

IN THE HIGH COURT OF SINDH KARACHI

S.M.A. No. 141 of 2016

[Muhammad Iqbal - Petitioner

In the matter of the estate of Noor Muhammad Chutani - Deceased]

Date of hearing : 29.05.2018.
Date of Decision : 24.09.2018
Applicant : Mst. Nasreen through Mr. Babar Sattar, Advocate.
Objectors : Business Vision (Pvt.) Ltd, and Mr. Tariq Islam, through Mr. Haseeb Jamali and Ms. Sana Q. Valika, Advocates.

ORDER

ADNAN IQBAL CHAUDHRY J. -

1. The SMA had been allowed on 16-06-2017 by granting to Mr. Muhammad Iqbal (the petitioner) Letters of Administration for Plot No.109/1, Sheet No.C.F. 1.5, measuring 2052 sq. yds., Clifton Quarters, Karachi (hereinafter 'the Subject Plot'), which was said to be the property of late Noor Muhammad Chutani s/o Moosa Bhai Chutani (the Deceased). Per the SMA/petition, the Deceased had passed away intestate on 05-05-1970 leaving behind only a daughter namely Naseem Begum Chutani, who also passed away on 10-07-1989 leaving behind her husband namely Mr. Muhammad Iqbal (the petitioner) and a daughter namely Mst. Nasreen.

By order dated 27-09-2017, the petitioner was allowed to submit a Certified True Copy of the lease of the Subject Plot with his personal bond as security for the issue of Letters of Administration, which was eventually issued on 07-10-2017.

2. On 16-10-2017, Mr. Muhammad Iqbal (the petitioner) moved a contempt application (CMA No.1600/2017) against the Director Land KMC on the ground that despite Letters of Administration the KMC had declined to mutate the Subject Plot to the names of the

legal heirs of the Deceased. By order dated 05-12-2017, when the alleged contemnor was before the Court, it was directed that the petitioner shall appear before the KMC again for the purposes of mutation of the Subject Plot which should be done within 3 days, and if the KMC had any reservations on the mutation, it should bring that to the notice of the Court. On 15-12-2017, the KMC filed a statement in the SMA to inform the Court that the mutation was not done because per the KMC's record, the Subject Plot was the property of M/s Bibojee Services (Pvt.) Ltd. and Mr. Tariq-ul-Islam. The statement filed by the KMC also gave a chronology of the transactions in respect of the Subject Plot.

3. On 28-12-2017, M/s Business Vision (Pvt.) Ltd. and Mr. Tariq Islam (hereinafter 'the Objectors') moved the following applications:

- (i) CMA No.2057/2017 under Section 263 of the Succession Act, 1925 for revoking Letters of Administration granted to Mr. Muhammad Iqbal (the petitioner) in respect of the Subject Plot;
- (ii) CMA No.2058/2017 under Section 301 of the Succession Act, 1925 for suspending Mr. Muhammad Iqbal as Administrator of the Subject Plot;
- (iii) CMA No.2059/2017 under Section 282 of the Succession Act, 1925 for initiating criminal proceedings against Mr. Muhammad Iqbal for having made false averments in the SMA/petition.

Vide an interim order dated 28-12-2017, Letters of Administration granted to Mr. Muhammad Iqbal for the Subject Plot was suspended.

4. On 12-01-2018, Mst. Nasreen, who was mentioned in the SMA as the other legal heir of the Deceased as his grand-daughter (through the late Naseem Begum Chutani), moved CMA No.59/2018 under Order XXII Rule 3 CPC to bring on record the fact that her father, Mr. Muhammad Iqbal (the petitioner) had passed

away on 17-12-2017, and praying that in his stead she (Mst. Nasreen) should be impleaded as petitioner. Since Mr. Muhammad Iqbal (the Administrator) had remained unsuccessful in administering the Subject Plot before he passed away, Mst. Nasreen also moved CMA No.60/2018 under Section 259 of the Succession Act, 1925 for the grant of Letters of Administration to her for the Subject Plot.

This order proceeds to decides all of the aforesaid CMAs.

