

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
II Appeal No.70 of 2016

Date Order with signature(s) of Judge(s)

Hearing/priority case

1. For hearing of CMA No.5467/2016 (Stay)
 2. For hearing of main case
-

08.04.2021

Mr. Asif Ibrahim, advocate for appellant
Mr. Bashir Kazi, A.A.G.

A suit for specific performance was filed by the applicant against one Rano Mal, Safari Construction (Pvt.) Limited, Kausar Jahan and Karachi Development Authority. The suit was dismissed by the trial court on the basis of the fact that there was no title enjoyed by Safari Construction (Pvt.) Limited, for the enforcement of contract against it, which order was maintained by the appellate court.

I have heard the learned counsel for the appellant, AAG whereas rest chose not to appear despite service, and perused the material available on record. No one preferred to appear for respondents Nos.2 and 3. The property involved in the litigation is a plot bearing No.408, Block-12, Scheme No.36, Gulistan-e-Jauhar, Karachi, measuring “60” square yards. It was perhaps, as the present record reveals, owned by Rano Mal, vide allotment order available on record at page 77. On the basis of irrevocable general power of attorney, available at Page 87, Rano Mal extended all such powers to Akhtar Aziz. The power of attorney is claimed to be for consideration i.e. claimed to have been coupled with the interest as a substantial amount in respect of 60 square yards plot was paid by virtue of receipt, which amount was also acknowledged in the sale agreement dated 14.10.1987 at page 81. The said attorney then executed another irrevocable sub-general power of attorney i.e. Akhtar Aziz Kazmi son of Talqeen Ahmed Kazmi, executed sub-power in favour of Allah Dino Behan son of Mero. Appellant then perhaps entered into an agreement with one

Mominat Behan wife of last owner Allah Dino Behan, claiming herself to be Chief Executive of Safari Construction (Pvt.) Limited. The appellant claimed that he was made to believe that it was the company who owned the property and perhaps on this presumption a sale agreement was executed between Mominat widow of Allah Dino Behan and Muhammad Farooq, the appellant. The entire sale consideration was paid and the possession of constructed house was handed over by Safari Construction (Pvt.) Limited. The execution of sub-lease, however, was avoided and consequently suit for performance was filed, performance of which was declined on the count that neither Mominat widow of Allah Dino Behan nor Safari Construction (Pvt.) Limited enjoyed the title of the subject property. It was also taken into consideration that perhaps the title documents of plot were lost. There is no cavil to this proposition that the terms of the sale consideration and the receipt is a matter of record and not seriously disputed. The power of attorney executed on behalf of the original allottee i.e. Rano Mal also authorized the attorney to construct a residential house on the said property for residence or for the purposes as incorporated therein and accordingly to submit the building plan. These power of attorney and sub-power of attorney are registered instruments and hence on the face of it cannot be denied. Even Mominat Behan in evidence has not opposed the execution of the sale agreement and payment of consideration. The court came to the view that since the title was not enjoyed by them, therefore, there was no question of specific performance.

After hearing the counsel for the appellant on the basis of the above facts I have reached to the conclusion that perhaps these power of attorney and sub-power of attorney are to be read with the sale agreement and sale consideration and the contents of the power of attorney which may be looked into in terms of Section 200 and 202 of the Contract Act and some view had to be formed whether it coupled with interest. In that case if the property was not enjoyed by Safari Construction (Pvt.) Limited it was surely enjoyed by one of the Directors i.e. Allah Dino Behan and at one point of time the widow of Allah Dino Behan

i.e. Mominat Behan, may be as chief executive of Safari Construction (Pvt.) Limited, entered into agreement of sale, having share in it. The sale consideration for plot was paid by Allah Dino Behan. If at all for any technical reason the performance could not be sought against Safari Construction (Pvt.) Limited, it could well be asked against an individual Allah Dino Behan and/or widow Mominat who acquired share in it when she entered into agreement. Since Allah Dino Behan expired in 1989, there is no record if the legal heirs were brought on record or if the property was brought in the pool of assets of company enabling Chief Executive to enter into agreement with consent of other owners or if it is private limited between family members then perhaps principles of partnership could be applied. Therefore, the agreement that was entered into with Mominat Behan widow of Allah Dino Behan was one of the beneficiaries of property along with the legal heir of deceased Allah Dino Behan.

In my tentative view, a valuable amount of this poor appellant was involved against 60 square yards plot and in all fairness I deem it appropriate to set aside the two judgments of the trial court as well as the appellate court and remand the case to the trial court, enabling the applicant to file the amended title, disclosing the legal heirs of Allah Dino Behan, which include his widow Mominat Behan or any other legal heirs as the record of the NADRA reveals, who acquired rights in the property and also assets of respondent No.2 as it was chief executive of respondent No.2, who assured appellant for performance. Once all such legal heirs are placed on record by filing an amended title, de novo proceedings for the performance of the agreement be initiated and if required additional evidence be recorded for disposal of the suit for specific performance in accordance with law.

The appeal is disposed of in the above terms.

J U D G E