

# THE HIGH COURT OF SINDH, KARACHI

## Suit No. 1171 of 2017

[Mohammad Qasim versus Haroon Qasim Hussain and others]

Plaintiff : Mohammad Qasim through  
Ms. Zubaida K. Jamali, Advocate.

Defendants 1, 4, 6 & 8 : Haroon Qasim Hussain & 3 others  
through Mr. Abdul Wahab Baloch,  
Advocate.

Defendants 2, 3, 5 & 7 : Nemo.

Date of hearing : 30-01-2020

Date of order : 07-04-2020

## ORDER

**Adnan Iqbal Chaudhry J.** - The parties are siblings and children of the late Hajiyan Aisha Bai (deceased mother) who is said to have passed away in 1989. The Plaintiff claims to be in possession of Bungalow No. 109, Block 6, Federal B Area, Karachi (suit property), and it is his case that the suit property vested in the deceased mother and he is entitled to a partition of his share therein. Per the plaint, ever since the demise of the deceased mother in 1989, the Defendant No.1, who is the elder brother, has kept his siblings in false hopes of their share in the suit property; that in September 2016 the Plaintiff learnt that the Defendant No.1 had made a deal to sell the suit property and that is when a dispute arose between the parties; that in May 2017 the Defendant No.1 entered the suit property and tried to dispossess the Plaintiff; hence the following prayers :

*“A) Direct the Defendant No.1 to make partition of the suit property. In case failure of it, Nazir of this Court be appointed to distribute/partition/auction according to law the suit property bearing No. double storey bungalow 109, measuring about 600 sq. yds., Block 6. Federal B Area, Karachi, amongst the Plaintiff and Defendants in accordance with their legal respective shares.*

*B) to declare if any document prepared fraudulently regarding above property to be void, or any transaction whatsoever is illegal regarding the suit property.*

C) *Permanent injunction to the effect that the defendants and their legal heirs have no right whatsoever to dispossess the plaintiff and his family or to make any transaction regarding the suit property and in case any transaction is made the same will be null & void, illegal and in effective on rights of the plaintiff and other legal heirs, so also not to create any third party interest.*

D) *Cost of the suit .....*

E) *To grant any other relief .....* “

2. The Defendants 1, 4, 6 and 8 have filed written statements. Per the said Defendants, though the suit property was purchased in the name of their mother, such purchase was from the hard earned income of the Defendant No.1 working abroad; therefore, after the demise of their mother, all her children, including the Plaintiff, executed a registered relinquishment deed dated 22-07-2008 to relinquish their respective shares in the suit property to the Defendant No.1; thereafter, the Defendants 4 and 6 vacated their respective rooms in the suit property in favor of the Defendant No.1, but the Plaintiff refused to vacate the one room in his occupation, and subsequently, taking advantage of the absence of the Defendant No.1 from Pakistan, the Plaintiff unlawfully occupied the rooms vacated by the Defendants 4 and 6; that on coming back to Pakistan, the Defendant No.1 tried to reason with the Plaintiff for vacating the suit property, but he refused, and therefore, the Defendant No.1 filed a complaint against the Plaintiff before the District and Sessions Judge, Karachi (Central) under the Illegal Dispossession Act, 2005, which is pending.

The Defendant No.1 has also filed a counter suit against the Plaintiff, being Suit No. 2197/2018, praying *inter alia* for a declaration of his title to the suit property and for possession of that part thereof which is in occupation of the Plaintiff.

3. Heard the learned counsel and perused the record.

I take up first CMA No. 4654/2018 which is by the Defendants 1, 4, 6 & 8 for rejection of the plaint under Order VII Rule 11 CPC. The ground urged for rejection is essentially that in view of the registered relinquishment deed executed by the Plaintiff himself in favor of the Defendant No.1, the suit for partition is *malafide* and not maintainable.

However, such ground would not be covered in the grounds listed under Rule 11 of Order VII CPC for rejection of plaint. In other words, rejection of plaint is being sought on the basis of the defense, i.e., the registered relinquishment deed which is introduced in the written statement, and it is settled law that for rejection of plaint the contents of the written statement cannot be examined. See *Abdul Karim v. Florida Builders (Pvt.) Ltd.* (PLD 2012 SC 247). It is another matter that if subsequently the relinquishment deed is admitted by the Plaintiff, or it is proved to have been executed by him, this suit may fail. But that stage has yet to arrive. Therefore, CMA No. 4654/2018 is misconceived.

4. CMA No. 1579/2018 by the Plaintiff is for initiating contempt proceedings against the Defendant No.1 for allegedly violating the undertaking given to the Court on 09-05-2017 when counsel for the Defendant No.1 stated that till the next date of hearing, the Defendant No.1 will maintain *status quo* and will not dispossess the Plaintiff from the suit property. It appears that thereafter the Defendant No.1 moved a complaint against the Plaintiff under the Illegal Dispossession Act, 2005 and that is the ground taken by the Plaintiff for alleging contempt. Suffice to say that the undertaking given to the Court on 09-05-2017 cannot be construed to prohibit the availing of a remedy available at law. The contempt application is misconceived.

5. By CMA No. 7405/2017, the Plaintiff prays for a temporary injunction to restrain the Defendant No.1 from dispossessing the Plaintiff from the suit property and from creating third-party interest therein. That relief is sought on the basis of a share inherited in the suit property from the deceased mother. Though the Defendant No.1 does not deny that the suit property vested in their mother at the time of her death, but he relies on a subsequent registered relinquishment deed dated 22-07-2008 to submit that after the demise of the mother, all her children, including the Plaintiff, had relinquished their share in the suit property in favor of the Defendant No.1. The Defendants 4, 6 and 8 support the Defendant No.1. Copy of the registered relinquishment deed dated 22-07-2008 in favor of the Defendant No.1

appears to have been executed also by the Plaintiff, and is followed by a mutation of the suit property in the name of the Defendant No.1. The said documents are on the record since February 2018, but the Plaintiff has not so far attempted to explain or challenge them by way of Order VI Rule 17 CPC or Order VIII Rule 9 CPC or by a fresh suit. Therefore, on a *prima facie* view of the matter, the Defendant No.1 appears to be exclusive owner of the suit property and the balance of convenience is in his favor. The Plaintiff has not demonstrated that the suit property, a residential bungalow, is capable of being partitioned by metes and bounds amongst 9 siblings. Therefore, in the event the Plaintiff does eventually succeed, he would not be without a remedy to claim his share in the suit property or proceeds thereof from the Defendant No.1. In other words, the Plaintiff will not suffer any irreparable harm if injunction is refused. For these reasons, CMA No. 7405/2017 is dismissed.

6. By CMA No. 7406/2017 the Plaintiff prays for an inspection of the suit property. However, having dismissed the application for temporary injunction, there is no purpose of the inspection.

For the foregoing reasons, all of the listed applications, CMA No. 4654/2018, CMA No. 1579/2018, CMA No. 7405/2017 and CMA No. 7406/2017 stand dismissed.

Karachi  
Dated: 07-04-2020

**JUDGE**