5. Mr. Haseeb Jamali, learned counsel for the Objectors submitted that the Subject Plot No.109/1 was originally part of a larger Plot No.109 which had been purchased in 1951 by the partnership firm of N.M. Chottani Jewellers through its partner Haji Noor Muhammad Chottani; that in 1952, the Subject Plot was subdivided into Plot No.109/1 and Plot No.109/2; that in 1953 the partnership firm of N.M. Chottani Jewellers was dissolved, and by virtue of a Deed of Dissolution, the Subject Plot was given to one of the partners of the dissolved firm namely Mr. Hashim s/o Haji Noor Muhammad in lieu of his share in the dissolved partnership; that in 1958, the said Mr. Hashim sold/transferred the Subject Plot vide a registered deed to the ancestors and predecessors-in-title of Mr. Tariq-ul-Islam (Objector No.2); that the Subject Plot eventually devolved on Mr. Tariq-ul-Islam in 2001 by way of inheritance; that for the purposes of a joint business venture, Mr. Tariq-ul-Islam appointed M/s Bibojee Services (Pvt.) Ltd. as his Attorney for the Subject Plot; that in 2008, the Subject Plot was amalgamated with the adjoining Plot No.108 and Plot No.109/2; that the amalgamated plot being Plot No.108 was commercialized in 2011; that in 2016, Bibojee Services (Pvt.) Ltd. transferred the amalgamated plot vide a registered deed to Business Vision (Pvt.) Ltd. (Objector No.1), of which Mr. Tariq-ul-Islam (Objector No.2) is shareholder and Chief Executive; and that the Objectors are in possession of the amalgamated plot and of the original lease of the Subject Plot as

against Mr. Muhammad Iqbal and Mst. Nasreen who possess only a Certified True Copy of the lease of the Subject Plot.

Learned counsel for the Objectors also submitted that earlier in 2014, Mst. Nasreen had applied to the KMC for mutation of the Subject Plot on the ground that she was the 'daughter-in-law' of the Deceased (Noor Muhammad Chutani) and his sole surviving legal heir; that in 2015 when she wrote to the KMC for the second time, she claimed to be the 'grand-daughter' of the Deceased and a legal heir along with her father, Mr. Muhammad Iqbal; that a Will of the Deceased had also been relied upon by Mst. Nasreen before the KMC; that when Mr. Muhammad Iqbal and Mst. Nasreen could not produce documents to support their request for mutation, their application was declined by the KMC.

Learned counsel for the Objectors further submitted that the Deceased is said to have passed away in 1970, his spouse before him in 1967, and their daughter Naseem Begum Chutani in 1989, but suspiciously, death certificates of all three had been issued to Mr. Muhammad Iqbal in 2016 who surfaced after decades to lay claim to the Subject Plot. He submitted that in the facts of the case it is doubtful that Mr. Muhammad Iqbal and Mst. Nasreen are legal heirs of the Deceased.

In view of the foregoing, learned counsel for the Objectors submitted that Letters of Administration in respect of the Subject Plot had been obtained by Mr. Muhammad Iqbal by way of fraud and misrepresentation; that the facts narrated by the Objectors constituted a just cause within the meaning of Section 263 of the Succession Act, 1925 to revoke/annul the said Letters of Administration; and that the same facts are sufficient grounds for denying Mst. Nasreen any further Letters of Administration in respect of the Subject Plot.

6. On the other hand, Mr. Babar Sattar, learned counsel for Mst. Nasreen contended that the documents relied upon by the Objectors for title to the Subject Plot have all been managed, are fabrications

and sham transactions; that even these documents do not show how title of the Subject Plot came to be with Bibojee Services (Pvt.) Ltd. so as to entitle it to transfer the same to Business Vision (Pvt.) Ltd. (Objector No.1) as Mr. Tariq-ul-Islam never transferred the Subject Plot to Bibojee Services (Pvt.) Ltd. and nor did the Power of Attorney given by Mr. Tariq-ul-Islam to Bibojee Services (Pvt.) Ltd. empower the latter to sell/transfer the Subject Plot; that consequently the subsequent amalgamation of the Subject Plot into Plot No.108 and then the commercialization of the latter, are all unlawful; that the Search Certificate on the record does not record any of the transactions relied upon by the Objectors and it still shows the Deceased as the owner of the Subject Plot; that the chronology of transfers of the Subject Plot given by the Objectors is at variance with the one given by the KMC; that the documents on the record are sufficient to establish the status of Mr. Muhammad Iqbal and Mst. Nasren as legal heirs of the Deceased.

Mr. Babar Sattar further submitted that the lease of 1955 relied upon by both sides shows that the Subject Plot had in fact been leased by the KMC to the Deceased and not to the partnership firm of "N.M. Chottani Jewellers" as alleged by the Objectors; that in any case, title of the Subject Plot could not have been transferred to Mr. Hashim s/o Haji Noor Muhammad Chottani by the Deed of Dissolution as claimed by the Objectors, inasmuch as such Deed of Dissolution was an unregistered document, and therefore the subsequent transfer allegedly made by Mr. Hashim to the predecessor-in-title of Mr. Tariq-ul-Islam (Objector No.2) has no legal basis; and that the falsity of the claim of the Objectors stands exposed by the fact that on the one hand they contend that the lease of the Subject Plot was issued to the partnership firm in 1955, and on the other hand they contend that the said partnership had already been dissolved earlier in 1953.

