

**IN THE HIGH COURT OF SINDH AT
KARACHI**

Suit No. 2432 of 2014

Plaintiff : Syed Saadullah, through Ms. Zahida Naqvi, Advocate.

Defendants No. 1 : Muhammad Younus Tabani, through Mr. Abdul Rasheed Nizamani, Advocate.

Defendants No.2 : Asghar Hussain Motiwala, through Mr. Abdul Wajid Wyne, Advocate.

Defendants Nos. 3 to 5 : Nadeem Ahmed and 2 others, through Mr. Naeem Suleman, Advocate.

Date of hearing : 02.04.2019

ORDER

YOUSUF ALI SAYEED, J. – The Plaintiff has brought this Suit seeking specific performance of a so called Mutual Agreement said to have been executed on 01.01.2013 (the “**Subject Agreement**”), ostensibly reflecting a tripartite arrangement inter se the Plaintiff, Defendant No.1 and Defendant No.2 in relation to Town House No. D-184/B, Block 2, PECHS, Karachi (the “**Suit Property**”) which was said to be under construction at the time, and as per which possession of the Suit Property was to be handed over to the Plaintiff by the Defendant No.2 after completion of such construction within a period of one year and a lease executed in his favour in consideration of a sum of Rs.14,400,000/- said to have been owed to the Plaintiff by the Defendant No.1.

2. Within such framework, the Plaintiff firstly filed an Application under Order 39, Rules 1 and 2 CPC (CMA 16650/14) seeking to restrain the Defendant from creating any third-party interest in the Suit Property, followed by an Application under 38, Rule 5 CPC (CMA 4355/16) seeking attachment of the Suit Property on the ground that the Defendant No.2 was seeking to negotiate the sale thereof, and it is these two Applications that arise for consideration in terms of this common Order.
3. Whilst advancing her arguments in support of these Applications, learned counsel for the Plaintiff relied on the content of the Subject Agreement to contend that the same reflected an obligation on the part of the Defendant No.2 to hand over possession of the Town-House and to convey the same to the Plaintiff, and such transaction and the obligation thereby imposed had unreservedly been acknowledged and accepted by the Defendant No.1 in terms of his Written Statement. She submitted that, under such circumstances, the Plaintiff had a demonstrable case to injunctive relief even if a case of attachment had not been made out.
4. Learned counsel for the Defendant No.1 echoed the contention of Plaintiff's counsel and submitted that the Subject Agreement had been executed and the parties thereto were bound in accordance with its terms.
5. Conversely, learned counsel for the Defendant No.2 disavowed the Subject Agreement and refuted that the same had never been executed by the Defendant No.2, submitting that the signature appearing thereon being ascribed to him was a forgery. He submitted that the transaction reflected in the Subject Agreement defied logic, was unsupported by any consideration flowing from the Plaintiff or Defendant No.1 to the Defendant

No.2, and was a fraudulent device being employed by the Plaintiff and Defendant No.1 in a concerted endeavor to usurp the property of the Defendant No.2. It was submitted that the Defendant No.2 had been the owner of Plot No. 2/184-B, measuring 600 square yards, Survey Sheet No.35-P/1, Block 2, PECHS, Karachi (the “**Plot**”), which had since been conveyed by him to the Defendants Nos. 3 to 5 registered Sale Deeds dated 27.11.2014 and 02.12.2014, and it was pointed out that the envisaged town-house had never been constructed or even remained under construction on the Plot. He submitted that the very description of the Suit Property in the Subject Agreement was incorrect and bereft of any particulars as to the description/scope of the supposed town-house, and that the very transaction envisaged was misconceived.

6. Having considered the submissions in light of the pleadings and material on record, it merits consideration that in terms of the Subject Agreement, no consideration was payable directly by the Plaintiff to the Defendant No.2, and what was envisaged was that the transfer of the Suit Property, as described, would serve to set-off the liability said to owed to the Plaintiff by the Defendant No.1.

7. Needless to say, this begs the question as to what would have induced the Defendant No.2 to come forward for purpose of a transaction under which no consideration was to flow to him, especially when the Subject Agreement itself ascribes a higher market value to the Suit Property than the amount reflected as being the transactional value. No plausible reason has been pleaded or was forthcoming during the course of arguments, however it was pointed that in the Written Statement of the Defendant No.1 it had been pleaded that onward payment had been made by the Defendant No.1 to the Defendant No.2.

8. Be that as it may, the bare statement without any particulars as to the date or mode of payment is hardly demonstrative of the fact, and no material is available on record to even prima facie reflect such payment.
9. Furthermore, at the time that the Suit was filed, the Defendants Nos. 3 to 5, had not been impleaded and were only joined subsequently vide Order dated 29.08.2016 on their own Application under Order 1, Rule 10 CPC. As such, when the interim order of 15.12.2014 had been made, the same only operated as regards the Defendants Nos.1 and 2, but by then the Defendant No.2 had already conveyed title in the Plot to the Defendants Nos. 3 to 5 under the Sale Deeds dated 27.11.2014 and 02.12.2014.
10. Albeit that a restraint against the Defendant No.2 was of no further avail after he had divested himself of title, the interim Order was apparently never extended to the Defendants Nos. 3 and 5 following their joinder.
11. Under the circumstances, what essentially has to be determined at present is whether a case for injunctive relief at this stage stands made out in favour of the Plaintiff against the Defendants Nos. 3 to 5. In this respect, it merits consideration that the amended Plaint filed in the matter only broadly alleges collusion between the Defendant No.2 and Defendants Nos. 3 to 5, and does not contain any specific allegation as to the Defendants Nos. 3 to 5 having knowledge of a prior transaction in favour of the Plaintiff or any special nexus with the Defendant No.2 so as to reflect collusion.

12. Having regard to these facts, it is apparent that no prima facie case for injunction as against the Defendants Nos, 3 to 5 or for attachment of the Suit Property stands made out. The discretionary relief prayed for is therefore refused and CMA Numbers 16650/14 and 4355/16 are dismissed accordingly.

JUDGE

Karachi
Dated _____