, Bhutta Village Keamari and (iii) a house on Plot No.657, Block 02 at SCH 16, Federal 'B' Area, Karachi.*
- b) *For permanent prohibitory injunction restraining the defendants from making any claim, right title or interest in above properties.*
- c) *Cost of the suit and*
- d) *Any other or further relief or reliefs deemed proper by this Hon'ble Court in the circumstances of case.*

2. The facts of the case as averred in the plaint are that the plaintiff is lawful owner of *properties* viz: (i) Allah hoo fishing launch/vessel, Col. No.31909, (ii) a house on Plot No.4006, Bhutta Village, Block

No.3, Keamari and (iii) house on Plot No.657, Block 02 at SCH-16, Federal 'B' Area, Karachi [suit properties]. The defendant No.1, step-son of the plaintiff (son of his deceased wife from her former husband), on the instigation of defendant No.2, the real brother of plaintiff, has started to raise false claim of his share in the suit properties. It is also averred that defendant No. 2 earlier had also claimed the share in suit properties against which the plaintiff had to file suit bearing No. 73 of 1996 in the Court of Senior Civil Judge, Karachi (Central). The said suit, however, was compromised and subsequently withdrawn when defendant No.2 admitted the claim of plaintiff. Since then defendant No.2 has personal grudge with the plaintiff and now he instigated defendant No.1 to raise claim his share in the suit properties. It is also averred that the suit properties are owned by the plaintiff and the defendants have no right, title and interest of whatsoever nature in the suit properties.

3. Notices of the present case were issued to the defendants through all modes including publication made on 19.02.2009 in Daily "Jang" Karachi but they failed to appear and contest the matter. Consequently, on 25.05.2009 this Court while holding "service good" declared the defendants exparte.

4. Record reveals that the plaintiff filed his affidavit-in-exparte proof on 1.04.2010, thereafter he was examined on 11.01.2011 and produced the following documents:

- (i) Plaintiff as **Ex.5/1**,
- (ii) Original certificate No.928 dated 01.07.2008 in respect of Motor Fishing Boat namely Allah Hoo as **Ex.5/2**,
- (iii) Original lease deed executed by KMC in favour of the plaintiff on 10.02.1993 in respect of property plot bearing No. 4006 Bhutto village, Block No. 3, Kemari Karachi as **Ex.5/3**, and

- (iv) Original sale-deed dated 04.05.2007 executed in favour of the plaintiff in respect of property plot No. 657/2, Block -2 at Scheme No.16 Federal B Area, Karachi as **Ex.5/4**.

Since no one appeared on behalf of the defendants to cross-examine the plaintiff, therefore, cross-examination was ordered to be nil.

5. This is an old matter pertaining to the year 2007, and is being fixed for final arguments since 2011, therefore, on 13.08.2018, this matter was taken up when neither on behalf of the plaintiff nor the defendants' side appeared. In the circumstances, the matter was reserved for judgement

6. From the perusal of the material available on record and the evidence, it is clear that in the instant matter the plaintiff's version is supported through his evidence while the defendants despite opportunities have failed to appear and contest the matter. The contentions /assertions and the evidence led by the plaintiff are thus unrebutted and deemed to be admitted by the defendant. The documents relied upon by the plaintiff in respect of the suit properties also reflect that the plaintiff is the owner of the same, however, suit properties at Sr. (i) & (ii) are in the name of plaintiff, whereas the property at Sr. No.(iii) is mutated in the name of plaintiff as well as his wife namely Mst. Saira Bano. Hence, it appears that presumption of truth is attached to them until and unless they are rebutted through a strong and cogent evidence and, on the other hand, the Defendant has failed to bring any such evidence on the record. Therefore, there appears no reason, cause or justification to hold the said documents otherwise. In these circumstances, I am of view that the plaintiff has

established his rights over the suit properties and is entitled to the reliefs claimed in the present case. Accordingly, the plaintiff is declared owner in respect of the suit properties except property mentioned at Sr. Nos.(iii) which is in the joint name of plaintiff as well as his wife namely Mst. Saira Bano. Further the defendants are restrained from claiming any right, title, interest and or interfering with respect of the suit properties.

The suit is decreed in the above terms.

JUDGE

Karachi

Dated 30.08.2018

jamil