7. The above narration of the contentions of learned counsels is to show firstly that the Objectors dispute not only the title of the

Deceased to the Subject Plot, but also question the status of Mr. Muhammad Iqbal and Mst. Nasreen as legal heirs of the Deceased; and secondly, to show that the dispute between the parties is one that cannot be decided without recording evidence. The question that then comes to mind is whether in the exercise of this testamentary jurisdiction, and to what extent if any, can this Court proceed to record evidence while deciding a matter under Section 263 of the Succession Act, 1925. However as discussed *infra*, that question need not be addressed in the circumstances of this case. Section 263 of the Succession Act, 1925 reads as under:

“263. Revocation or annulment for just cause.

The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. Just cause shall be deemed to exist where :--

- (a) the proceedings to obtain the grant were defective in substance; or
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) the grant has become useless and inoperative through circumstances; or
- (e) the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.”

8. I find that in the circumstances of the case the questions whether the grant was defective, or had been obtained fraudulently or by means of an untrue statement within the meaning of clauses (a), (b) and (c) of Section 263 of the Succession Act, 1925, are only moot points at this stage for the reason that Mr. Muhammad Iqbal, to whom Letters of Administration had been granted for the Subject Plot, has since passed away and admittedly he remained

unsuccessful in using such grant before he passed away. Therefore, without dwelling on the disputed questions of fact that arise in this case, the death of Mr. Muhammad Iqbal in my view is just cause to annul, under clause (d) of Section 263 of the Succession Act, 1925, the Letters of Administration granted to him for the Subject Plot as such grant has now become useless and inoperative.

9. Regards CMA No.59/2018 moved by Mst. Nasreen under Order XXII Rule 3 CPC for succeeding late Mr. Muhammad Iqbal in these proceedings, having concluding that the death of Mr. Muhammad Iqbal makes the Letters of Administration granted to him useless and inoperative, the right to defend such Letters of Administration does not survive to his legal heirs. In my view, a 'Letter of Administration' and the bond executed by the grantee pursuant thereto, is personal to the grantee and does not survive his death. That much is also envisaged under Section 259 of the Succession Act, 1925 discussed *infra*.

10. Adverting now to CMA No.60/2018 moved by Mst. Nasreen for the grant of Letters of Administration of the Subject Plot to her under Section 259 of the Succession Act, 1925, that Section reads:

"259. Rules as to grants of effects unadministered. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made."

Since Rules of an original grant are applicable for granting Letters of Administration under Section 259 as well, the Rule embodied in Section 295 Succession Act, 1925 is attracted to the prayer made in CMA No.60/2018 which Section provides that once proceedings for the grant become contentious, then the same are to be decided by way of a regular suit and not in SMA proceedings which are essentially for non-contentious matters. Given the

competing contentions of the parties discussed above, and the counter-affidavit filed by the Objectors to CMA No.60/2018, this matter is clearly contentious.

11. Therefore, for reasons discussed in paras 8 to 10 above I hold as follows:

- (a) that Letters of Administration dated 07-10-2017 granted to Mr. Muhammad Iqbal for the Subject Plot No.109/1 has become useless and inoperative due to his death, and for such reason it stands annulled under clause (d) of Section 263 of the Succession Act, 1925. CMA No.2057/2017 and CMA No.2058/2017 stand disposed off in the said terms;
- (b) that on the death of Mr. Muhammad Iqbal, CMA No.2059/2017 under Section 282 of the Succession Act, 1925 for initiating criminal proceedings against him, also abates and is disposed off as such;
- (c) that since the right to defend Letters of Administration granted to a person does not survive to the legal heirs of the grantee, CMA No.59/2018 is dismissed;
- (d) that since the grant of Letters of Administration for the Subject Plot to Mst. Nasreen is a contentious matter that cannot be decided in these proceedings, CMA No.60/2018 is also dismissed. Since a challenge to the deeds relied upon by the Objectors for their title to the Subject Plot has not been pleaded in the original petition nor in CMA No.60/2018, the conversion of this matter to a regular suit would serve no purpose. Mst. Nasreen is at liberty to institute a fresh civil suit;
- (e) that the contempt alleged in CMA No.1600/2017 is that by declining to mutate the Subject Plot to the names of Mr. Muhammad Iqbal and Mst. Nasreen, the Director Land KMC

had disobeyed the order dated 16-06-2017. However, that order only granted the SMA and did not direct the Director Land KMC to effect mutation. Therefore, the contempt application is misconceived and is also dismissed.

JUDGE